

Contract Administration Unit

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Back-pay compensation— PS Forms 8038 and 8039

Letter carriers are entitled to “back-pay compensation” when grievance settlements and arbitration decisions reverse or amend personnel actions taken by the Postal Service or to make an employee whole for work improperly denied. If you are unfamiliar, the process for recovering this back pay can be complicated and confusing. This month’s Contract Talk will summarize the back-pay process, Postal Service rules regarding back pay and the necessary forms.

Section 436 of the *Employee and Labor Relations Manual (ELM)* governs back pay and the processing of back-pay claims. The *ELM* defines this action as a “Corrective entitlement.” *ELM* Section 436.1 states:

An employee or former employee is entitled to receive back pay for the period during which an unjustified or unwarranted personnel action was in effect that terminated or reduced the basic compensation, allowances, differentials, and employment benefits that the employee normally would have earned during the period.

For purposes of entitlement to employment benefits, the employee is considered as having rendered service for the period during which the unjustified or unwarranted personnel action was in effect.

Management Instruction (MI) EL-430-2017-6, Back Pay explains that back-pay compensation can be awarded to letter carriers in two forms—in a lump sum or calculation of the number of hours worked. A lump sum is back-pay compensation in the form of a single payment of a known amount of money. A lump-sum award does not affect the compensation history used by the Office of Personnel Management to calculate retirement annuities or other employment-related benefits, such as sick or annual leave, health or life insurance or Thrift Savings Plan participation. A back-pay lump-sum award is always subject to federal, state and local income tax withholding and Social Security and Medicare deductions, where applicable. Lump-sum payments differ from make-whole awards in that make-whole awards require recalculation of employment-related benefits along with hours that the employee would have normally worked.

Per-hour calculations are based on a hypothetical schedule that the claimant would have worked if not for the personnel action that was subsequently reversed or the retirement action that was denied.

In some cases, the process for recovering back pay can be simple. According to *MI EL-430-2017-6*, grievance settlements and arbitration decisions that award specified amount lump-sum payments or less than

one full pay period of lost earnings calculation of hours in which there is no directive to make whole, do not require the employee to complete any forms or provide documentation. These awards are processed by management through the Grievance Arbitration Tracking System and can be completed relatively quickly.

However, employees and union representatives should make note of the amount of accrued leave without pay (LWOP) the employee has on record. For every 80 hours of LWOP, the employee will lose annual leave—four, six or eight hours—so a lump-sum payment should be avoided. Further, excessive LWOP not corrected through back pay may affect retirement calculations.

Grievance settlements or arbitration decisions that require tabulation of the number and type of pay hours can be more complicated and require additional steps. In these circumstances, the employee will be required to complete and sign a PS Form 8038, Employee Statement to Recover Back Pay and management must complete the companion PS Form 8039, Back Pay Decision/Settlement Worksheet.

ELM Section 436.2 provides for offsetting back pay by a reduction equal to outside earnings during the period of non-work. Section 436.2 states:

Any amount that the employee earned in new employment or in an enlarged part-time employment to replace Postal Service employment must be determined and offset against the amount of the reimbursement to which he or she would be entitled.

An employee who files an appeal challenging a personnel action involving separation, indefinite suspension or denial of employment is required to mitigate damages during the period necessary to adjudicate their appeal.

If the original action, prior to grievance settlement or award of an arbitrator, resulted in separation or suspension of 45 days or less, the employee is not required to certify or provide documentation to support efforts to secure other employment. For periods in excess of 45 days, up to six months, the employee must provide a statement certifying the reasons why they did not secure other employment for the period beyond the first 45 days. If the period of separation or suspension was more than six months, then the employee must provide documentation certifying their efforts to obtain other employment. These requirements are found in *ELM* Section 436.42, d.

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Back-pay compensation (continued)

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There is an exception to this rule. Preference-eligible veterans pursuing an administrative appeal with the Merit Systems Protection Board (MSPB) are not required to make reasonable efforts to obtain employment.

