



CHIEF OF THE NATIONAL GUARD BUREAU INSTRUCTION

NGB-J1-TCP
DISTRIBUTION: A

CNGBI 1400.25, Vol. 715
29 June 2020

NATIONAL GUARD TECHNICIAN AND CIVILIAN PERSONNEL VOLUNTARY AND NON-DISCIPLINARY ACTIONS PROGRAM

References: See Enclosure D.

1. Purpose.

a. Instruction. This instruction is composed of several volumes, each containing its own purpose. The purpose of the overall instruction is to establish policy and assign responsibilities for the National Guard (NG) Technician and Civilian Personnel Policy Division (TCP) in accordance with (IAW) the references a through d.

b. Volume. This volume provides policy and assigns responsibilities for voluntary and non-disciplinary actions for NG employees in accordance with (IAW) references e through g.

2. Cancellation. This instruction rescinds and replaces Technician Personnel Regulation 715, 13 July 2007, "Voluntary and Non-Disciplinary Actions Process and Procedures."

3. Applicability. This instruction:

a. Applies to the NG of the 54 States, Territories, and District of Columbia, hereafter referred to collectively as "States," and to all NG employees. The term "NG employees" throughout this volume is defined IAW references a, b, and c as Title 32 military technician (dual status) excepted service employees and Title 5 NG excepted or competitive service employees within the States.

b. Does not apply to the civilian employees of the Office of the Chief of the National Guard Bureau, National Guard Bureau Joint Staff, Air National Guard Directorate, and Army National Guard Directorate, and Directorate of Space Operations.

4. Policy. It is NG policy to provide due process in accordance with merit systems principles for affected NG employees under this instruction. Merit

UNCLASSIFIED

system principles call for holding Federal employees accountable for performance and conduct.

5. Definitions. See Glossary.
6. Responsibilities. See Enclosure A.
7. Summary of Changes. This is the initial publication of CNGBI 1400.25, Vol. 715.
8. Releasability. This instruction is approved for public release; distribution is unlimited. Obtain copies through <<https://www.ngbpmc.ng.mil/>>.
9. Effective Date. This instruction is effective upon publication and must be reissued, canceled, or certified as current every five years.



DAWNE L. DESKINS
General, USAF
Director, Manpower and Personnel
National Guard Bureau

Enclosures:

- A -- Responsibilities
- B -- Staff Functions
- C -- Voluntary and Non-Disciplinary Actions
- D -- References
- GL -- Glossary

ENCLOSURE A
RESPONSIBILITIES

1. Manpower and Personnel Directorate (NGB-J1). NGB-J1 will provide the CNGB with oversight of NG human resource technician and civilian employee program development, staffing, and execution of policies, plans, and programs concerning employment.

2. NGB-J1 Technician and Civilian Personnel Division (NGB-J1-TCP). NGB-J1-TCP will develop, coordinate, and maintain procedures for voluntary and non-disciplinary actions in the NG Technician and Civilian Personnel.

3. The Adjutants General (TAGs) and the Commanding General of the District of Columbia (CG). TAGs and the CG will:

a. Establish procedures to ensure due process for affected employees under this regulation.

b. Ensure the recommended personnel action meets statutory, regulatory, and DoD policy guidance. TAG or the CG may delegate responsibility for approving personnel actions to an appropriate official within the NG, including the Human Resource Officer.

c. If appropriate, give the employee the right to file an appeal to the Merit Systems Protection Board (MSPB) or to file a grievance.

d. Be considered the head of the agency in any administrative action.

ENCLOSURE B

STAFF FUNCTIONS

1. HRO. HROs should:

a. Ensure State programs comply with applicable law, this instruction, and negotiated collective bargaining agreements (CBAs).

b. Negotiate with local labor organizations supplementary procedures within the context of appropriate arrangements for all bargaining unit employees, but may not negotiate military matters.

c. Prepare and issue written furlough notices.

2. Labor Relations Specialists. Labor Relations Specialists should:

a. Administer voluntary and non-disciplinary action programs for the HRO and TAG in coordination with the JAG.

b. Implement and prepare local guidance regarding this instruction.

c. Provide advice, assistance, and training to commanders, managers, and supervisors on the effective use of and participation in the program.

d. Monitor compliance with law, applicable Code of Federal Regulations (CFR) provisions, Civilian Personnel Manuals (CPM), this instruction, and all local directives and policies of TAG and obtain legal reviews thereof.

e. Represent, or advise the representative of, TAG in cases regarding employee relations.

f. Propose new regulations, policies, and local directives that substantially impact working conditions and notify the exclusive representative (labor organization) of the bargaining unit. Local directives and policies may not violate a negotiated CBA.

