

**AFGE-VA Settlement Agreement –
AFGE National Grievance on Night Differential and Weekend Premium Pay While on
Authorized Leave Dated 7/19/13
(FMCS Case No. 141008-50100-A; NVAC NG-7/19/13)**

The American Federation of Government Employees (AFGE) and the Department of Veterans Affairs (VA) (collectively, the Parties) hereby agree to settle all disputes arising out of AFGE's National Grievance (Grievance) dated July 19, 2013, concerning the provision of night and weekend premium pay to Registered Nurses, Physician Assistants, Expanded Function Dental Auxiliaries, and Hybrids while on authorized paid leave in the AFGE bargaining unit.

- 1) **Withdrawal of Grievance** - Upon full execution of this agreement (Settlement Agreement), AFGE, on behalf of all Registered Nurses, Physician Assistants, Expanded Function Dental Auxiliaries, and Hybrids in the AFGE bargaining unit (AFGE BUEs), past and present, agrees to withdraw the Grievance dated July 19, 2013.
- 2) **Waiver of Claims** - AFGE, on behalf of all AFGE BUEs, past and present, agrees to release and waive its right to file any complaint, claim, lawsuit, grievance, appeal or proceeding of whatever nature arising from the Grievance against VA, its officials, employees, former officials or former employees, or their successors and assignees, including any and all claims against VA officials, employees, or former officials or employees, in both individual and official capacities, in any state or Federal court, or before any administrative body, tribunal, board, or commission, regarding any matter that was raised in the Grievance, with the exception of any claims that may arise by reason of breach of any term in this Settlement Agreement. AFGE further agrees that it will not grieve, arbitrate or litigate any claims asserted in its Grievance dated July 19, 2013, on behalf of AFGE BUEs, with the exception of any claims that may arise by reason of breach of any term in this Settlement Agreement.
- 3) **Eligible Positions** - In order to be eligible to file a claim pursuant to this Settlement Agreement, an AFGE BUE must be in an position specifically designated by the AFGE BUE's station as a 38 U.S.C. § 7401(3) hybrid position designated to receive additional pay on the same basis as nurses pursuant to 38 U.S.C. § 7454 (b)(1) ("Designated Hybrid"), in an occupation listed under 38 U.S.C. § 7401(3) ("Hybrid"), or approved for hybrid status by the Assistant Secretary for Human Resources and Administration in VA Handbook 5007, Part V, Appendix A ("Hybrid"). No claims concerning unpaid or incorrectly paid Weekend Pay for Periods of Leave or Night Differential may be filed on behalf of Registered Nurses, Physician Assistants, or Expanded Function Dental Auxiliaries pursuant to this Settlement Agreement.
- 4) **Eligible Claim Period** - Claims may only be filed for the period of July 1, 2012 through the date of execution of this Settlement Agreement ("claim period").
- 5) **Duplicate Payment Exclusion** - AFGE BUEs who have already received Weekend Pay or Night Differential for Periods of Leave for the period from July 1, 2012 through the date of execution of this Settlement Agreement are not eligible to receive a duplicate payment for the same pay entitlement or claim period.

6) **Eligibility & Claims for Weekend Pay and/or Night Differential for Periods of Leave.**

a. **Night Differential** - In order to be eligible to file a claim for Night Differential pursuant to this Settlement Agreement, an AFGE BUE must be a Designated Hybrid. To be considered a Designated Hybrid AFGE BUE who is eligible for night differential pursuant to this Settlement Agreement, the AFGE BUE's station *must* have specifically designated the AFGE BUE's hybrid occupation to receive premium pay on the same basis as nurses under 38 U.S.C. 7454(b)(1) for the claim period. Additional information can be found in Human Resources Management Letter No, 05-12-11, dated November 20, 2012, which is Attachment B.

b. **Weekend Premium Pay** - In order to be eligible to file a claim for Weekend Premium Pay pursuant to this Settlement Agreement, an AFGE BUE must be in a Title 38 Hybrid occupation listed under 38 U.S.C. 7401(3) or approved for hybrid status by the Assistant Secretary for Human Resources and Administration. Attachment A identifies the Hybrid occupations that may file claims for Weekend Pay Premium under this Settlement Agreement. Additional information can be found in Human Resources Management Letter No, 05-12-11, dated November 20, 2012, which is Attachment B.