PS Form 8038, Employee Statement to Recover Back Pay

Letter carriers who are required to complete and sign the PS Form 8038 should seek assistance from their local manager and union representative when completing the form. Section A – Employee Identification, contains basic employee information along with information identifying the employee’s work location and the USPS labor relations or human resource contact information. Section B – Statement Questions, contains information from the back pay period itself. This section includes information on outside employment, other income and health benefits enrollment or reinstatement, to name a few.

Letter carriers also must include on the PS Form 8038 any unemployment or workers’ compensation that was received during the back-pay period and attach supporting documentation for each. The amounts included will be offset from the final back-pay amount. Employees also might be entitled to substitute annual or sick leave for periods when they were not ready, willing or able to perform their Postal Service job. In addition, the PS Form 8038 provides options for enrollment or reinstatement of health benefits, partici-

pation in TSP, and payment of current postal indebtedness. Be mindful when completing the form to make sure everything is accurate. This will ensure that the back-pay compensation is calculated properly.

United States Postal Service®
Employee Statement To Recover Back Pay

INSTRUCTIONS: An employee may be eligible to receive payment of back pay following an unwarranted or unjustified personnel action if the employee was one of the following:
 a. separated (except for erroneous separation due to optional retirement),
 b. placed on leave without pay (LWOP) during indefinite suspension
 c. denied Postal Service™ employment.

Before a back pay claim can be processed, an employee who satisfies one of the above conditions must also:
 a. complete this form,
 b. provide all required supporting documentation. Attach additional pages as necessary, noting on each attached page which question it relates to.

If you have questions concerning the completion of any part of this form, contact your local personnel office for assistance.

A - Employee Identification

Name (Last, first, MI)		Employee ID Number	Designation/Activity Code (DES-ACT)	
Address (Number, street, box, ste./apt. no.)				City
State	ZIP+4®	Telephone No. (include area code)	Current Position Title	Current Occupation Code
Back Pay Period: From (MM/DD/YYYY)	Back Pay Period: To (MM/DD/YYYY)	Employing Office Finance No.	Employing Office Telephone No. (include area code)	
Employing Office Address (Number, street, box, ste./apt. no.)				City
State	ZIP+4	USPS® Labor Relations or Human Resources Contact	USPS Contact Telephone No. (include area code)	

B - Statement Questions

Employment -- Questions 1 - 4

1. **Did you seek outside employment during the back pay period?** Yes No
Note: Preference eligibles requesting back pay under an MSPB decision are not required to seek outside employment.
 If YES, you must furnish the information required below based on the type of personnel action and the length of the back pay period.

a. **SEPARATIONS AND INDEFINITE SUSPENSIONS.** If the back pay claim is for a period of separation or indefinite suspension and no outside employment was obtained for all or part of the back pay period, you must furnish the following:

- (1) If the back pay period is 45 days or less, you must answer questions 2, 5 and 6 on this form.
- (2) If the back pay period is more than 45 days but less than 6 months, you must provide a written explanation of the reasons outside employment was not obtained for all parts of the back pay period, except for the first 45 days.
- (3) If the back pay period is 6 months or more, you must provide detailed information concerning the efforts you made to obtain other employment for all parts of the back pay period, except for the first 45 days. Give the following information for EACH employer:

- (a) the date or approximate date the contact was made;
- (b) the business name, address, and telephone number;
- (c) whether the contact was in person, by telephone, or by mail;
- (d) the name of the person contacted or who conducted the interview;

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 PS Form 8038, January 2004 (Page 1 of 6)

PS Form 8039, Back Pay Decision/Settlement Worksheet

The PS Form 8039 is completed by management and is used in conjunction with the PS Form 8038 submitted by the employee to calculate the back-pay amount and corrections to employee benefits other than wages. These forms may be completed by local management or the back-pay coordinator designated by the district labor manager. The form includes general information about the employee, any disallowed periods and offset amounts, as well as hour tabulations for the back-pay period.

