

Deferred Resignation Program-related FAQs for Employing Agency HR Offices—Set II

Pay Issues

Q: How should agencies treat Law Enforcement Availability Pay (LEAP) for individuals serving in covered positions who have enrolled in the Deferred Resignation Program and will be on extended administrative leave in CY2025?

A: An employing agency may continue LEAP during periods of administrative leave granted to a Deferred Resignation Program participant as long as the employee remains eligible for LEAP. To continue LEAP, an agency should not change an employee's position in a manner that would cause the employee to lose LEAP eligibility. By law and regulation, full days of leave do not count as "regular workdays" in computing an investigator's average hours per regular workday; thus, use of administrative leave will not cause an employee to fail to meet the LEAP 2-hours-per-regular-workday average hours requirement. (See 5 U.S.C. 5545a(a)(4) and (d) and 5 CFR 550.183.)

As a general rule, LEAP continues during a period of "leave with pay" since it is paid as a percentage of an employee's payable amount of basic pay (5 CFR 550.185(b)). However, paying LEAP during periods of excused absence with pay is generally subject to agency discretion (5 CFR 550.185(d)). Once an agency has implemented the administrative leave law in 5 U.S.C. 6329a and supporting regulations, the administrative leave granted to Deferred Resignation Program participants would be "leave with pay" as described in 5 CFR 550.185(b), which would require payment of LEAP. Agencies have until September 13, 2025, to implement section 6329a. Until section 6329a is implemented, the administrative leave granted to Deferred Resignation Program participants would be considered "excused absence with pay" as described in 5 CFR 550.185(d), which would make the payment of LEAP discretionary. Since LEAP is basic pay for retirement and certain other purposes, agencies should carefully consider the effects of not continuing LEAP during periods of administrative leave.

Reservists/Active Duty Issues

Q: If civilian employees under the Deferred Resignation Program are called to active duty as reservists, can they continue to receive the administrative leave during the deferred resignation period while on active duty?

A: There is no authority to use administrative leave during uniformed service by a federal employee. Only certain types of paid leave or paid time off can be used during military service, as provided in 5 CFR 353.208.

Disciplinary Issues

Q: I am a supervisor with a disciplinary action pending decision and the employee subject to discipline elected into the Deferred Resignation Program. Should I proceed with issuing a decision and effectuating the decision?

A: Yes, you should proceed with issuing a decision but hold the action in abeyance until the employee exits the federal service. If the employee resignation (or retirement) is not effectuated under the terms of the Deferred Resignation Program agreement, the agency should then proceed with effectuating the decision. Agencies are encouraged to amend the Deferred Resignation Program agreement to incorporate a mutual understanding that the employee will forgo any disciplinary action only upon his or her departure from federal service under the Deferred Resignation Program. Before amending the Deferred Resignation Program agreement, you should consult with agency legal counsel.

Q: I am a supervisor with a disciplinary action in which I've made a decision to remove the employee. The employee, however, has elected the Deferred Resignation Program. The effective date of the removal is before the date the employee would go out on Administrative Leave under the Deferred Resignation Program. Should I proceed with removing the employee on the effective date?

A: No, you should hold the disciplinary action, whether removal or a lesser penalty, in abeyance until the employee exits the federal service. As explained above, the agency should proceed with effectuating the removal or other penalty if the resignation or retirement is not effectuated by the terms of the Deferred Resignation Program agreement. The agency should also amend the Deferred Resignation Program agreement to incorporate a mutual understanding that the employee's rescission of his or her participation in the Deferred Resignation Program will lead to the agency effectuating the removal or other penalty. Before

amending the Deferred Resignation Program agreement, you should consult with agency legal counsel.

Q: I am a supervisor with a disciplinary action in which I've made a decision and the employee subject to discipline elected the Deferred Resignation Program. The effective date of the discipline is after the date the employee would go out on Administrative Leave under the Deferred Resignation Program. Should I still place the employee on Administrative Leave and proceed with removing the employee on the effective date?

A: No, you should place the employee on administrative leave and hold the discipline in abeyance until the employee exits the federal service. The agency should follow the same steps as described in the immediate questions above.

Q: I am a supervisor who has been working with HR to propose a disciplinary/performance-based action against an employee. The subject employee has informed me that they have elected Deferred Resignation Program. Should I proceed with the action?

A: You should first consult with your human resources point of contact to confirm your employee's participation in the Deferred Resignation Program. If the employee's election into the Deferred Resignation Program is approved, your human resources point of contact should continue working with you to prepare the appropriate notification concerning the disciplinary or performance-based action. Notification of the proposed action should be held in abeyance until the employee exits the federal service. Alternatively, the agency may consider amending the Deferred Resignation Program agreement to include mention of the pending proposed action and that said proposed action will be held in abeyance and not acted on further unless the employee fails to separate from federal service under the terms of the Deferred Resignation Program agreement. The agency should consult with its Office of General Counsel for advice on how and whether to modify the agreement.

Return to Work Issues

Q: Do we have to first process a reassignment of duty location back to the office for the employees that resign?

A: An employee whose Deferred Resignation request is approved is not required to return to in-person work at an agency office. Thus, a remote worker's official

worksite (duty location) does not need to change. To the extent the remote worker is required to work for a period of time to assist in transition, the worker may continue to work at the remote location.

Processing, Data Management Standards & Other Implementation Issues

Q: For the Deferred Resignation Program, will the effective date be September 30th?

A: The general default effective date of a deferred resignation is September 30, 2025. A participant in the Deferred Resignation Program is free to elect an earlier resignation date at any time. Employees who retire may have a resignation/separation date as late as December 31, 2025.

Q: Is written processing guidance currently available using Legal Authority Code (LAC) 2 for the Deferred Resignation Program, including for addressing a return to duty from a non-pay status and for retirement processing? If not, when may it be available?

A: On February 24, 2025, OPM provided guidance to agency Chief Human Capital Officers regarding use of a special secondary legal authority code (RZM) when processing any personnel actions related to the Deferred Resignation Program. The Guide to Processing Personnel Actions (GPPA) will be updated in the future to reflect the new legal authority code. OPM also advised agencies and shared service providers that they may elect to (1) create accounting/labor codes specific to the Deferred Resignation Program to allow agency tracking and reporting capabilities related to the Deferred Resignation Program and (2) add the following remark “Deferred Resignation Program” on employee timecards for additional traceability within the Time and Attendance system.

Q: Since the guidance given to employees and the Deferred Resignation Program agreement states that employees will continue to receive all pay while on administrative leave, the only way to make this happen would be to not change an employee’s duty station when the Deferred Resignation Program begins. Agencies could reassign employees to a new position, but it would need to be a position that allows the agencies to provide the same pay. Is this understanding correct?

A: That is correct. Once an employee's Deferred Resignation is approved, agencies should not make changes in the employee's position, official worksite (duty station), or established tour of duty in a manner that would affect the employee's pay entitlements. For example, if an employee is a remote worker who is stationed in Kansas City, Missouri, at the time the employee's deferred resignation is approved, and who but for the deferred resignation would have been expected to work at the home office in Washington, DC, the employee's official worksite would remain at Kansas City, Missouri, and the employee's locality pay would be based on the Kansas City location.

If an agency changes the remote worker's duty station via an SF 50 before the Deferred Resignation Program resignation period begins, location-based pay entitlements will be based on the new location, since that is the official duty station when the deferred resignation was approved.