

Union Calendar No. 761

115TH CONGRESS
2^D SESSION

H. R. 5896

[Report No. 115–973]

To amend title 5, United States Code, to modify the authority for pay and work schedules of border patrol agents, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 21, 2018

Mr. HURD (for himself, Mr. VELA, and Ms. MCSALLY) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

SEPTEMBER 25, 2018

Additional sponsors: Mr. O’ROURKE, Mr. GONZALEZ OF TEXAS, Mr. O’HALLERAN, and Ms. SINEMA

SEPTEMBER 25, 2018

Reported amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Omit the part struck through and insert the part printed in italic]

A BILL

To amend title 5, United States Code, to modify the authority for pay and work schedules of border patrol agents, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Border Patrol Agent
 5 Pay Reform Amendments Act of 2018”.

6 **SEC. 2. AMENDMENTS TO THE BORDER PATROL AGENT PAY**
 7 **REFORM ACT OF 2014.**

8 (a) BORDER PATROL AGENT PAY.—

9 ~~(1) IN GENERAL.~~—Section 5550 of title 5,
 10 United States Code, is amended—

11 ~~(A)~~ (1) in subsection (a)(1), by inserting
 12 “agent” after “applicable border patrol”;

13 ~~(B)~~ (2) in subsection (b)(1)—

14 ~~(i)~~ (A) in subparagraph (A), by striking
 15 “Not later than 30 days before the first day of
 16 each year beginning after the date of enactment
 17 of this section, a border patrol agent shall make
 18 an election whether the border patrol agent
 19 shall, for that year, be assigned to” and insert-
 20 ing “Not later than December 1 of each year,
 21 a border patrol agent shall make an election
 22 whether the border patrol agent shall, for the
 23 next annual period beginning on the first day of
 24 the first pay period that commences on or after
 25 January 1, be assigned to”;

1 ~~(ii)~~ (B) in subparagraph (C), by striking
 2 “Not later than 60 days before the first day of
 3 each year beginning after the date of enactment
 4 of this section” and inserting in its place “Not
 5 later than November 1 of each year”;

6 ~~(iii)~~ (C) in subparagraph (D)—

7 ~~(H)~~ (i) by amending clause (iv) to read
 8 as follows:

9 “(iv) a border patrol agent shall be
 10 assigned a basic border patrol rate of pay
 11 during the period of initial training (in-
 12 cluding initial orientation sessions, basic
 13 training, and other preparatory activities)
 14 prior to the agent’s first regular work as-
 15 signment; and”;

16 ~~(H)~~ (ii) in clause (v), by striking “or
 17 the level 2 border patrol rate of pay”;

18 ~~(iv)~~ (D) in subparagraph (E)—

19 ~~(H)~~ (i) in clause (i), by striking “or
 20 the level 2 border patrol rate of pay”;

21 ~~(H)~~ (ii) clause (ii), by striking “the
 22 analysis conducted under section 2(e) of
 23 the Border Patrol Agent Pay Reform Act
 24 of 2014” and inserting in its place “a writ-
 25 ten staffing analysis”; and

1 ~~(HH)~~ (iii) by adding at the end the
 2 following:

3 “(iv) EXCLUSION OF CERTAIN EM-
 4 PLOYEES.—In applying any percentage
 5 limit under clause (i) or (ii) to a location
 6 population, U.S. Customs and Border Pro-
 7 tection shall exclude from such population
 8 any border patrol agent who is assigned a
 9 basic border patrol rate of pay under sub-
 10 paragraph (D)(iii) or (D)(iv) or who would
 11 reach the premium pay cap under section
 12 5547 if assigned a level 1 border patrol
 13 rate of pay.

