

118TH CONGRESS
1ST SESSION

S. 3221

To amend title 5, United States Code, to establish a special limitation on pay for wildland fire responders, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 2, 2023

Mr. PADILLA (for himself, Mr. LUJÁN, Mr. DAINES, Mr. TESTER, Ms. ROSEN, Ms. CORTEZ MASTO, and Mr. HEINRICH) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To amend title 5, United States Code, to establish a special limitation on pay for wildland fire responders, 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 “Wildland Firefighter
5 Fair Pay Act”.

6 **SEC. 2. SPECIAL LIMITATIONS ON PAY FOR WILDLAND FIRE**
7 **RESPONDERS.**

8 (a) IN GENERAL.—Subchapter V of chapter 55 of
9 title 5, United States Code, is amended—

1 (1) in section 5541(2)(xi), by inserting “,
2 5547a(h),” after “section 5544”; and

3 (2) by inserting after section 5547 the fol-
4 lowing:

5 **“§ 5547a. Special limitations on premium pay for em-
6 ployees engaged in wildland firefighting**

7 “(a) DEFINITIONS.—In this section—

8 “(1) the term ‘covered employee’ means an em-
9 ployee of the Forest Service, the Department of the
10 Interior, or the National Weather Service who—

11 “(A) is a wildland firefighter;

12 “(B) is an incident meteorologist accom-
13 panying a crew of wildland firefighters;

14 “(C) is serving on an incident management
15 team or at a wildland fire operations center; or

16 “(D) is otherwise certified by the applica-
17 ble agency to perform wildland fire incident re-
18 lated duties during the period that employee is
19 assigned to a qualifying incident;

20 “(2) the term ‘covered services’ means services
21 performed by an employee that are determined by
22 the Secretary of the Interior, the Secretary of Agri-
23 culture, or the Secretary of Commerce, as applicable,
24 to primarily involve emergency wildfire suppression
25 activities;

1 “(3) the term ‘emergency wildland fire suppres-
2 sion activities’—

3 “(A) means initial-response and extended-
4 response activities that directly relate to sup-
5 pression of a wildfire;

6 “(B) includes activities associated with a
7 severity incident; and

8 “(C) does not include activities associated
9 with a prescribed fire incident;

10 “(4) the term ‘firefighter’ means an employee
11 who—

12 “(A) is a firefighter within the meaning of
13 section 8331(21) or section 8401(14);

14 “(B) in the case of an employee who holds
15 a supervisory or administrative position and is
16 subject to subchapter III of chapter 83, but
17 who does not qualify to be considered a fire-
18 fighter within the meaning of section 8331(21),
19 would otherwise qualify if the employee had
20 transferred directly to that position after serv-
21 ing as a firefighter within the meaning of that
22 section;

23 “(C) in the case of an employee who holds
24 a supervisory or administrative position and is
25 subject to chapter 84, but who does not qualify

1 to be considered a firefighter within the mean-
2 ing of section 8401(14), would otherwise qualify
3 if the employee had transferred directly to that
4 position after performing duties described in
5 section 8401(14)(A) for at least 3 years; or

6 “(D) in the case of an employee who is not
7 subject to subchapter III of chapter 83 or chap-
8 ter 84, holds a position that the Office of Per-
9 sonnel Management determines would satisfy
10 subparagraph (A), (B), or (C) if the employee
11 were subject to subchapter III of chapter 83 or
12 chapter 84;

13 “(5) the term ‘prescribed fire incident’ means a
14 wildland fire originating from a planned ignition in
15 accordance with applicable laws, policies, and regula-
16 tions to meet specific objectives;

17 “(6) the term ‘premium pay’ means the pre-
18 mium pay paid under the provisions of law cited in
19 section 5547(a), except as otherwise provided in sub-
20 section (g);

21 “(7) the term ‘qualifying incident’—

22 “(A) means a wildfire incident, a pre-
23 scribed fire incident, or a severity incident; and

24 “(B) does not include an initial response
25 incident involving a single operational period of

1 less than 36 hours (unless a longer period is
2 approved by an authorized agency due to excep-
3 tional circumstances) if the applicable employee
4 is in continual work status with no designated
5 sleep and rest period established by the agency;

6 “(8) the term ‘severity incident’ means an inci-
7 dent in which a covered employee is pre-positioned
8 in an area where conditions indicate there is a high
9 risk of wildfires;

10 “(9) the term ‘wildfire incident’—

11 “(A) means a wildland fire originating
12 from an unplanned ignition, such as lightning,
13 volcanos, or a human-caused fire; and

14 “(B) includes a prescribed fire that is de-
15 clared to be a wildfire; and

16 “(10) the term ‘wildland firefighter’ means a
17 firefighter—

18 “(A) who is employed by the Forest Serv-
19 ice or the Department of the Interior; and

20 “(B) the duties of the position of whom
21 primarily relate to fires occurring in forest
22 lands, range lands, or other wildlands, as op-
23 posed to structural fires.

24 “(b) TREATMENT OF PREMIUM PAY.—Any premium
25 pay earned by a covered employee for covered services

1 shall be disregarded in calculating the aggregate of the
2 basic pay and premium pay of the covered employee for
3 purposes of applying a limitation under section 5547.

