

Frequently Asked Questions About the Technician APHIS Settlement

1. What was settled?

On February 1, 2018, NTEU and CBP entered into a supplemental agreement concerning several national grievances that challenged CBP's failure to pay CBP Technicians appropriate premium pay under APHIS Directive 402.3. This agreement enforces and supplements an earlier settlement of these grievances. In addition to providing compensation for past errors, the grievances resulted in the correction of CBP's improper pay practices.

2. Who is eligible for payment under the settlement?

Current and former CBP employees who (1) served as a Technician at any time since December 16, 2003 (or, for those within NTEU Chapter 111's jurisdiction, October 16, 2003), and (2) performed work covered by the Directive that was not properly compensated. Chapter 111's recovery period is slightly longer due to an earlier-filed local grievance.

3. What type of work does the Directive cover?

The Directive generally applies to plant or animal inspectional or quarantine work. This includes work related to the "inspection, treatment, testing or certification of animals, animal products, birds, plants, and plant products in connection with their import into or export from the United States."

4. What kind of premium pay does the Directive provide?

The following types of premium pay are available for Directive-covered work:

a. Double time for overtime work performed on Sundays. See Directive, Sections V.D, VI.B.

b. Base pay plus holiday pay for non-overtime work performed on holidays. See Directive, Section VI.C.

c. Commuted travel time (CTT) for regular or Sunday overtime or holiday work. See Directive, Sections V.G., VI.D.

d. A minimum of two hours of compensation (two-hour minimum guarantee) for any period of overtime or holiday work. See Directive, Section V.C.

e. Sunday, night, and holiday differential. See Directive, Section V (noting that, with certain exceptions and conditions, employees are to be paid “premium rates for overtime, night, Sunday and holiday work in accordance with 5 U.S.C. §§ 5541-5549”); see also Directive, Sections V.B, V.D, VI.B, VI.C.

f. Compensation for multiple call-back/call-out assignments on a single holiday or other non-work day, if the conditions in Section V.I of the Directive are met. See Directive, Section V.I.

5. Where can I find a copy of the Directive?

You can find a copy of the Directive by clicking [here](http://www.aphis.usda.gov/library/directives/pdf/402_3.pdf) or going to www.aphis.usda.gov/library/directives/pdf/402_3.pdf.

6. How did CBP fail to comply with the Directive?

CBP erred by not paying some Technicians the premium pay required by the Directive and by paying others less than the full amount to which they were entitled. Part of the problem was CBP’s failure to enter into its pay system the work codes necessary for Technicians to receive APHIS Directive premium pay. Many of the errors pertained to Sunday overtime pay and commuted travel time payments. NTEU’s settlement will provide relief for these widespread pay errors dating back to December 2003.

7. When did CBP start paying Technicians correctly?

In November 2013, CBP directed ports to use proper work codes for all Directive-covered work. But, errors persisted, which required CBP to make additional coding modifications in February 2015. CBP's back pay computations address pay errors through mid-2015, when its pay system modifications were supposed to have been completed. But, to ensure that Technicians are correctly paid, claims for additional payments can be filed for any improperly compensated work done between December 16, 2003, and the present.

8. How did CBP identify Technicians who did Directive-covered work, but were not properly paid?

During efforts to resolve this matter, CBP claimed that it did not, at the national level, have a way of identifying Technicians who had performed Directive-covered work during the recovery period. So, ports were asked to submit lists of employees who had performed that kind of work since December 2003. In all, local ports identified 193 Technicians who, at some point during the grievance period, performed Directive-covered work. Some ports provided back pay figures for Technicians that appeared to have been underpaid, but other ports did not.

9. How did CBP calculate the back pay owed to Technicians that it identified as doing Directive-covered work?

CBP Payroll retrieved the time and attendance records of each of the 193 Technicians identified by ports as having done Directive-covered work during the grievance period. It then searched those time records for work codes that CBP is supposed to use to record the performance of such work. CBP pulled records going back to the start of the grievance period (October 16, 2003 for Technicians in NTEU Chapter 111's jurisdiction and December 16, 2003 for all other Technicians). And CBP pulled records going up to the point in mid-2015, when its pay practices were supposed to have been reformed. CBP determined that 153 of these Technicians were owed back pay.

10. Why has it taken so long to resolve this matter?

It took so long, in large part, because of CBP's deficient record-keeping systems. Because CBP, at the national level, was unable to identify current and former Technicians entitled to pay under the Directive, ports were asked to provide CBP headquarters with a list of relevant names and corresponding back pay amounts. That cumbersome process resulted in some of the ports submitting incomplete or unverified information.

To confirm that Technicians identified by the ports would receive the pay to which they were entitled, CBP headquarters then rebuilt their pay and assignment records for the lengthy grievance period. This included hiring a contractor to reconstruct agency systems and the retrieval of data that had been archived and was no longer readily accessible. This process consumed a lot of time but, in the end, resulted in the computation, overall, of more back pay than the ports had previously identified.