ELM Section 436.41 also requires local management to provide overtime averages, premium pay entitlement, step increases and other employment-related benefits information when completing the PS Form 8039. They also must use the responses provided by the employee on the PS Form 8038. Once the form is complete, all signatures must be obtained, including the employee's.


Always keep copies

Letter carriers always should keep copies of the PS Forms 8038 and 8039 along with all supporting documentation prior to submitting them to postal management. Be sure to make note of dates and to whom the forms are submitted. It also might be helpful to communicate this information and any changes in the status to the shop steward or branch officer assisting with the back-pay claim.

Management responsibilities

In addition to ELM Section 436, MI-EL-430-2017-6 details postal management's responsibilities in the back-pay compensation process. These responsibilities include providing the employee with the necessary forms and instructions.

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		Back Pay Decision/Settlement Worksheet																
<p>INSTRUCTIONS: The applicable sections of this form, depending on the calculation method used (see ELM 436), must be completely filled out before the Minneapolis Accounting Service Center (ASC) can process this back pay claim. The employee must review and agree to the information provided on this form prior to submission to the ASC.</p> <p>Do not attach or forward any additional documentation supporting this claim, unless otherwise specified. ALL supporting documentation must be retained as a part of the back pay file at the final approval level.</p>																		
<p>A. General Information (Must be completed)</p>																		
1. Employee's Name		2. Address of Employing Office																
3a. Social Security Number	3b. Designation/Activity Code																	
4. Back Pay Period (From/to: month, day, year)		5. Finance Number																
6. Calculation Method (Check only one)																		
<input type="checkbox"/> Direct Calculation: (For separations, suspensions, and denial. Complete all sections.)		<input type="checkbox"/> Pay Differential: (Complete section H. Section E should also be completed if a salary progression is applicable.)																
<input type="checkbox"/> Indirect Calculation: (Complete section F. No benefits are affected unless specified in the decision. If such is the case, the appropriate data must be noted in sections D and H.)		<input type="checkbox"/> Erroneous Separation for Optional Retirement (Complete sections D, E, and G, and you must attach either: (a) a letter from OPM stating the amount of erroneous payments if an annuity has been paid; or (b) a copy of the employee's NARECS monthly annuity statement stating amount of erroneous payments if no annuity payments were received by the employee.)																
7a. Forum of Decision/Award or Settlement Agreement (Check only one)			7b. Date of Decision															
<input type="checkbox"/> Grievance (Steps 1 through 4) <input type="checkbox"/> MSPB <input type="checkbox"/> EEOC <input type="checkbox"/> Arbitration <input type="checkbox"/> OPM <input type="checkbox"/> Court <input type="checkbox"/> Other:																		
8. Was Interest EXPRESSLY AWARDED in the Decision/Award or Settlement Agreement?																		
<input type="checkbox"/> Yes (Interest is computed after the award has been processed and is paid by separate check.) <input type="checkbox"/> No																		
NOTE: A copy of this form must be sent to the San Mateo ASC for the processing and payment of court costs and/or attorney fees.																		
9a. Were Court Costs Awarded?		10a. Were Attorney's Fees Awarded?																
<input type="checkbox"/> Yes (Complete items 9b and 9c) <input type="checkbox"/> No		<input type="checkbox"/> Yes (Complete items 10b and 10c) <input type="checkbox"/> No																
9b. Amount Awarded \$		10b. Amount of Fee \$																
9c. Name and Address of Payee		10c. Name and Address of Attorney																
<p>B. Periods Disallowed</p>																		
1. For Receipt of Worker's Compensation (Check only one)		2. For Failure to Seek Outside Employment (List dates below)																
<input type="checkbox"/> Full Compensation <input type="checkbox"/> Partial Compensation		<table border="1"> <thead> <tr> <th colspan="2">Date From</th> <th>Date To</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td></td> </tr> </tbody> </table>		Date From		Date To												
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Date From	Date To	Amount Received																
		\$																
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		\$																
PS Form 8039, November 1996 (Page 1 of 3)																		

