

EMPLOYMENT RIGHTS AND BENEFITS OF FEDERAL CIVILIAN EMPLOYEES WHO PERFORM ACTIVE MILITARY DUTY (30 DAYS OR MORE LWOP)

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), Public Law 103-353, effective 12 Dec 94, contains the rights and entitlements of employees that separate or go leave without pay (LWOP) for active military service. Military service may be under Title 10 or Title 32 and may be voluntary or involuntary. Reemployment rights and benefits are limited to five cumulative years of absence, for military service, from civilian employment with the same employer, i.e., The Adjutant General of Nebraska. Temporary employees with a not to exceed (NTE) date have reemployment rights only through the NTE date of the current appointment. All active military service performed on or after 12 Dec 94 counts toward the five-year reemployment limit, except for specific types, which are exempt by the Act. Reemployment is defined as return to duty from Absent Uniformed Service (AUS) status or following separation for military service that interrupts otherwise creditable civilian service. Advance written or verbal notification to the employer is required before entering on military duty. If notice is not given, reemployment rights may be denied. Civilian Federal employees who are members of the Uniformed Services are entitled to the following rights and benefits:

1. ELECTIONS/ACKNOWLEDGEMENT SHEET: The information in this document provides explanations of USERRA benefits and entitlements to assist in completing the Elections/Acknowledgement Sheet. Complete your acknowledgement/election sheet and attach to a Request for Personnel Action (SF-52) with a copy of orders.

2. PAY: Employees performing military duty will receive compensation from the Armed Forces. They will not receive compensation from their civilian employment unless they elect to use leave. Arrangements may need to be made for civilian payroll deductions such as Court Orders, garnishments, allotments, etc.

3 DEFINITION OF CONTINGENCY OPERATION: A military operation that is (a) designated by the Secretary of Defense or (b) results in the call or order to, or retention on, active duty under section 688, 12301(a), 12302, 12304, 12305, or 12406 of Title 10 U.S.C., or any other provision of law during a war or during a national emergency declared by the President or Congress. Operations include: Kosovo – Operation Allied Force and Joint Guardian; 911 Terrorist Attacks – Operation Enduring Freedom, Noble Eagle, Infinite Justice and Iraqi Freedom.

4. LEAVE: The Office of Personnel Management (OPM) revised the Guide to Processing Personnel Actions (GPPA), Chapter 15, for Nature of Action Code (NOAC) 473 from LWOP-US to Absent Uniformed Service (AUS). The National Guard is required to change documentation procedures for Technicians performing military duty. All periods of military absence, regardless of the number of days, requires documentation whether in a pay or non-pay status.

a. Non-Contingency – Thirty (30) days or more: Ordered to active duty under an authority of Title 32, 10 USC 12301(b) or 10 USC 12301(d) and LWOP (KG) for one (1) day or more during the period.

(1) Submit SF-52 with military order and USERRA documentation.
 (2) Effective date on the SF-52 will be the first day of LWOP-Mil (KG).
 (3) The Return to Duty (RTD) effective date will be determined by individual circumstances. Technicians will remain on AUS until the end of the military order or within USERRA time limits requests a later date. While on terminal leave under Title 10 a request for Return to Duty (RTD) maybe submitted to be present for work prior to the end of the military order. A Technician on AUS under Title 32 cannot report back to work until the end of their orders. Military duty under Title 32 does not allow return to a Title 32 Dual Status Technician position when on “ordinary leave”.

b. Contingency Operation with Reservist Differential (RD) - 30 days or more: Ordered to active duty under the authorities: 10 USC 331, 20 USC 332, 20 USC 333, 20 USC 688, 20 USC 12301(a), 10 USC 12302, 10 USC 12304, 20 USC 12305 or 10 USC 12406.

(1) Submit SF-52 with military order and USERRA documentation.
 (2) The effective date of the AUS for LWOP-Military (KG) on the SF-52 will be the effective date of the military order. Only EXCEPTION to beginning the AUS effective date on the date of orders is if the Technician has regular compensatory time (CT) to use. In that case, the Technician will use regular compensatory time first and once exhausted they will be placed on AUS the first full day after to allow the processing of time and attendance. The CT will be used consecutively and exclusively without the intermixing of other paid leave during this delay period.

(3) The Return to Duty (RTD) date will be determined by individual circumstances. Technicians will remain on AUS until the end of the military order, unless while on terminal leave a request for RTD prior to order end date to be

present for work or request a later date within USERRA time limits. Upon request for RTD the effective date will depend if the Technician is authorized the 5 days of Presidential Leave prior to reporting for work.