3. Managers and Supervisors. Managers and supervisors should ensure actions taken or proposed on behalf of TAG comply with law, applicable CFR provisions, Civilian Personnel Manuals, this instruction, all local directives and policies of TAG, and the CBA, if required. When in doubt consult the JAG.

ENCLOSURE C

VOLUNTARY AND NON-DISCIPLINARY ACTIONS

1. Resignation. NG employees are free to resign at any time, to set the effective date of their resignation, and to have their reasons for resigning entered in their official records. Management may ask for a reasonable period of notice to allow for a replacement or work adjustment, but may not set an earlier or later date than the date selected by the employee. Employees must complete a Standard Form (SF) 52, "Request for Personnel Action," or submit a written and signed resignation request that includes the effective date of resignation and the reason(s) for resigning. If it is not possible for the employee to submit a written resignation, the individual that received the resignation should prepare a memorandum for record to document the request, including the reason(s) for the resignation, the effective date, and the names of any witnesses.

a. Withdrawal of Resignation. Management may permit an employee to withdraw a resignation at any time before it becomes effective. Management may also decline a request to withdraw a resignation before its effective date only when it has a valid reason and explains that reason to the employee. Valid reasons include, but are not limited to, administrative or military disruption and the hiring or commitment to hire a replacement. Avoidance of adverse action proceedings is not a valid reason to decline a request to withdraw a resignation. If an employee's request to resign is denied, management must provide a written explanation of its decision and advise the employee of their right to request an appellate review or administrative hearing. (See reference h for a description of both appeal processes.)

b. Adverse Actions. Employees facing an involuntary change to lower grade or removal should seek advice on their options, rights and benefits from the appropriate Human Resources Office (HRO). These employees will be provided due process procedures as outlined in reference h. Employees who resign instead of adhering to the adverse action process forfeit all adverse action appeal rights. Employees may request to withdraw a resignation before it becomes effective. Requests to withdraw must be in writing.

c. Involuntary Resignation. If an employee alleges his or her resignation is involuntary, the allegation must be reported to the appropriate HRO. An involuntary resignation filed in a timely manner may be appealed to the Merit Systems Protection Board (MSPB). As required by reference i, once on notice of the alleged involuntary nature of the resignation, the HRO shall inform the employee that he or she may appeal an involuntary resignation to the MSPB not later than 30 days after the date of receipt of resignation or the effective

date of resignation, whichever is later. If the employee does not submit an appeal within this time limit, the appeal will be dismissed as untimely unless a good reason for the delay is shown. The MSPB judge provides an opportunity to show why the appeal should not be dismissed as untimely.

(1) If the appellant alleges involuntary resignation, the HRO will generally advise the employee whether complaints of involuntary resignation are excluded from the grievance procedure. For example, Title 5 NG employees may be able to use a negotiated grievance procedure, but dual-status technicians may not. Furthermore, Title 5 NG employees from a different bargaining unit within the same State NG may not be able to grieve an involuntary resignation if the applicable collective bargaining agreement (CBA) does not grant this right. For example, if Title 5 NG employees in one bargaining unit can grieve personnel actions, it does not automatically imply that employees in a different bargaining unit can grieve a similar personnel action. Because of the varying statuses of NG employment, different types of employees may have different appellate rights available to them within the same State. Similarly, the nature of the allegations may also afford an appellant different rights. Therefore, employees are strongly encouraged to seek guidance prior to selecting a forum for appeal.

(2) If the grievance procedure is available, the HRO shall advise the employee that (1) the complaint may, in the discretion of the employee, be raised either under the grievance procedure or by appeal to the MSPB, but not both; (2) the employee shall be deemed to have exercised this option at such time as the employee files a timely appeal to the MSPB or a timely written grievance, whichever occurs first; (3) filing a grievance will not extend the time limit for filing an appeal with the MSPB; and (4) if a timely written grievance is filed first the employee may seek MSPB review of the final grievance decision only if the employee claims the involuntary resignation also was due to prohibited discrimination.