14 “(v) APPLICATION FREQUENCY.—The
 15 10 percent limit under clause (i) or an al-
 16 ternative percentage limit under a waiver
 17 under clause (ii) shall be applied at the be-
 18 ginning of the first pay period beginning
 19 on or after January 1 each year.”;

20 ~~(v)~~ (E) by amending subparagraph (F) to
 21 read as follows:

22 “(F) CANINE CARE.—(i) For a border pa-
 23 trol agent assigned to provide care for a canine
 24 while not on duty and assigned to the level 1

1 border patrol rate of pay in accordance with
2 subparagraph (D)(ii)—

3 “(I) that rate of pay covers all such
4 care and no other pay shall be paid to the
5 border patrol agent for such care except as
6 set forth in subclauses (II) through (V);

7 “(II) the agent shall be credited with
8 1 hour of such care for each calendar day
9 on which such care occurs (without regard
10 to the actual duration of such care);

11 “(III) canine care hours credited
12 under subclause (II) on a day when the
13 agent performs regular time work under
14 paragraph (2)(A)(i) shall—

15 “(aa) be counted as up to 1 hour
16 of scheduled overtime (as described in
17 paragraph (2)(A)(ii)) on that work
18 day if the agent has not completed 2
19 hours of scheduled overtime (exclud-
20 ing the canine care hour credited
21 under clause (ii)) on that workday; or

22 “(bb) be counted as up to 1 hour
23 of overtime work that is officially or-
24 dered or approved in advance of the
25 workweek under section 5542(g)

1 based on the amount of canine care
2 credit for the workday that is not con-
3 verted to scheduled overtime under
4 item (aa);

5 “(IV) canine care hours credited
6 under subclause (II) on a day when the
7 agent does not perform regular time work
8 under paragraph (2)(A)(i) shall be counted
9 as 1 hour of overtime work that is offi-
10 cially ordered or approved in advance of
11 the workweek under section 5542(g); and

12 “(V) notwithstanding subclauses
13 (III)(bb) and ~~(IV)~~ (IV), overtime work cred-
14 ited under those subclauses is subject to
15 substitution or application as provided in
16 paragraph (2)(F) and subsection (f) as fol-
17 lows:

18 “(aa) Substitution for periods of
19 absence during regular time or sched-
20 uled overtime (as described in para-
21 graph (2)(A)(ii)) within the same
22 work period in which the canine care
23 credit was generated.

24 “(bb) Application towards a debt
25 of obligated overtime hours.

“(ii) Canine care hours credited under subclauses (III) or (IV) shall not be credited as overtime work under any other provision of law.”; and

~~(vi)~~ *(F)* by striking subparagraph (G);
~~(C)~~ *(3)* in subsection (b)(2)—

~~(i)~~ *(A)* by amending subparagraph (C)(i) to read as follows:

“(i) any compensation under this section or any other provision of law in addition to the compensation provided under subparagraph (B); or”;

~~(ii)~~ *(B)* in subparagraph (E)—

~~(i)~~ *(i)* by striking “paid leave” and inserting “leave”; and

~~(H)~~ *(ii)* by striking “absent from work” and inserting “excused from work”;

~~(iii)~~ *(C)* in subparagraph (F)(ii), by striking “and”;

~~(iv)~~ *(D)* by amending subparagraph (G) to read as follows:

“(G) if the border patrol agent participates in a full day of advanced training but does not perform the entire required amount of scheduled overtime work under subparagraph (A)(ii)

on that day, the border patrol agent shall be deemed to have performed scheduled overtime work during nonwork periods to the extent necessary to reach the required amount, but such deemed credit may be applied to no more than 180 hours in a calendar year; otherwise, the agent shall accrue a debt of hours for scheduled overtime not worked on such a day; and”;

~~(v)~~ (E) by adding at the end the following:

“(H) a border patrol agent may choose to reduce any debt of obligated overtime hours that the agent has incurred by applying any accrued compensatory time off for travel pursuant to section 5550b, and such compensatory time off for travel may be applied towards such debt only after other forms of overtime or earned compensatory time credited to the border patrol agent have been exhausted.”;

~~(D)~~ (4) in subsection (b)(3)—

~~(i)~~ (A) by amending subparagraph (C)(i) to read as follows:

“(i) any compensation under this section or any other provision of law in addition to the compensation provided under subparagraph (B); or”;

1 ~~(ii)~~ (B) in subparagraph (E), by striking
2 “paid leave” and inserting “leave”;

3 ~~(iii)~~ (C) in subparagraph (F)(ii), by strik-
4 ing “and”;

5 ~~(iv)~~ (D) by amending subparagraph (G) to
6 read as follows:

7 “(G) if the border patrol agent participates
8 in a full day of advanced training but does not
9 perform the entire required amount of sched-
10 uled overtime work under subparagraph (A)(ii)
11 on that day, the border patrol agent shall be
12 deemed to have performed scheduled overtime
13 work during nonwork periods to the extent nec-
14 essary to reach the required amount, but such
15 deemed credit may be applied to no more than
16 90 hours in a calendar year; otherwise, the
17 agent shall accrue a debt of hours for scheduled
18 overtime not worked on such a day; and”;

19 ~~(v)~~ (E) by adding at the end the following:

20 “(H) a border patrol agent may choose to
21 reduce any debt of obligated overtime hours
22 that the agent has incurred by applying any ac-
23 crued compensatory time off for travel pursuant
24 to section 5550b; such compensatory time off
25 for travel may be applied towards such debt

1 only after other forms of overtime or earned
2 compensatory time credited to the border patrol
3 agent have been exhausted.”;

4 ~~(E)~~ (5) by amending subsection (d) to read as
5 follows:

6 “(d) TREATMENT AS BASIC PAY.—

7 “(1) IN GENERAL.—Any overtime supplement
8 in addition to the basic border patrol rate of pay for
9 a border patrol agent resulting from application of
10 the level 1 border patrol rate of pay or the level 2
11 border patrol rate of pay shall be treated as part of
12 basic pay only—

13 “(A) except as otherwise provided in para-
14 graph (3), for purposes of the definitions in sec-
15 tion 8331(3) and 8401(4) and the provisions in
16 chapters 83 and 84 that rely on those defini-
17 tions (consistent with section 8331(3)(I));

18 “(B) except as otherwise provided in para-
19 graph (3), for purposes of sections 5595(c) and
20 8704(c);

21 “(C) for the purpose of section 8114(e);
22 and

23 “(D) subject to paragraph (2) and any
24 limitation established under paragraph (3), any
25 other purpose that the Director of the Office of

1 Personnel Management may by regulation pre-
2 scribe.

3 “(2) EXCLUSIONS.—The overtime supplement
4 described in paragraph (1) shall not be treated as
5 part of basic pay for purposes not covered by that
6 paragraph, including the purposes of calculating—

7 “(A) overtime pay, night pay, Sunday pay,
8 or holiday pay under section 5542, 5545, or
9 5546;

10 “(B) locality-based comparability payments
11 under section 5304 or special rate supplements
12 under section 5305; or

13 “(C) cost-of-living allowances in nonforeign
14 areas under section 5941.

15 “(3) LIMITATIONS.—

16 “(A) IN GENERAL.—During the control pe-
17 riod described in subparagraph (B), the amount
18 of the overtime supplement that is considered
19 basic pay under paragraphs (1)(A) and (1)(B)
20 may not exceed the amount derived by multi-
21 plying the border patrol agent’s basic border
22 patrol rate of pay by the percentage rep-
23 resenting the agent’s career average of assigned
24 overtime supplement percentages (including 0
25 percent for periods of time during which no

1 overtime supplement was payable). That career
2 average percentage is computed without regard
3 to the effect of the limitation on premium pay
4 under section 5547, but the premium pay limi-
5 tation remains applicable in determining the
6 dollar amount of any overtime supplement com-
7 puted using the career average percentage.

8 “(B) CONTROL PERIOD.—For the purposes
9 of applying subparagraph (A), the control pe-
10 riod described in this subparagraph is the pe-
11 riod that begins 3 years before the date a bor-
12 der patrol agent will meet age and service re-
13 quirements associated with entitlement to an
14 immediate annuity and continues throughout
15 the remainder of the individual’s career as a
16 border patrol agent.

17 “(C) ASSIGNED OVERTIME SUPPLEMENT
18 PERCENTAGES.—For the purpose of applying
19 subparagraph (A), a border patrol agent’s ini-
20 tial career average of assigned overtime supple-
21 ment percentages is the average for the border
22 patrol agent’s career (excluding any period of
23 initial training prior to the agent’s first regular
24 work assignment) prior to the beginning of the
25 control period described in subparagraph (B).

1 During such control period, the career average
2 shall be recomputed at the end of each annual
3 period (as described in subsection (b)(1)(A)). In
4 computing such career average, any periods of
5 service as a border patrol agent prior to the
6 first day of the first pay period beginning on or
7 after January 1, 2016, shall be included, and
8 the agent's assigned overtime supplement dur-
9 ing such periods shall be deemed to be 25 per-
10 cent.