4a. LEAVE Options: Civilian LES's should be submitted within 30 days after RTD to the HRO-Tech Svcs for the pay periods in which civilian leave was taken between the AUS and RTD dates. The LES's will be used to substantiate hours and amounts paid into the Federal Employees Retirement System (FERS) account for computation of deposit amount and proper retirement credit. Military deposits for periods of AUS (KG) will be required for retirement credit.

- a. 120 Hours Military Leave: Employees may request to use their military leave. An eligible full-time employee accrues 120 hours each fiscal year. Maximum carry over each 1 Oct (FY) is 240 hours.
- b. 22 Days Military Leave for contingency operations - Permanent or indefinite employees who perform duty in support of a contingency operation are entitled to 22 day (176 hours) of Law Enforcement Leave (LEL) each calendar year. It is not a dual compensation leave. The employee will not receive both military and federal civilian pay. LEL is computed "after the fact". The employee's normal civilian pay is compared to the actual military pay received (base pay, BAH, BAS, FSA, HPF & HDP less travel, transportation or per diem) and determined if a monetary difference exists. If the civilian pay would be greater, the difference would be received minus normal deductions. Hours do not carry over each calendar year. A debt could occur for insufficient funds to cover deductions such as FEHB
- c. 44 Days Military Leave for duty under Title 10 12301(b) or (d) provides 352 hours of military type leave without pay in support operations OCONUS. Dates claimed must be elected prior to deployment and reflected on the military order. This leave is in a military non-pay status. The technician will be converted to a military pay status on non-workdays, holidays and non-selected dates. Technicians will receive either military or civilian pay, not both. Civilian earnings are not exempt from taxes and all normal deduction will be taken. There is no eligibility for compensatory time, OWCP or holiday (premium) pay. Hours do not carry over each calendar year.
- d. Annual Leave: The use of annual leave should be requested prior to continuous LWOP. Employees may choose to (1) use all or a portion of accrued annual leave (2) have their annual leave remain to their credit until they return to the civilian position or (3) receive a lump-sum payment for all accrued annual leave. Use of intermittent leave is authorized.
- e. Other leave: The use of earned compensatory time.
- f. Excused Absence (upon return): Employees returning from active duty while in support of a contingency operation for 42 continuous days or longer are entitled to five (5) work days of excused absence. Normal work schedule according to regulation equals a workweek of normally 40 hours (4/10 schedule, 4 days (40hrs), 5/8 schedule, 5 days (40hrs). The days must be used prior to reporting as present and resumption of civilian duties. Employees are entitled to the 5 days of excused absence only once in a 12 month period. A new 12 month period begins after the first use of excused absence.
- g. PDMRA (upon return)- Army Post-Deployment/Mobilization Respite Absence (PDMRA) is leave given by the military based on months of deployment. It is military administrative absence. Federal, State or local government civilian employees cannot use leave or be present and receive their civilian earnings/wages and PDMRA.
- h. Reservist Differential (www.opm.gov/reservist) Public Law 111-8 dated 11 Mar 09 authorizes the pay of a differential on a bi-weekly basis equal to the amount of an employee's basic pay for a period of LWOP during qualifying contingency duty status periods that exceeds the employee's actual military pay and allowances. The employee must provide a copy of military orders or DD 214 and military LES's for the period. Receipt of a reservist differential does not affect leave status. This pay is taxable and considered for purposes of debt collection, garnishment and back pay according to various laws. It is not civilian basic pay for any purpose such as retirement, life insurance or severance pay. It is simply a supplemental payment that is computed using a comparison of civilian and military pay. An employee may continue to choose to use annual leave or other applicable paid leave as appropriate and receive benefits appropriately.

5. HEALTH BENEFITS (FEHB): Individuals on orders for more than 30 days are provided medical and dental services under TRICARE. Dependents are covered by care within a military facility or by the TRICARE program. An employee covered by the Federal Employees Health Benefits Program (FEHB) can have his or her health benefits enrollment

continued, unless they elect in writing to have the enrollment terminated. If the FEHB coverage is continued, TRICARE will be a secondary insurance.

a. Elect to retain coverage - Not in support of contingency operations:

Coverage may be carried for up to 24 months beginning the date of entrance on active duty.