(3) The HRO shall provide the employee the address of the appropriate MSPB office where an appeal should be filed; a copy, or access to a copy, of the MSPB's regulations; and a copy of the MSPB appeal form available at reference j.

(4) The HRO will advise the employee that he or she also may appeal an involuntary resignation under National Guard Bureau (NGB) regulatory procedures in the same manner as an appeal of an adverse action and that, if the negotiated grievance procedure is available, the employee may file a grievance challenging the final decision of the appeal, unless the grievance procedure states that these decisions may not be challenged by grievance, in which case the HRO shall so advise the employee.

(5) The HRO also shall advise the employee that filing an appeal under NGB regulatory procedures, or a grievance thereafter, will not extend the time limit for filing an appeal with the MSPB.

2. Change to Lower Grade. Employees may voluntarily request a change to a lower grade at any time. The request must be in writing, stating the grade desired and the facts and reasons on which the request is based (which can be for personal reasons). The request may be granted if management has need for performance of lower-graded duties within the employee's ability and if arrangement for performance of the employee's higher-graded duties can be made without substantial disruption. The request may be withdrawn at any time before it becomes effective.

a. Employees who allege that the change to lower grade was not voluntary will have their allegations processed as one of the following:

(1) Title 5 competitive service employees performance based actions are processed IAW reference k and conduct based actions are processed IAW reference h and m.

(2) Title 5 excepted service employees and military technicians (dual status) performance based actions are processed IAW reference m and conduct- based actions are processed IAW reference h and m.

b. If an employee alleges that his or her change to lower grade is involuntary (other than in the context of an agency-initiated adverse action), the allegation must be reported to the appropriate HRO. An employee may appeal to the MSPB a change to lower grade claimed by management to be voluntary, but claimed by the employee to be involuntary. As required IAW reference i, the HRO shall inform the employee that (1) he or she may appeal an involuntary change to lower grade to the MSPB not later than 30 days after the effective date of the change or the employee's receipt of the agency decision implementing the change, whichever is later; (2) if IAW reference i, the employee does not submit an appeal within this time limit it may be dismissed as untimely unless a good reason for the delay is shown; and (3) an opportunity must be provided to show why the appeal should not be dismissed as untimely. However, the Board's jurisdiction is not plenary; it is limited to matters over which it has been given jurisdiction by law, rule, or regulation. When the notice of decision or other documentation contains information indicating that the appellant could appeal a matter to the Board, erroneous advice does not serve to confer MSPB jurisdiction upon the Board where it does not otherwise exist. Therefore, HROs should provide broad notice of MSPB appeal rights and contest jurisdiction later with the assistance of the Judge Advocate General (JAG).

(1) If the employee is covered by a negotiated grievance procedure, the HRO shall advise the employee whether a complaint claiming involuntary change to lower grade is excluded from the grievance procedure and, if not, the time period for filing a grievance.

(2) If a negotiated grievance procedure is available for Title 5 NG employees, the HRO should advise the employee that (1) the complaint may, at the discretion of the employee, be raised either under the grievance procedure or by appeal to the MSPB but not both; (2) the employee shall be deemed to have exercised this option at such time as the employee files a timely appeal to the MSPB or a timely written grievance, whichever occurs first; (3) filing a grievance will not extend the time limit for filing an appeal with the MSPB; and (4) if a timely written grievance is filed first the employee may seek MSPB review of the final grievance decision only if the employee claims that the involuntary change was due to prohibited discrimination. The fact that an agency improperly advises an employee of a right of appeal to the MSPB or through the negotiated grievance procedure, which does not, in fact, exist, is insufficient to confer jurisdiction on the Board, an arbitrator, or the Federal Labor Relations Authority. This is true even when the appellate provision is incorporated into a CBA. While the lack of subject matter jurisdiction is never waived, the HRO in conjunction with the JAG should do its best to raise these jurisdictional issues early.

(3) The HRO shall reference appeal rights in the notice documentation and provide the employee the address of the appropriate MSPB office where an appeal should be filed; a copy, or access to a copy, of the MSPB's regulations; and a link to reference j.