11 “(4) ANNUAL LEAVE PAYMENT.—For the pur-
12 pose of computing an agent's lump-sum annual leave
13 payment under section 5551 or 5552, the pay the
14 agent is projected to receive shall include a deemed
15 overtime supplement derived under this paragraph.
16 Such overtime supplement shall be based on the
17 lower of the agent's actual overtime supplement per-
18 centage in effect at separation or the average per-
19 centage of the agent's overtime supplement over the
20 26 full biweekly pay periods immediately preceding
21 that separation, and shall not exceed the amount
22 that is or would be payable under the premium pay
23 limitation in section 5547.”;

24 ~~(F)~~ (6) in subsection (f)—

1 ~~(i)~~ (A) in the heading of such subsection,
2 by striking “AND SUBSTITUTION OF HOURS”
3 and inserting “DURING REGULAR TIME; AB-
4 SENCES DURING SCHEDULED OVERTIME”; and

5 ~~(ii)~~ (B) by adding at the end the following:

6 “(5) SPECIAL RULES FOR LEAVE WITHOUT
7 PAY.—

8 “(A) AT LEAST 1 WORKDAY.—If a border
9 patrol agent takes leave without pay for a pe-
10 riod of at least 1 workday, the agent shall not
11 receive any pay for the hours during which the
12 border patrol agent took leave without pay.

13 “(B) NO ACCRUAL OF OVERTIME DEBT.—
14 A border patrol agent shall not accrue an over-
15 time debt for any full workdays during which a
16 border patrol agent uses leave without pay, re-
17 gardless of the border patrol rate of pay to
18 which the border patrol agent is assigned.

19 “(C) CALCULATION OF PAY.—For pay pe-
20 riods during which a border patrol agent takes
21 1 or more full days of leave without pay, the
22 amount of border patrol pay that the agent
23 would normally receive shall be reduced propor-
24 tionally by the amount of overtime hours that
25 the agent has not worked due to being on leave

without pay. The total amount of border patrol pay that a border patrol agent would normally receive in a pay period described in the preceding sentence shall be decreased based on the percentage of work days for which the border patrol agent takes leave without pay.”; and

~~(G)~~ (7) by adding at the end the following:

“(i) ~~(h)~~ ALTERNATIVE WORK SCHEDULES.—

“(1) IN GENERAL.—Notwithstanding any other provision in this section or section 6101, U.S. Customs and Border Protection may assign a border patrol agent an alternative work schedule as described in this subsection, subject to any regulations prescribed by the Director of the Office of Personnel Management. No alternative work schedule may be established under subchapter II of chapter 61.

“(2) LEVEL 2 BORDER PATROL AGENT.—A border patrol agent receiving a level 2 border patrol rate of pay may, in lieu of the standard work schedule described in subsection (b)(3)(A), be assigned to an alternative work schedule under the following terms and conditions:

“(A) The alternative work schedule shall be a regular tour of duty consisting of 9 workdays per biweekly pay period, with—

1 “(i) 8 workdays including 9 hours of
2 regular time per workday and 1 additional
3 hour of scheduled overtime for each day
4 the agent performs work during regular
5 time; and

6 “(ii) 1 workday including 8 hours of
7 regular time per workday and 2 additional
8 hours of scheduled overtime when the
9 agent performs work during such regular
10 time.

11 “(B) Subparagraphs (B) through (H) of
12 subsection (b)(3) shall continue to apply to an
13 agent assigned to an alternative work schedule
14 under this paragraph. References in this section
15 to regular time under subsection (b)(3)(A)(i)
16 and scheduled overtime under subsection
17 (b)(3)(A)(ii) shall be deemed to be references to
18 regular time and scheduled overtime described
19 in subparagraph (A), respectively.