- (1) Premiums may be paid by incurring a debt or paid directly to DFAS.
 - (a) If incurring a debt the repayment is deducted upon return to duty. One premium debt will be deducted pre-tax each pay period.
 - (b) To pay directly, with after-tax monies, a check or money order payable to DFAS-Disbursing Officer including name, SSN and noted for "FEHB Premium" should be submitted. Obtain address from HRO Tech Svcs.
- (2) The first 12 months an employee is responsible for the enrollee premium. For the final 12 months the cost will be 102% (employee and government shares with 2% admin fee). At the end of the 24 months, the enrollment will terminate, with a 31-day extension of coverage.
- (3) Coverage will be reinstated upon return to civilian service, whether enrollment terminates after 24 months or failure to pay premiums during the final 12 months.

b. Elect to retain coverage - In support of a contingency operation:

Ordered to active duty voluntarily or involuntarily an employee is eligible for the agency to make the payments of FEHB premiums for up to 24 months.

- (1) Premiums will be deducted each pay period leave is used.
- (2) The 24 month period begins the date of entrance on active duty. If enrollment terminates at the end of the 24 months it will be reinstated upon return to civilian service.
- (3) TRICARE is available for a limited time (normally 180 days from separation). To take advantage of the extended TRICARE and terminate FEHB contact the HRO office for a waiver and SF-2809. If termination is elected, reenrollment is available upon the loss of TRICARE or revocation of the waiver. Details at www.tricare.mil.

c. Termination coverage while on orders: Notify the HRO in writing to have FEHB terminated. The effective date will be the day placed on military duty. Termination is not considered a break in coverage for meeting the five-year requirement for continuing FEHB into retirement.

- (1) The employee and covered family members have 31 day temporary coverage.
- (2) Coverage will be reinstated upon restoration/return to civilian duty.
- (3) Upon returning from a contingency operation and wanting to use Transitional TRICARE for the limited time (normally 180 days from separation) without reinstating FEHB immediately upon RTD will require coordination with HRO for a TRICARE Waiver.

e. Changes to FEHB (upon return): An employee may enroll or make plan changes within 60 days after return to civilian service or upon loss of Transitional TRICARE due to contingency duty. An election to change will be accomplished Employee Benefits Information System (EBIS) at www.abc.army.mil as a Qualifying Life Event (QLE). Changes become effective on the first day of the pay period that follows a pay period during which an employee was in a pay status.

6. FLEXIBLE SPENDING ACCOUNT (FSA), FEDERAL DENTAL and VISION INSURANCE PLANS (FEDVIP) & LONG TERM CARE INSURANCE PROGRAM (FLTCIP):

Programs offered by the Federal Government. If enrolled in FSA, FLTCIP or FEDVIP changes may be required (i.e. payments, continued eligibility met, etc). Upon return to duty you will have opportunities to enroll in FSA or FEDVIP.

a. FSA (Flexible Spending Acct) - POC: www.fsafeds.com:

- (1) Health Care FSA: Two options: If have not pre-paid your allotment, your HCFSA account will be frozen and you will not be eligible for reimbursement of any HCFSA expenses incurred during the period of LWOP or until you return to pay status and begin making allotments again. You may continue to submit claims for eligible health care expenses incurred prior to your period of LWOP.
OR

You may want to request a QRD (Qualified Reservist Distribution) if you are called to duty for at least 180 days, have a balance and think you might not be able to incur sufficient eligible expenses to deplete your account. Rather than forfeit those funds you can have your balance refunded to you. This distribution will be taxable wages and you give up the ability to submit expenses for the remainder of the benefit period. Accomplish on the FSA website under "HEART Act-QRD".(2) Dependent Care FSA: DCFSA expenses you incur during your LWOP that meet IRS guidelines for eligible expenses may be reimbursed up to your account balance.

b. FEDVIP (Dental & Vision Ins) - POC: www.benefeds.com or 1-877-888-3337:

- (1) Individual responsibility to contact BENEFEDS. When LWOP after two consecutive attempts to obtain premium deductions, BENEFEDS will bill the enrollee directly for premiums. Direct payments made to BENEFEDS are post-tax.
- (2) Canceling enrollment: Enrollment may be cancelled outside an Open Season if an employee or spouse is deployed. Family coverage also ends upon the effective date of the cancellation.
- (3) Coverage will end when you:
 - begin a period of non-pay status or pay is insufficient to have premiums withheld and do not make direct premium payments to BENEFEDS;
 - making direct premium payments to BENEFEDS and you stop making the payments; or
 - cancel the enrollment.
- (4) Under FEDVIP, there is no 31-day extension of coverage or right to convert to individual policy.

c. FLTCIP (Long Term Care Ins) – POC www.ltcfeds.com or 1-800-582-3337: Can keep your FLTCIP coverage as long as continue to pay your premiums. If currently have payroll deduction of premiums, contact LTCFEDS. Can have premiums deducted from military pay. Explain to LTCFEDS that your servicing payroll location is changing.