11. How did the alleged overpayments come up?

When it reconstructed and reviewed its pay and assignment records, CBP discovered instances when it believes that employees received premium pay under the Directive that should not have been paid. This discovery triggered a lengthy CBP investigation into the facts surrounding these overpayments, which further delayed implementation of the settlement. And, once CBP's investigation concluded, NTEU had to press the agency to adopt a fair process for employees to challenge the overpayments, or have any obligation to repay overpaid amounts waived.

12. What if I was not identified by CBP as eligible for back pay, but believe that I did the relevant type of work without proper payment? Am I owed back pay?

As noted above, given CBP's deficient record keeping, the process for identifying Technicians who have done Directive-covered work since

2003 was an imprecise one. It depended on ports to do their best to come up with a list of names. It is certainly possible that some Technicians eligible for back pay were not identified by the ports. It is also possible that CBP was wrong when it concluded that 40 of the 193 Technicians identified by the ports were not entitled to any back pay.

So, if you did Directive-covered work during the grievance period, but were not identified by CBP as being owed back pay, read the notice and claim form you receive carefully. You will have the opportunity, through the claims process, to make your claim for any premium pay to which you were entitled, but did not receive. Interest on any pay owed will continue to accrue until it is paid.

13. What does the claims process entail?

Every individual who has served as a Technician during the grievance period will receive a notice and claim form from CBP. Those for whom CBP has computed back pay will, as part of their notices, be provided information about the agency's calculations. Any Technician, including those for whom CBP did not compute back pay, may use the claim form to identify assignments for which pay is still owed. Claims must be supported in some way, with either a sworn written narrative or documentation like pay stubs, time and attendance records, etc.

You will have 60 days from the receipt of your notice and claim form to submit your claim, subject to the following exception, which might extend that deadline. You will be able to request any records from CBP that you need to complete your claim. If you request records from CBP, you are guaranteed 45 days from the receipt of those records to submit your claim.

14. How long will it take for claims to be resolved?

CBP is supposed to issue written decisions concerning claims within 45 days of receiving them. CBP will grant or deny a claim, in whole or in part. If you disagree with CBP's decision on your claim, you can send a copy of CBP's decision and a copy of your claim to NTEU, at the address listed in the notice accompanying your claim form. NTEU

can then address your situation with CBP. If informal efforts do not resolve a dispute, NTEU may elect to present it to an arbitrator for adjudication.

15. I am one of the 97 Technicians who CBP alleges received an overpayment. What should I do?

If the notice and accompanying spreadsheet that you receive from CBP indicates that CBP believes you were overpaid, there are two avenues available to you. You may take advantage of either or both of these options.

First, you may challenge CBP's contention that you were overpaid through the claims process that is described in the notice that you will receive from CBP. Note that only those who purportedly received overpayments will receive packages with instructions on how to challenge such overpayments. Those not in the "overpayment" category will receive different packages.

Second, regardless of whether you agree with CBP's determination that you were overpaid for one or more assignments, you may ask—and should ask—DHS/CBP to waive any overpaid amounts. Petitions for waiver are submitted directly to DHS/CBP. NTEU will soon provide more information about the waiver process.

A successful claim or waiver petition would lead to the issuance of any back pay that was withheld by CBP to offset the allegedly overpaid amount. For example, CBP might have calculated \$10,000 in back pay owed to a Technician, while simultaneously concluding that s/he was overpaid \$2,000 during the grievance period. In this situation, the employee would receive \$8,000 in back pay, with CBP withholding \$2,000 to satisfy the overpaid amounts. But if that same Technician successfully challenges the \$2,000 in overpayments through the claims process, s/he would receive an additional \$2,000 back payment. Similarly, if the Technician seeks waiver of the \$2,000 in overpayments and CBP grants that waiver, a back payment of \$2,000 would issue to the Technician. Again, a Technician may file a claim or waiver petition or both.

16. My spreadsheet has a separate entry for interest related to some kind of previous payment. What is that about?

In 2012-2013, 50 Technicians received corrective payments for some of the work covered by these grievances. In total, approximately \$250,000 was paid out, but the payments were issued without interest. The settlement requires CBP to now issue payments equal to the amount of interest that would have been paid when these payments were made.

17. How do I know if I'm being paid properly under the APHIS Directive now?

CBP, at the national level, has given ports the proper work codes to be used for APHIS premium pay, and it has also reminded ports about when that pay should issue. But if you believe that you are still not being paid in accordance with the Directive, you should contact NTEU Assistant Counsel Paras N. Shah at paras.shah@nteu.org.

18. When will the initial payments be issued?

CBP is supposed to distribute the settlement packages to Technicians on or before March 3, 2018. CBP is then supposed to issue the initial payments on or before April 2, 2018. Interest on the back pay amounts will continue to accrue until the payments are issued.

19. Who should I contact with questions?

Please send any questions to NTEU Assistant Counsel Paras N. Shah at paras.shah@nteu.org. You may also contact your chapter's National Field Representative or Assistant Counsel.