20 “(3) BASIC BORDER PATROL AGENT.—A border
21 patrol agent receiving a basic border patrol rate of
22 pay may, in lieu of the standard work schedule de-
23 scribed in subsection (b)(4)(A), be assigned to an al-
24 ternative work schedule that is a regular tour of

1 duty consisting of 4 workdays per week with 10
2 hours of regular time per workday.²²

3 “(4) *SUNDAY PAY; PREMIUM PAY.*—A border pa-
4 trol agent assigned to an alternative work schedule
5 under this subsection, may receive, as applicable—

6 “(A) *Sunday pay for no more than 8 hours*
7 *of regular time associated with a given Sunday,*
8 *consistent with section 5546(a);*

9 “(B) *premium pay for work on a holiday*
10 *for no more than 8 hours of regular time associ-*
11 *ated with a given holiday, consistent with sec-*
12 *tion 5546(b); and*

13 “(C) *basic pay for all regular time hours*
14 *that qualify for holiday time off pay when an*
15 *agent is relieved or prevented from working dur-*
16 *ing such regular time on a day designated as a*
17 *holiday by Federal statute or Executive order.*

18 “(5) *APPLICATION.*—For purposes of admin-
19 istering sections 6303(a), 6304, 6307(a) and (d),
20 6323, 6326, 6327, and 8339(m), in the case of an em-
21 ployee assigned to an alternative work schedule under
22 this subsection, references to a day or workday (or to
23 multiples or parts thereof) contained in such sections
24 shall be considered to be references to 8 hours (or to
25 the respective multiples or parts thereof).

1 “(i) *REGULATIONS.*—*The Director of the Office of Per-*
 2 *sonnel Management shall promulgate regulations to carry*
 3 *out this section, including regulations governing—*

4 “(1) *elections and assignments of a border patrol*
 5 *rate of pay for newly hired border patrol agents who*
 6 *complete initial training during an annual period;*

7 “(2) *situations in which an agent receives more*
 8 *than one type of border patrol rate of pay in a bi-*
 9 *weekly pay period or is employed as a border patrol*
 10 *agent for only part of a biweekly pay period; and*

11 “(3) *the treatment of hours that are substituted*
 12 *for nonpay status hours during regular time.”.*

13 ~~(2) *REGULATIONS.*—The Director of the Office~~
 14 ~~of Personnel Management shall promulgate regula-~~
 15 ~~tions to carry out the amendments made by this~~
 16 ~~subsection, including regulations governing—~~

17 ~~(A) elections and assignments of a border~~
 18 ~~patrol rate of pay for newly hired border patrol~~
 19 ~~agents who complete initial training during an~~
 20 ~~annual period;~~

21 ~~(B) situations in which a border patrol~~
 22 ~~agent receives more than one type of border pa-~~
 23 ~~trol rate of pay in a biweekly pay period or is~~
 24 ~~employed as a border patrol agent for only part~~
 25 ~~of a biweekly pay period; and~~

1 ~~(C) the treatment of hours that are sub-~~
2 ~~stituted for nonpay status hours during regular~~
3 ~~time.~~

4 (b) OVERTIME RATES.—Section 5542(g)(5) of title
5 5, United States Code, is amended—

6 (1) in subparagraph (A), by striking “leave
7 year” and inserting “an annual period, as described
8 in section 5550(b)(1)(A)”; and

9 (2) by amending subparagraph (E) to read as
10 follows:

11 “(E) shall not receive credit towards com-
12 putation of the border patrol agent’s annuity
13 based on unused compensatory time off; and”.

14 (c) PREMIUM PAY CAP.—Section 5547(c) of title 5,
15 United States Code, is amended by inserting after “duty,”
16 the following: “or to border patrol agents who receive an
17 overtime supplement for overtime hours within their reg-
18 ular tour of duty under section 5550,”.

19 (d) BASIC PAY FOR RETIREMENT.—Section
20 8331(3)(I) of title 5, United States Code, is amended by
21 adding before the semicolon at the end the following: “,
22 subject to the limitation prescribed in section 5550(d)(3)”.

23 (e) SCHEDULED OVERTIME WORK.—Section 2(c)(2)
24 of the Border Patrol Agent Pay Reform Act of 2014 (Pub-
25 lic Law 113–277) is amended by inserting after “sched-

1 uled overtime work” the following: “(other than scheduled
2 overtime work within the regular tour of duty)”.

3 **SEC. 3. EFFECTIVE DATE.**

4 The amendments made by section 2 shall take effect
5 on the first day of the first pay period beginning on or
6 after the day that is 90 days after the date of the enact-
7 ment of this Act.

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