(4) The HRO shall advise the employee that he or she also may appeal an involuntary change to lower grade in the same manner as an appeal of an adverse action and that, if the employee's claim is expressly covered by a negotiated grievance procedure, the employee may file a grievance challenging the final decision of the appeal, in which case the HRO shall so advise the employee.

(5) The HRO also shall advise the employee that filing an appeal under NGB regulatory procedures, or a grievance thereafter, will not extend the time limit for filing an appeal with the MSPB.

c. Withdrawal of change. When a request for a voluntary change to lower grade in lieu of an adverse action is withdrawn, the adverse action will resume. All time periods that were stayed or delayed because of the request for change to lower grade will resume at the point when the request for a voluntary downgrade is withdrawn.

3. Retirement. An employee who is eligible to retire is free to retire at any time and to set the effective date of his or her retirement. The HRO explains alternatives when an employee qualifies for more than one type of retirement by providing rights and benefits information. The employee is entitled to apply for the retirement option he or she prefers, unless excluded under section 8456(a)(3) of reference n. The choice may depend on the employee's interest in subsequent Federal reemployment. Use retirement application SF 2801, "Application for Immediate Retirement (Civil Service Retirement System)," or SF 3107, "Application for Immediate Retirement (Federal Employees Retirement System)," as required.

a. Withdraw of Retirement Application. Employees have the right to withdraw an application for retirement before it becomes effective. All requests to withdraw an application for retirement must be in writing, signed, and dated. Management must provide a written explanation of its decision and advise the employee of his or her right to an appellate review or an administrative hearing under the terms of an applicable negotiated grievance procedure if an employee's withdrawal request is denied. Management must establish the validity of its reasons for denying the withdrawal. Management may deny the withdrawal request before its effective date only for legitimate reasons, including, but not limited to, administrative or military disruption, the hiring of a replacement, or a valid commitment to hire a replacement. Avoidance of an adverse action proceeding is not a legitimate reason to deny the withdrawal. Management must communicate the denial and the reasons for the denial to the employee.

b. Retirement instead of adverse action. An employee who has received a written notice of a proposed action and is eligible to retire, who properly has pursued or still retains the right to appeal an adverse action to the MSPB or to challenge it through a negotiated grievance procedure, may voluntarily retire in lieu of an adverse action.

c. Involuntary Retirement. An employee may appeal an involuntary retirement to the MSPB. If an employee alleges that his or her retirement is involuntary, the allegation must be reported to the HRO. As required by reference i, the HRO shall inform the employee that he or she may appeal the involuntary retirement to the MSPB not later than 30 days after the effective date of the action, whichever is later. If the employee is covered by a negotiated grievance procedure, the HRO shall advise the employee that a grievance concerning retirement is excluded from the procedure. The HRO shall provide to the employee the address of the appropriate MSPB office where an appeal should be filed; a copy, or access to a copy, of the MSPB's regulations; and a copy of the MSPB appeal form available at reference j.

4. Abandonment of Position. An employee may be removed for abandonment of position if he or she fails to report to work within a reasonable time (usually 10 calendar days). The agency must:

a. Immediately put the employee into an "absent without leave"(AWOL) status. It is administratively easy to change AWOL to approved leave, but very difficult to do the opposite.

b. Take steps to contact the employee. Call the employee if the employee's number is known to the supervisor, and send a certified return receipt letter to the last known address notifying the employee that he or she is being charged AWOL and that further disciplinary actions may be taken if he or she does not return to work. AWOL may be processed as an adverse action or as Abandonment of Position. The facts and circumstances in conjunction with advice from the HRO and JAG will usually guide management towards which is the best course of action.

c. If an NG employee is absent, without leave being approved, it is appropriate that the time be recorded as AWOL. This can later be changed to an approved leave category if the approving authority determines that extenuating circumstances are such that the absence is improperly charged as AWOL. This offense includes leaving the workstation without permission. If charged as an adverse action, the penalty depends on the length and frequency of absences, as well as any mitigating or aggravating factors. Removal may be appropriate for a first or second offense if the absence is prolonged or there are aggravating factors.

d. If the absence is processed as abandonment of position, the employee's immediate supervisor will send a proposed action memorandum, "Removal for AWOL," by certified mail to the employee's last known home address.

e. The deciding official will make a final agency decision on the charge of "Abandonment of Position" if no reply is received within 10 calendar days or if the reply is unsatisfactory. The deciding official will send the final agency decision memorandum IAW reference h by certified mail to the employee's last known home address. The agency must include the following in the decision memorandum:

(1) Notice of the time limits for appealing to the Board, the requirements of reference i, and the address of the appropriate Board office for filing an appeal.