c. **Claims**

i. **Timely claims** - Within ninety (90) calendar days of the date of execution of this Settlement Agreement, an AFGE Local, on behalf of a Designated Hybrid or Hybrid AFGE BUE, or an AFGE Designated Hybrid or Hybrid BUE must file the attached claim form, Attachment C, in writing, with the Local Payroll Office at the facility where they worked during the date(s) of the claim concerning unpaid or incorrectly paid Weekend Premium Pay for Periods of Leave or Night Differential for the eligible claim period. A copy of the claim form must also be sent to the Financial Service Center (FSC) at VAFSCPayrollSpecialActionsTeam@va.gov.

ii. **Untimely claims** - Untimely claim forms will be denied and will not be eligible for payroll/FSC review, grievance/arbitration, and payment.

iii. While a Designated Hybrid or Hybrid AFGE BUE may seek assistance from the Local Payroll Office if they are unable to obtain any of the information on the claim form, including requesting leave approval documentation in or possible access to ETA or VATAS, it is ultimately the AFGE BUE's responsibility to provide the required information for his/her claim. The claim form must include:

1. Name;
2. Occupation/Occupation Series during claim period;
3. Social Security Number;
4. Home Address;
5. Telephone Number;
6. Email Address (required for Payroll notifications via email);
7. Hybrid or Designated Hybrid position during claim period;
8. Station Number and Facility;
9. Date(s) of allegedly incorrect Premium Pay for leave;
10. Number of hours of Premium Pay being claimed during Authorized Leave for Weekend Pay;

11. Number of hours of Premium Pay being claimed during Authorized Leave for Night Differential;
12. "Regularly Scheduled Tour" during date(s) in claim period;
13. Copy of leave approval(s) in VATAS or ETA for date(s) in claim period;
14. Name of supervisor for date(s) in 4i; and,
15. Name of timekeeper (if known) for date(s) in claim period.

- d. For the purposes of this Settlement Agreement only, "customarily and regularly worked" means the hours that a Designated Hybrid or Hybrid AFGE BUE worked during his/her scheduled tour of duty.

7) Review of Claims

- a. **Local Payroll Review** - The Local Payroll Office will have sixty (60) calendar days from its date of receipt of a claim form and the required supporting information to provide a preliminary determination on whether a pay adjustment is warranted to the FSC.
- b. **FSC Payroll Review of Claims** – The FSC will have ninety (90) calendar days from its date of receipt of the Local Payroll's preliminary determination to:
 - i. review the claim and supporting information, make a final determination on the pay adjustment or request missing information, and submit a payment file to DFAS for eligible claims
 1. If a claim is missing any required information, the Designated Hybrid or Hybrid AFGE BUE will have thirty (30) calendar days from the FSC notification concerning the incomplete claim to supplement and/or amend the claim. If the claim is not resubmitted within the thirty (30) calendar day period, the claim will be denied for any unsupported claim period(s) and the claim will not be eligible for payroll review or grievance/arbitration.
 - ii. notify the active Designated Hybrid or Hybrid AFGE BUE via email or notify the separated Designated Hybrid or Hybrid AFGE BUE in writing of the final determination as to whether a pay adjustment is warranted. Any interest payments issued for claims processed pursuant to this Agreement will be capped at a flat ten percent (10%).
 - iii. Defense Finance Accounting System (DFAS) provides payroll services for VA and will issue payments under this Settlement Agreement. However, in some instances, VA may determine that the VA Financial Services Center (FSC) or Station Accounting will issue a certain type of payment (e.g., payments for separated and deceased employees). If a 1099 is issued for a payment or interest payment, the AFGE BUE will be responsible for paying the associated taxes. The parties acknowledge that DFAS is a separate entity and the Agency exercises no control over and is not the principal of DFAS.

- 8) **Local Grievances** - An AFGE Local and/or AFGE Designated Hybrid or Hybrid BUE will have thirty (30) calendar days from the date of the notice of the FSC's final determination,

or one hundred and fifty (150) calendar days from the date of submission of the claim to Local Payroll if no determination is made by Local Payroll Office or the FSC, to file a step 3 local grievance concerning the pay adjustment determination in paragraph 5 pursuant to the VA-AFGE Master Agreement. Any awarded remedy must be consistent with the terms of this Settlement Agreement and, if interest is awarded, it must be capped at a flat ten percent (10%) for any claims processed pursuant to this Agreement.