7. LIFE INSURANCE:

a. FEGLI – Federal Employees Group Life Insurance. If LWOP or separate the FEGLI continues for up to 12 months or until 90 days after military service ends whichever date comes first, at no cost to the employee. An additional 12 months with payment by the employee for a total of up to 24 months is available. If an employee does not submit a completed election notice, the FEGLI coverage will end at the end of the first 12 months, subject to the 31-day extension.

Option #1, #2 or #3 must be elected by signing a FEGLI Election Form.

- (1) Option #1: The coverage is terminated after 12 months in a non-pay status; with a 31-day temporary continuation of coverage for conversion to a non-group policy. If coverage is terminated after the 12 months, it will be automatically restored upon return to duty in a pay status.
- (2) Option #2: Elect to continue FEGLI coverage for an additional 12 months, for a total of up to 24 months. Employee must agree to pay both the employee and the agency share of premiums for their Basic coverage and pay the full premium for any Optional insurance for the additional 12 months of coverage. Arrangements for payment to DFAS discussed with HRO-Tech Svcs.
- (3) Option #3: Elect to continue FEGLI Basic coverage for additional 12 months from the date of the completion of first 12 months in nonpay status. Choose to reduce the coverage of any optional insurance.

b. ASSURITY LIFE (Previously known as Security Mutual): Options are canceling or continuing coverage. While LWOP the insured may keep the insurance in force by paying premiums directly to the company: Assurity Life Insurance, P.O. Box 82248, Lincoln, NE 68501-2248, noting on the check Certificate #, Policy # and Group #. If premium payments are not made the coverage will be cancelled.

c. NGAUS: An employee has the options of (1) canceling; (2) continuing coverage or (3) enrollment.

- (1) Tech Life Insurance: While LWOP the company will waive premiums for up to 90 days. If LWOP longer than 90 days the company will begin direct billing. If payments are not made, after the 90day period, the insured will not be covered. This policy will be reinstated upon return to duty without cost to the employee.

- (2) Tech Pay (Disability Income Insurance): While LWOP the company will waive premiums for up to

30 days. No premiums will be due and coverage will be reinstated upon return to duty. Benefits are not payable for disabilities resulting from intentionally self-inflicted injuries; act of war, declared or not; Active Duty lasting more than 30 days, mental or nervous conditions, alcoholism, except as specifically provided in the policy.

- (3) Upon return from contingency operations, employees may enroll in NGAUS insurance plans without a physical within 31 days of resuming normal technician duties.

8. RETIREMENT: While LWOP performing military duty an employee continues to be covered by the FERS/CSRS retirement plan. If disabled for a civilian position during the LWOP and meets the minimum amount of civilian service an employee may become entitled to disability benefits.

- a. Upon eventual retirement from civilian service, military service may be creditable under FERS/CSRS. A deposit for the military service would be required. A military deposit paid before the first interest accrual date (within 3 years of return to a covered position), no interest is charged. The deposit would equal the lesser of:
- (1) FERS – 3% of military basic pay and CSRS – 7% ; OR
 - (2) FERS - 0.8% if hired before 01/01/2013 or 3.1% if hired on/after 01/01/2013.
CSRS – 7% of civilian pay. Exception: CSRS employee hired prior to 1 Oct 82, military service is creditable; but, if a deposit is not made the retirement annuity will be reduced, at retirement or age 62.
- b. If an employee separates to enter active military duty, he or she generally will receive retirement credit for the period of separation when the employee exercises restoration rights to his or her civilian position. If the separated employee does not exercise restoration rights, but later re-enters Federal civilian service, the military service may be credited, subject to the rules governing credit for military service.