(2) A copy, URL, or location with access to a copy of the Board's regulations.

(3) A copy of the MSPB appeal form available at reference j.

(4) Notice of any right the employee has to file a grievance or to seek corrective action under subchapters II and III of reference o, including:

a. Whether the election of any applicable grievance procedure will result in waiver of the employee's right to file an appeal with the Board.

b. Whether both an appeal to the Board and a grievance may be filed on the same matter and, if so, the circumstances under which proceeding with one will preclude proceeding with the other, as well as specific notice that filing a grievance will not extend the time limit for filing an appeal with the Board.

c. Whether there is any right to request Board review of a final decision on a grievance IAW reference i.

d. The effect of any election under reference o, including the effect that seeking corrective action under subchapters II and III of reference o will have on the employee's appeal rights before the Board.

(5) Notice of any right the employee has to file a complaint with the Equal Employment Opportunity Commission or to allege unlawful discrimination, IAW the provisions of references o and p.

(6) The name or title and contact information for the agency official to whom the Board should send the Acknowledgment Order and a copy of the appeal if the employee files an appeal with the Board. The contact information should include the official's mailing address, email address, and telephone and fax numbers.

5. Military Technician (Dual Status) Failure to Meet a Condition of Employment.

a. A military technician (dual status) who is separated from the NG or ceases to hold the military grade specified by the Secretary with jurisdiction over his or her military position will be promptly separated from military technician (dual status) employment by The Adjutant General (TAG) or CG of the State concerned (see reference b).

b. The military aspects of technician employment are paramount to other concerns. Failure to remain in a compatible military assignment for the following reasons may result in reassignment or separation from employment as a military technician (dual status) and concurrent discharge from the NG by TAG of the State concerned (see reference b): failure to maintain flying status, a driver's license, current qualifications as an aircrew member, physical standards required for an aircrew member, authorization to carry a firearm, security clearance, Personnel Reliability Program qualification, military training, ability to perform employee duties efficiently and safely, and failure to restore to employee status after five years of uniformed service.

6. Failure to Meet a Condition of Employment. Failure to maintain, complete, or remain in a compatible military assignment for any of the following reasons may result in reassignment or termination as an employee: the military appointment requirement for the position, military rank required for the position, flying status, a driver's license, current qualifications as an aircrew member, physical standards required for an aircrew member, authorization to carry a firearm, security clearance, Personnel Reliability Program qualification, military training, or ability to perform employee duties efficiently and safely, and failure to restore to employee status after five years of uniformed service. Military technicians perform duties as civil service personnel for which they receive civilian pay, but they can also be activated for military duty, whereupon, as military Service personnel, they receive military pay. If they become ineligible to serve in a military status via, for example, denial of reenlistment, military medical disqualification, military force shaping, or similar factors, they must be promptly separated from their dual-status position by operation of law. See specifically reference b, sections (b), (c), and (f), and generally references b, h, j, k, l, and m.

a. If the inability to meet a requirement of the position is permanent or adversely impacts the military mission or readiness, management must remove the employee from the position by reassignment, change to a lower grade, or termination. The decision made in each case must be justified, with the reasons for the decision thoroughly documented in the decision.

b. If management determines that a change to a lower grade or reassignment is necessary, the employee will be provided with a reasonable amount of time to accept or reject the offer (usually 15 calendar days). The written notification must inform the employee that if he or she chooses not to accept the offer, termination will be processed. The notice must include MSPB appeal rights or grievance rights. The date of the notification memorandum constitutes a 30-day notice of termination. The notification memorandum should provide the following instructions:

(1) Information about an employee's right to appeal to the MSPB, if applicable, including the address of the appropriate MSPB office for filing the appeal and the time limits for appealing to the MSPB.

(2) An employee must file an appeal with the MSPB IAW references i and j within 30 days of receiving TAG's final decision on an adverse action or the effective date of the adverse action, whichever is later.

(3) A copy of MSPB Form 185, "Merit Systems Protection Board Appeal Form," if applicable, and a copy, or access to a copy, of the MSPB regulations.