- 9) **Subsequent Claims** - Any claim arising after the execution of this Settlement Agreement must be pursued by following the applicable grievance procedure in the VA-AFGE Master Agreement.
- 10) **Attorney's Fees** - Within thirty (30) calendar days of the execution of this Agreement, the Agency will pay the Union attorneys' fees in the amount of \$22,092.40. The Agency will issue payment via electronic deposit/check into:

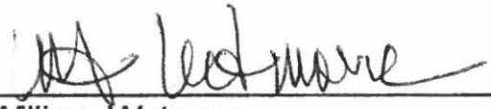
AFGE Legal Rep Fund
Amalgamated Bank
275 Seventh Avenue
New York, NY 10001
Accounting Number: 81019974
Routing Number: 026003379
Caging Code: 490Z5
Tax Identification Number: 53-0025740

- 11) **Stipulations** - The parties further stipulate and agree that:
- a. They have entered into this Settlement Agreement freely and voluntarily.
 - b. The Parties may mutually agree in writing to extend any time limits in this Settlement Agreement.
 - c. This Settlement Agreement does not constitute an admission of guilt, fault, or wrongdoing by either party.
 - d. The Settlement Agreement constitutes a joint effort by the Parties and should not be construed against any party.
 - e. The terms of this Settlement Agreement, the negotiations leading up to this Settlement Agreement, the data, documents, or information exchanged between the parties in the course of negotiations of this Settlement Agreement, may not be offered, taken, construed, or introduced as evidence of liability or as an admission or statement of wrongdoing by either party in this action or in any subsequent proceeding of any nature.
 - f. The obligations of the Parties specified above constitute consideration sufficient to render this Settlement Agreement enforceable by either party.
 - g. This Settlement Agreement constitutes the entire understanding between the Parties regarding the resolution and settlement of the National Grievance, and there are no

other terms or commitments, verbal or written, regarding the settlement of the National Grievance. No other promises or agreements shall be binding unless placed in writing and signed by the parties.

- h. The Parties may submit the Settlement Agreement as evidence of withdrawal of the National Grievance and all actions, claims, complaints, grievances, appeals or proceedings of whatever nature arising from the allegations contained in the National Grievance.
- i. All the time limits in this Settlement Agreement are in calendar days. If a time limit expires on a Saturday, Sunday, or a Federal Holiday, then the time limit shall expire on the next business day.
- j. Either party may bring a claim in the form of a grievance arising from the breach of any term of this Settlement Agreement.

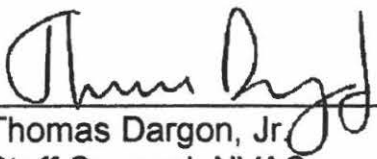
FOR AFGE



William Wetmore
Chair, Grievance & Arbitration Committee
AFGE/NVAC

9-18-20

DATE

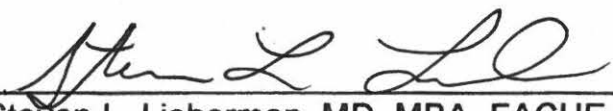


Thomas Dargon, Jr.
Staff Counsel, NVAC
Office of the General Counsel
AFGE, AFL-CIO

9/18/20

DATE

FOR VA



Steven L. Lieberman, MD, MBA, FACHE
Acting Deputy Under Secretary for Health
Veterans Health Administration
U.S. Department of Veterans Affairs

9/29/20

DATE

Attachment A

VA Title 38 and Hybrid Title 38 Occupations

Title 38 Positions

Title	Occ Series
Chiropractor	0601 (previously 0604)
Dentist	0680
Expanded-function dental auxiliaries	0601
Nurse Anesthetist	0605
Optometrist	0662
Physician Assistants	0603
Physicians	0602
Podiatrist	0668
Registered Nurses	0610

Hybrid Title 38 Positions

Title	Occ Series	FPL
Acupuncturist	GS-0601	11
Audiologist/Speech-Pathologist/Audiologist-Speech Pathologist	GS-0665	12
Biomedical Engineer	GS-0858	12
Biomedical Equipment Specialist	GS-1601	11
Blind Rehabilitation Specialist	GS-0601	11
VIST Coordinator	GS-0601	12
Blind Rehabilitation Outpatient Specialist	GS-0601	12
Certified Respiratory Therapist	GS-0640	7
Cytotechnologist	GS-0601	9
Dental Assistant	GS-0681	6
Dental Hygienist	GS-0682	9
Diagnostic Radiologic Technologist	GS-0647	8
Dietitian	GS-0630	11
Genetics Counselor	GS-0601	11
Health Technician (Massage Therapy)	GS-0640	7
Health Technician (Ophthalmology)	GS-0640	8
Health Technician (Telehealth)	GS-0640	6
Histopathology Technician	GS-0646	6
Histopathology Technologist	GS-0601	9
Kinesiotherapist	GS-0635	10
Licensed Practical or Vocational Nurse	GS-0620	6
Licensed Professional Mental Health Counselor	GS-0101	11
Marriage and Family Therapist	GS-0101	11