Back-pay compensation (continued)

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Management also must provide assistance to employees in obtaining information and completing required forms and documentation. The back-pay coordinator, who is also the certifying official, has the responsibility of reviewing and coordinating the back-pay claim process. The claim is then forwarded to the manager, labor relations, who has the responsibility of ensuring that all forms and documentation are complete and that claimants have satisfactorily mitigated damages as set forth in *ELM* 436.2. The manager, labor relations submits the required back-pay forms and documentation to the manager, human resources for final approval. Upon final approval of the employee's claim, the Human Resources Shared Services Center conducts final processing of the employee claim for wages and benefits adjustment.

Interest on back pay

In cases involving disciplinary suspension or removal, the national parties have agreed that the letter carrier is entitled to interest on the back-pay amount. This agreement has been memorialized in the Memorandum of Understanding (MOU) Re: Interest on Back Pay, found on page 200 of the 2019-2023 National Agreement, states:

Where an arbitration award specifies that an employee is entitled to back pay in a case involving disciplinary suspension or removal, the Employer shall pay interest on

such back pay at the Federal Judgment Rate. This shall apply to cases heard in arbitration after the effective date of the 1990 Agreement. (The preceding Memorandum of Understanding, Interest on Back Pay, applies to NALC City Carrier Assistant Employees.)

Pursuant to *ELM* Section 436.7, interest on back pay also is required to be paid on decisions/awards from the MSPB, Equal Employment Opportunity Commission (EEOC) and the National Labor Relations Board (NLRB).

Delayed payment

The MOU, Re: Article 15-ELM 436-Back Pay provides relief to city carriers when back pay compensation is delayed. The MOU found on page 201 of the 2019-2023 National Agreement states:

The following applies solely to back pay claims covered by Section 436 of the Employee and Labor Relations Manual (ELM):

A pay adjustment required by a grievance settlement or arbitration decision will be completed promptly upon receipt of the documentation required by *ELM* part 436.4 *Documents in Support of Claim*. An employee not paid within sixty (60) days of submission of the required documentation will receive an advance, if requested by the employee, equivalent to seventy (70) percent of the approved adjustment. If a disagreement exists over the amount due, the advance will be set at seventy (70) percent of the sum not in dispute. (The preceding Memorandum of Understanding, Article 15 - ELM 436 - Back Pay, applies to NALC City Carrier Assistant Employees.)

As indicated, letter carriers who have not received back pay within 60 days of submission of required documentation may request an advance on the approved amount. This MOU is why it is important to document the date on which the back-pay claim is submitted and to make copies of all the associated information. To receive the salary advance, it may be necessary for the claimant to prove the submission date.

The process of recovering back pay can be very cumbersome. Letter carriers often find their back pay delayed or denied based on improper completion of required forms and management's failure to properly process claims. Letter carriers should seek the advice and guidance of their local union officials when submitting claims for back pay.

If you have any questions related to back pay, contact your shop steward or branch officer for more information. You also can find more information on *ELM* Section 436 and *MI-EL-430-2017-6* on the NALC website at nalc.org under the "Workplace Issues" tab.

Correction: Regretfully, there was an error in the information provided in the March 2023 Contract Talk article. On page 38 of the magazine, the first paragraph of column two has been corrected to read:

Management has an obligation to fill temporarily vacant carrier technician positions when requested via Article 25 by a qualified career letter carrier. National Arbitrator Snow held in C-10254, Sept. 10, 1990, that management may not assign different employees on an "as needed" basis to carry a route on a T-6 string when a vacancy of five or more days is involved; instead, such vacancies must be filled according to Article 25. While CCAs are not eligible for higher-level pay under Article 25, CCAs can be administratively assigned by management to vacant carrier technician assignments. When this occurs, the CCA's PS Form 50, Notification of Personnel Action must be revised to reflect that they are assigned to a carrier technician position.