7. Title 5 NG Employee Failure to Meet a Condition of Employment. Failure to maintain duty or position qualifications such as flying status, a government

driver's license, current qualifications as an aircrew member, physical standards required for an aircrew member, revocation of authorization to carry a firearm, or security clearance or failure to restore to employee status after five years of uniformed service, may result in separation from Federal employment.

30-Day Notice Rules
"Day" means calendar day. A calendar day is the 24-hour period between one midnight and the next.
The 30-day period begins the day after the notification is given directly to the employee or, if mailed, five days after the date mailed as shown on the certified mail return receipt.
The last day of the 30-day period may not be a non-work day.
There is no prohibition against effecting this action 15 December through 03 January.
An employee has the option of waiving the 30-day notice requirement (waivers must be in writing).
Preparation and issuance of the notice is an HRO responsibility.

Table 1. Rules for 30-Day Notice

8. Military Appointment Requirements. Supervisors must issue a formal notice, in writing, informing the dual-status employee that acceptance of an incompatible military appointment will result in termination from employment and that, unless the employee is selected for a position designated as warrant officer or officer, termination from civilian employment will occur upon receipt of temporary Federal Recognition (Army National Guard) or upon graduation from the Officer Training School (Air National Guard). General officers cannot serve in dual-status positions unless they meet criteria outlined in reference q. Termination will occur not later than 14 days following the date of Federal Recognition for any general officer grade that does not meet the criteria outlined in reference q. The HRO provides a copy of the SF 50 terminating civilian employment to the NGB General Officer Management Office before the Federal Recognition orders are published.

9. Notification Requirements. The employee must be notified by memorandum to explain the reassignment and the effective date of the action. The HRO provides the employee with a reasonable amount of time (normally five workdays) to accept or reject the assignment, benefits information; and explain that if the offer is rejected, the notification memorandum constitutes a 30-day notice of termination. The HRO shall inform the employee that he or she may appeal a termination to the MSPB not later than 30 days after the termination; that, if the employee does not submit an appeal within this time limit, it will be dismissed as untimely filed unless a good reason for the delay is shown; and that opportunity will be provided to show why the appeal should not be dismissed as untimely.

a. If on the day before the termination, the employee was covered by a negotiated grievance procedure, the HRO shall advise the employee that the procedure may not be used to challenge the termination unless the employee claims that an unfair labor practice caused the termination and that the employee has not obtained any other regular and substantially equivalent employment. The HRO shall further advise the employee that this is because, unless the employee so claims, the employee does not meet the legal definition of an "employee" covered by the grievance procedure.

b. The HRO will advise the employee whether complaints for termination are excluded from the grievance procedure.

c. If the grievance procedure is available, the HRO shall advise the employee that (1) the complaint may, in the discretion of the employee, be raised either under the grievance procedure or by appeal to the MSPB but not both; (2) the employee shall be deemed to have exercised this option at such time as the employee files a timely appeal to the MSPB or a timely written grievance, whichever occurs first; and (3) if a timely written grievance is filed first, the employee may seek MSPB review of the final grievance decision only if the employee claims that the termination also was due to prohibited discrimination.

d. The HRO shall provide to the employee the address of the appropriate MSPB office where an appeal should be filed; a copy, or access to a copy, of the MSPB's regulations; and a copy of the MSPB appeal form available at reference j.

e. The HRO shall advise the employee that he or she also may appeal a termination under NGB regulatory procedures IAW reference h in the same manner as an appeal of an adverse action. If the negotiated grievance procedure is available, the employee may file a grievance challenging the final decision of the appeal, unless the grievance procedure states that these decisions may not be challenged by grievance, in which case the HRO shall so advise the employee.

f. The HRO also shall advise the employee that filing an appeal under NGB regulatory procedures, or a grievance thereafter, will not extend the time limit for filing an appeal with the MSPB.

10. Transfer of Function. HROs are responsible for providing written notification of transfers of function IAW reference r. The relevant CBA may also be reviewed. This notice must explain why the transfer is occurring; provide the effective date of transfer; give the employee a reasonable amount of time (normally 10 calendar days) to accept or reject the transfer; and explain that if the offer is rejected, the notification memorandum constitutes a 30-day notice

of termination. Notifications should include all the requirements in paragraph 9 of Enclosure C of this instruction.