Title	Occ Series	FPL
Medical Instrument Technician		
Specializations:		
Anesthesia	GS-0649	8
Cardiac Catheterization	GS-0649	8
Electrocardiograph (EKG)	GS-0649	7
Electroencephalograph (EEG)	GS-0649	8
Gastroenterology	GS-0649	7
Perfusion	GS-0649	10
Hemodialysis	GS-0649	8
Pulmonary Function	GS-0649	8
Diagnostic Ultrasound	GS-0649	8
Echocardiography	GS-0649	8
Polysomnography	GS-0649	8
Vascular	GS-0649	8
Medical Record Administrator/Specialist	GS-0669	11
Medical Record Technician	GS-0675	7
Medical Record Technician (Cancer Registry)	GS-0675	8
Medical Record Technician (Coder)	GS-0675	8
Medical Record Technician (Health Information Tech)	GS-0675	7
Medical Record Technician (Release of Information)	GS-0675	6
Medical Technologist	GS-0644	9
Medical Support Assistant	GS-0679	5
Nuclear Medicine Technologist	GS-0601	9
Nursing Assistant	GS-0621	5
Occupational Therapist	GS-0631	12
Occupational Therapy Assistant	GS-0636	7
Orthotist-Prosthetist	GS-0667	11
Pharmacist	GS-0660	12
Pharmacy Technician	GS-0661	5
Physical Therapist	GS-0633	12
Physical Therapy Assistant	GS-0636	7
Prosthetic Representative	GS-0672	11
Psychologist	GS-0180	13
Recreation and Creative Arts Therapist	GS-0638	11
Registered Radiologist Assistant	GS-0601	9
Registered Respiratory Therapist	GS-0601	8
Social Worker	GS-0185	11
Therapeutic Medical Physicist	GS-0601	13
Therapeutic Radiologic Technologist	GS-0648	8

Attachment B



DEPARTMENT OF VETERANS AFFAIRS

DEPUTY ASSISTANT SECRETARY FOR
HUMAN RESOURCES MANAGEMENT
WASHINGTON DC 20420

November 20, 2012

HUMAN RESOURCES MANAGEMENT LETTER NO. 05-12-11

Premium Pay for Periods of Leave for Hybrids and Health Care Workers Post June 30, 2012

1. Purpose. This Human Resources Management Letter (HRML) provides new mandatory pay administration rules for Title 38 hybrid employees and Title 5 health care workers. These changes do not apply to any other category of employees.

2. Background. These pay changes are related to the *Quimby et al. v. United States* and *Adams et al. v. United States* class-action cases and will remain in effect until changed by official VA notice or policy update.

3. Mandatory Changes

a. Effective July 1, 2012, all Title 38 hybrid employees and Title 5 health care workers are entitled to receive Title 38 weekend premium pay when on authorized paid leave during normal tours of duty, any part of which is within the period beginning midnight Friday and ending midnight Saturday and which do not include any Sunday hours.

NOTE: *Normal tours of duty that begin prior to midnight Saturday (e.g. 11:59 PM Saturday) and continue after midnight Saturday (e.g. 12:01 AM Sunday) are considered Sunday tours. Weekend pay is not payable for periods of leave used during Sunday tours.*

b. Also effective July 1, 2012, Title 38 hybrid employees who are authorized to receive premium pay on the same basis as registered nurses, as provided under 38 U.S.C. 7454(b)(1), are entitled to receive night differential when on authorized paid leave during normal tour of duty night differential hours. These employees will receive night differential that is otherwise payable whether performing actual duty or on authorized leave and regardless if the total leave hours is greater than 8 hours in a pay period.

c. For full-time employees, a normal tour of duty consists of the 80 hours in the biweekly pay period excluding overtime hours. For part-time employees, a normal tour of duty consists of less than 80 hours in a pay period excluding any additional unscheduled hours or overtime hours. Employees may use paid leave only during their normal tour of duty.

HUMAN RESOURCES MANAGEMENT LETTER NO. 05-12-11

4. Covered Employees

a. For purposes of the weekend pay provisions in this HRML, only Title 38 hybrid employees in occupations listed under 38 U.S.C. 7401(3) or approved for hybrid status by the Assistant Secretary for Human Resources and Administration and Title 5 health care workers are covered. VA Handbook 5007, Part V, Appendix A, contains a list of occupations eligible for weekend premium pay.

b. For purposes of the night differential pay provisions in this HRML, only Title 38 hybrid employees who are authorized to receive premium pay on the same basis as registered nurses under 38 U.S.C. 7454(b)(1) are covered. In the PAID system, hybrid employees who are authorized to receive premium pay on the same basis as registered nurses are coded (by payroll offices) with premium pay codes E or F. However, due to the possibility of incorrect premium pay codes, HR offices must confirm there is on file a written authorization signed by the facility director in accordance with VA Handbook 5007, Part V, Chapter 4, before applying the night differential provisions in this HRML.