9. THRIFT SAVINGS PLAN (TSP): Contributions cannot be made to the civilian account while LWOP or separated. Information can be located at www.tsp.gov, Fact Sheet – “TSP Benefits that Apply to Members of the Military Who Return to Federal Civilian Service”. If an individual participates in both the military and civilian TSP, the total contributions for both accounts for a year may not exceed the IRS limit for tax exempt and tax deferred contributions. Fact sheet – “Annual Limits on Elective Deferrals” or FAQ’s - “How does the TSP apply the limits to both civilian and uniformed services TSP accounts?”.

- a. An employee is eligible to make TSP contribution elections upon return to duty.
- b. **FERS employees** are entitled to receive retroactive Agency Automatic (1%). These are contributions which would have been received had the employee remained in civilian service and pay status.
- c. **FERS employees:** If contributions were made to the Uniformed Services TSP account during the military service, the employee is entitled to the 4% agency matching contributions. The employee is required to furnish military pay LES's which reflect the contributions made to the Uniformed Service TSP account within 60 days. Matching contributions will be applied to the civilian account, after compared to the contributions deducted from the military basic pay (does not include incentive pay, special pay or bonuses). Depending on the military and civilian basic pay contributions an employee may request to make up retroactive contributions to receive the full agency matching.

Using your LES and the Military Basic Pay chart to approximate 5% for matching.

- (1) \$ _____ (Civilian hourly wage) X 176 hours = \$ _____ (Salary for 22 working days in a month).
- (2) \$ _____ (Salary for 22 days) X 5% = \$ _____ (Total TSP matching allowed)
- (3) \$ _____ (Monthly Military Basic Pay) X _____% = \$ _____ (To equal or close to total in #2)
- (4) Want #3 total to be close to #2 for 5% matching TSP.

- d. When restored or re-employed an employee is allowed 60 days to request to make up TSP contributions missed during the period of military service. The amount of makeup contributions must be reduced by the total amount of contributions made to the Uniformed Service TSP account. The employee will be **required to furnish military LES's** which reflect the contributions made to the Uniformed Service TSP account.

- e. **TSP Loans:** An employee must notify HRO Tech Svcs, who will send notification to TSP. Payments are suspended until return to a pay status. Although payments will not be due, interest will continue to accrue. Payments may be made directly to TSP while the loan is suspended. Review the TSP Loan Program Booklet.

10. VACANCY ANNOUNCEMENTS AND CONSIDERATION FOR PROMOTIONS:

a. Vacancies: Applicants will apply for advertised positions at www.usajobs.gov. Announcements will provide the specific details of how to apply. Vacancy announcements are posted on the NENG website.

b. Promotions: In accordance with NE TPR 335, employees will be considered for promotion to positions.

11. RETURNING TO TECHNICIAN DUTY AND APPLICATION FOR REEMPLOYMENT: An employee who enters active duty has job protection. This includes an indefinite or temporary employee. There is a 5-year cumulative total limit on active duty. The employee's military service must be under honorable conditions.

a. Periods allowed for return to duty are based on the length of time the individual serves on active duty.

(1) Less than 31 days of military duty must report back to work at the beginning of the next scheduled workday following their release and the expiration of 8 hours after a period allowing for the safe transportation of the employee from the place of service to the employee's residence.

(2) More than 30 days, but less than 181 days must submit an application for reemployment within 14 days of separation.

(3) More than 180 days must submit an application for reemployment within 90 days of separation.

b. An employee who serves less than 91 days must be restored to the position, for which qualified, that he or she would have attained had his/her employment not been interrupted or to his/her former position. Employees who serve more than 90 days have essentially the same rights, except that the agency has the option of placing the employee in a position for which qualified of like seniority, status, and pay.

c. Upon return or restoration, an employee generally is entitled to be treated as though he or she had never left for purposes of rights and benefits based upon length of service. This means that the employee must be considered for career ladder promotions, and the time spent in the military will be credited for seniority, successive within-grade increases, probation, career tenure, annual leave accrual rate, and severance pay. An employee who was on a temporary appointment completes any unexpired portion of his or her original appointment

d. An employee performing active military duty is protected from reduction in force (RIF). An individual who is re-employed may not be discharged, except for cause, for a period of 1 year following a period of service of more than 180 days or if the period of military service was more than 30 days but less than 181 days, within 6 months.

12. EMPLOYEE ASSISTANCE PROGRAMS (EAP): EAP can be helpful to employees and their families in coping with the stress and disruption associated with military duty. Short-term counseling and referral services are provided to help with financial, emotional, and dependent care problems. Military One Source - <http://www.militaryonesource.com/skins/MOS/home.aspx>

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