4 “(c) TREATMENT OF DISREGARDED PREMIUM
5 PAY.—Any premium pay that is disregarded under sub-
6 section (b) shall be disregarded in calculating the aggre-
7 gate pay of the applicable covered employee for purposes
8 of applying the limitation in section 5307.

9 “(d) LIMITATION.—

10 “(1) IN GENERAL.—Pay that is disregarded
11 under subsection (b) may not be paid to the extent
12 that such pay would cause the aggregate of the basic
13 pay, premium pay, and hazard pay of the applicable
14 covered employee under section 5545(d) payable in
15 the applicable calendar year to exceed the rate of
16 basic pay payable for a position at level II of the Ex-
17 ecutive Schedule under section 5313, as in effect at
18 the end of that calendar year.

19 “(2) BIWEEKLY LIMITATION.—For the pur-
20 poses of paragraph (1), any premium pay that is
21 subject to a biweekly limitation under section
22 5547(e) shall be paid first before other premium pay
23 in applying the level II limitation.

24 “(e) RELATIONSHIP TO LUMP-SUM PAYMENT.—Any
25 additional pay resulting from application of this section

1 may not be used in computing a lump-sum payment for
2 accumulated and accrued annual leave under section 5551
3 or 5552.

4 “(f) RECORDS.—The Secretary of the Interior, the
5 Secretary of Agriculture, and the Secretary of Commerce
6 shall each maintain records that document uses of the au-
7 thority provided under this section.

8 “(g) LIMITATION FOR PREVAILING RATE EMPLOY-
9 EES.—

10 “(1) DEFINITIONS.—In this subsection—

11 “(A) the term ‘basic pay’ means wages, en-
12 vironmental differential pay, and night shift dif-
13 ferential pay; and

14 “(B) the term ‘premium pay’ means over-
15 time pay, Sunday premium pay, and holiday
16 premium pay.

17 “(2) LIMITATION.—For a prevailing rate em-
18 ployee described in section 5342(a)(2)(A) who is a
19 covered employee, premium pay may not be paid to
20 the extent that payment would cause the aggregate
21 of the basic pay and premium pay of the covered
22 employee in the applicable calendar year to exceed
23 the rate of basic pay payable for a position at level
24 II of the Executive Schedule under section 5313, as
25 in effect at the end of that calendar year.”.

1 (b) CLERICAL AMENDMENT.—The table of sections
2 for chapter 55 of title 5, United States Code, is amended
3 by inserting after the item for section 5547 the following:

“5547a. Special limitations on premium pay for employees engaged in wildland
firefighting.”.

4 (c) DISREGARDING OF PREMIUM PAY FOR CERTAIN
5 PURPOSES.—For the purpose of applying section 5547 of
6 title 5, United States Code, as carried out pursuant to
7 the requirements of section 1701 of division B of the Ex-
8 tending Government Funding and Delivering Emergency
9 Assistance Act (5 U.S.C. 5547 note) (as amended by sec-
10 tion 601 of title VI of division HH of the Consolidated
11 Appropriations Act, 2022 and section 440 of title IV of
12 division G of the Consolidated Appropriations Act, 2023),
13 in calendar year 2023, incident standby premium pay shall
14 be included in premium pay that is subject to the limits
15 established pursuant to those requirements, as so amend-
16 ed.

17 (d) EFFECTIVE DATES.—

18 (1) IN GENERAL.—The amendments made by
19 subsections (a) and (b) shall take effect on the first
20 day of the first pay period that has a payment date
21 in January 2024.

22 (2) DISREGARDING OF PREMIUM PAY.—Sub-
23 section (c) shall take effect on the first day of the

1 first applicable pay period beginning on or after Oc-
2 tober 1, 2023.

3 (e) REPORTS ON HIRING WILDLAND FIREFIGHTERS
4 AND INCIDENT METEOROLOGISTS.—

5 (1) DEFINITIONS.—In this subsection:

6 (A) RELEVANT CONGRESSIONAL COMMIT-
7 TEES DEFINED.—The term “relevant congress-
8 sional committees” means—

9 (i) the Committee on Homeland Secu-
10 rity and Governmental Affairs of the Sen-
11 ate;

12 (ii) the Committee on Oversight and
13 Accountability of the House of Representa-
14 tives;

15 (iii) the Committee on Appropriations
16 of the Senate; and

17 (iv) the Committee on Appropriations
18 of the House of Representatives.

19 (B) SECRETARY CONCERNED.—The term
20 “Secretary concerned” means—

21 (i) the Secretary of Agriculture;

22 (ii) the Secretary of the Interior; and

23 (iii) the Secretary of Commerce.

24 (2) REPORTS REQUIRED.—Not later than
25 March 30, 2024, each Secretary concerned, in con-

1 sultation with the Director of the Office of Manage-
2 ment and Budget and the Director of the Office of
3 Personnel Management, shall submit to the relevant
4 congressional committees a plan that addresses the
5 needs of the Department of Agriculture, the Depart-
6 ment of the Interior, or the National Weather Serv-
7 ice, as applicable, to hire and train additional
8 wildland firefighters or incident meteorologists (as
9 those terms are defined in section 5447a of title 5,
10 United States Code, as added by subsection (a))
11 such that sufficient personnel resources are available
12 throughout the year without causing those wildland
13 firefighters or incident meteorologists to receive com-
14 pensation, in a typical calendar year, in excess of the
15 annual rate for level IV of the Executive Schedule
16 under section 5315 of title 5, United States Code.

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