11. Decrease in the Hours of Duty for Part-time Employees. Before management can decrease the number of hours, the part-time employee must be provided with written notification of the decrease. At a minimum, the notification must be given to the employee in advance of the pay period in which the change occurs. The notice must include the reason for the decrease. The notification memorandum must be cleared by the HRO before it is issued. A reduction in scheduled hours is not subject to adverse action procedures.

12. Management-Directed Reassignment.

a. Management may, based on the efficiency of the service, reassign an employee to another position at the same grade and pay or move the employee from a position with potential for noncompetitive promotion to a position without that potential. IAW Table 2, there must be a valid reason for a management-directed reassignment.

Valid Reasons for Management-Directed Reassignments
Management needs the technician's expertise or talents elsewhere.
Action is required to prevent an incompatible assignment or grade inversion;
Action is required to eliminate or avoid disruption and conflict where personal disagreements are affecting work relationships.

Table 2. Valid Reasons for Management-Directed Reassignments

b. At a minimum, this notification will explain the reassignment; the effective date for the action; provide the technician with a reasonable amount of time (normally five workdays) to accept or reject the assignment; provide benefits information; explain that if the offer is rejected, the notification memorandum constitutes a 30-day notice of termination; and inform the employee of MSPB appeal rights IAW reference i. Notifications should include all the requirements in paragraph 9 of Enclosure E of this instruction.

13. Furlough for 30 Days or Less (22 Workdays). Management has the authority to furlough any or all of its employees for legitimate reasons IAW reference l. Management must honor all CBAs and negotiated agreement provisions on furlough procedures. If exceptions to negotiated procedures are required by management's authority to act in an emergency, labor organizations should be informed in advance of the nature and extent of the emergency. Management must provide notifications to employees within 24 hours of the effective date of the furlough. Furlough notice statements must include the reason for the furlough, the estimated length of the furlough, and a statement that the employee has the right to have the furlough action

reviewed by TAG. A furlough period can be for 30 consecutive calendar days or 22 nonconsecutive workdays; such as one day per week for 22 weeks.

a. An employee who requests a review of the furlough action will submit his or her objections to the HRO. Upon review of the employee's objections, as well as management's need for the furlough, TAG will select the appropriate course of action to pursue.

b. The TAG issues a final decision that summarizes the employee's objections, the review methodology, and includes the reason(s) for the final decision. The employee must be advised of their appeal right to the MSPB. Furloughs in excess of 30 calendar days or 22 workdays must be processed IAW reference r.

14. Administrative Leave. Employees are allowed administrative leave under certain circumstances IAW reference s, but this is to be used sparingly IAW applicable law. Management has the right to require an employee to leave the worksite when it is determined that the employee is not ready, willing, and able to perform assigned duties or when the employee's continued presence is highly undesirable or presents an immediate threat to Government property or the well-being of the employee, co-workers, or the public. Table 3 list three examples that illustrate this management right.

Management Right to Require an Employee to Leave Worksite
1. An employee reports to work without required safety equipment. Management determines the employee is not ready, willing, and able to perform assigned duties.
2. An employee appears for work in what the supervisor reasonably determines to be an unsafe state based on the employee's physical appearance, conduct, or behavior. Attempts to have the employee explain their condition are unsuccessful. The supervisor determines that the employee's continued presence creates an immediate threat to Government property, the employee, and/or co-workers. The supervisor affords the employee an option of being taken home, to a family physician, or having a family member called. If the employee refuses to choose, or is unable to choose, the supervisor selects the best alternative.
3. An employee is in a rage, disrupting the entire shop (throwing objects, insubordinate, and cursing). Attempts to calm the employee are disregarded. The supervisor determines the employee's continued presence would be highly undesirable.

Table 3. Management Right to Use Administrative Leave

a. In all cases, management has the right to place the employee on administrative leave. The next duty day, the employee is responsible for contacting the supervisor to indicate whether the employee is ready, willing, and able to perform their assigned duties in an orderly and professional manner. If the employee indicates that he or she is ready to return to work, the employee will be allowed to return to the worksite. This does not preclude management from proposing adverse action for the underlying misconduct; management has an affirmative duty to propose actions when the underlying misconduct justifies it. Prior to taking action, management contacts the HRO and the JAG for advice.

b. If the employee indicates that he or she is not ready, willing, or able to return to the worksite, the supervisor should advise the employee that he or she is making a voluntary decision to not return to work. The employee may request to be placed on unscheduled personal accrued leave.

c. If the employee fails to report to work on the next scheduled duty day, he or she will be advised that IAW references h and m, further administrative action, including adverse action, could result.