5. Guidance

a. It is anticipated that within 60 days from the date of this HRML, the Veterans Health Administration's Office of Finance will issue instructions to payroll offices. The instructions will address the actions required by facilities to make payments retroactive to July 1, 2012, as well as on-going actions required until modifications are made to the Enhanced Time and Attendance (ETA) and payroll systems. No payments may be made until the instructions are issued.

b. HR offices must provide a Notice of Pay Change (sample attached) to each affected employee. In addition, HR offices should provide a copy of this HRML to leave approving officials and remind them to continue leave approvals in accordance with established procedures to ensure adequate coverage to meet workload requirements.

6. Questions. HR offices may contact the compensation specialist assigned to their geographic area as shown in the Contact Pay section on the [OHRM Pay Administration Web page](#). Payroll offices will receive contact information once payment instructions are issued.

/s/Tonya M. Deanes

Attachment

SAMPLE NOTICE OF PAY CHANGE

Effective July 1, 2012, Title 38 hybrid employees and Title 5 health care workers are entitled to receive Title 38 weekend premium pay when on authorized paid leave during normal tours of duty, any part of which is within the period beginning midnight Friday and ending midnight Saturday and which does not include any Sunday hours.

NOTE: Normal tours of duty that begin prior to midnight Saturday (e.g. 11:59 PM Saturday) and continue after midnight Saturday (e.g. 12:01 AM Sunday) are considered Sunday hours. **Weekend pay is not payable for periods of leave that include any Sunday hours.**

Also effective July 1, 2012, Title 38 hybrid employees who are authorized to receive premium pay on the same basis as registered nurses, as provided under 38 U.S.C. 7454(b)(1), are entitled to receive night differential when on authorized paid leave during normal tour of duty night differential hours. Affected employees will receive night differential that is otherwise payable whether performing actual duty or on authorized paid leave and regardless if the total leave hours is greater than 8 hours in a pay period.

For purposes of the weekend pay provisions, only Title 38 hybrid employees in occupations listed under 38 U.S.C. 7401(3) or approved for hybrid status by the Assistant Secretary for Human Resources and Administration and Title 5 health care workers are covered. VA Handbook 5007, Part V, Appendix A, contains a list of occupations eligible for weekend premium pay.

For purposes of the night differential pay provisions, only Title 38 hybrid employees who are authorized by the facility director to receive premium pay on the same basis as registered nurses under 38 U.S.C. 7454(b)(1) are covered. The night differential provisions do not apply to Title 5 health care workers.

Questions concerning this pay change may be directed to [insert local HR point of contact that can assist in answering employee questions].

Attachment C

CLAIM FORM

**AFGE National Grievance
Night Differential and Weekend Premium Pay for
Designated Hybrids on Paid Leave**

PURPOSE(S): To verify Department of Veterans Affairs designated hybrid employee information and initiate the claim process for National Grievance, FMCS Case No. 141008-50100-A.

DISCLOSURE: Voluntary; however, failure to furnish required information will result in non-receipt of payment under National Grievance, FMCS Case No. 141008-50100-A

ADDRESS INFORMATION

(Please print all information)

1. EMPLOYEE'S NAME *(Last, First, Middle Initial)*

2. SOCIAL SECURITY NUMBER *(XXX-XX-XXXX)*

3. HOME ADDRESS

a. OTHER ADDRESS INFORMATION *(If applicable)*

b. NUMBER AND STREET OR ROUTE

c. CITY AND STATE

d. ZIP CODE

4. TELEPHONE NUMBER

5. EMAIL ADDRESS *(If applicable)*

6. HYBRID OCCUPATION & SERIES *(during claim period)*

EMPLOYEE'S NAME (*Last, First, Middle Initial*)

10. SIGNATURE

11. DATE

RETURN COMPLETED AND SIGNED FORM TO BOTH:

*** THE LOCAL PAYROLL OFFICE AT THE FACILITY WHERE EMPLOYEE WORKED DURING DATE(S) OF CLAIM** (i.e., multiple claims may need to be submitted if employee worked at multiple facilities)

*** THE FINANCIAL SERVICE CENTER (FSC) AT VAFSCPayrollSpecialActionsTeam@va.gov**

A COMPLETE AND SIGNED FORM MUST BE RETURNED BY EMPLOYEE NO LATER THAN **DECEMBER 28, 2020. LATE FORMS WILL NOT BE ELIGIBLE FOR PAYMENT.**