ENCLOSURE D

REFERENCES

- a. CNGB Instruction 1400.25A, 10 October 2017, “NG Technician Personnel Program”
- b. Title 32 United States Code (U.S.C.) Section § 709, “Technicians”
- c. Department of Defense (DoD) Directive 5105.77, 30 October 2015, “National Guard Bureau (NGB),” Incorporating Change 1, 10 October 2017
- d. Title 10 U.S.C. § 10508, “National Guard Bureau: General Provisions”
- e. 5 Code of Federal Regulations (CFR), § 715.202, “Nondisciplinary Separations, Demotions, and Furloughs”
- f. CNGB Memorandum, 16 February 2017, “Designation of the Adjutants General to Appoint, Employ, and Administer National Guard Employees”
- g. Public Law 114-328, 23 December 2016, “National Defense Authorization Act for Fiscal Year 2017”
- h. CNGB Instruction 1400.25 Vol 752, 29 June 2020, “National Guard Discipline and Adverse Action Program”
- i. 5 CFR, Part 1201, “Practices and Procedures”
- j. U.S. Merit Systems Protection Board website <<http://www.mspb.gov>>, accessed 05 February 2020
- k. CNGB Instruction 1400.25, Volume 431, 24 July 2018, “NG Technician Performance Appraisal Program”
- l. 5 CFR, Part 752, “Adverse Actions”
- m. 5 CFR, Part 432, “Performance Adverse Actions”
- n. Title 5 U.S.C. Chapter 84, “Federal Employees’ Retirement System”
- o. Title 5 U.S.C. Chapter 71, “Labor-Management Relations”
- p. 29 CFR Chapter XIV, “Equal Employment Opportunity Commission”
- q. CNGB Instruction 1400.25 Volume 303, 11 December 2018, “National Guard Title 32 Dual Status Military Technician Compatibility Program”

- r. 5 CFR, Part 351, "Reductions in Force"
- s. 5 CFR, Part 630, "Absence and Leave"

GLOSSARY

PART I. ACRONYMS

AWOL	Absent without leave
CBA	Collective Bargaining Agreement
CFR	Code of Federal Regulations
CNGB	Chief of the National Guard Bureau
CPM	Civilian Personnel Manual
HRO	Human Resources Office
IAW	In accordance with
JAG	Judge Advocate General or servicing legal office
MSPB	Merit Systems Protection Board
NG	National Guard
NGB	National Guard Bureau
NGB-J1	Manpower and Personnel Directorate
NGB-J1-TN	Technician Personnel Management Division
TAG	The Adjutant General
SF	Standard Form

PART II. DEFINITIONS

Accrued Leave -- Leave earned by an employee during the current leave year that is unused at any given time in that leave year.

Accumulated Leave -- Unused leave remaining, to the credit of an employee, at the beginning of a leave year.

Board -- The Merit Systems Protection Board (the Board) is an independent Government agency that operates like a court. The Board is comprised of three members appointed by the President and confirmed by the Senate. The Board was created to ensure that all Federal government agencies follow Federal merit systems practices. The Board does this by adjudicating Federal employee appeals of agency personnel actions, and by conducting special reviews and studies of Federal merit systems.

Earned Compensatory Time Off -- Time off with pay in lieu of overtime pay for irregular or occasional overtime work or, when permitted under State flexible work schedule programs, time off with pay in lieu of overtime pay for regularly scheduled or irregular or occasional overtime work.

Excused Absence (also known as Administrative Leave) -- An administratively authorized absence from duty without loss of pay and without charge to leave.

Leave Year -- The period beginning with the first day of the first complete pay period in a calendar year and ending with the day immediately before the first day of the first complete pay period in the following calendar year.

Medical Certification -- A written statement signed by a registered practicing physician or other practitioner that certifies incapacitation, examination, treatment, or period of disability.

NG Employee -- Title 32 military technician (dual status) excepted service employees and Title 5 National Guard excepted or competitive service employees defined in references a and b.

