

DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY

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DEPARTMENTAL PERSONNEL MANUAL

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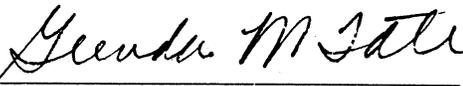
OCT 13 1994

SUBJECT: Employment Rights and Benefits of Civilian
Federal Employees Who Perform Active Military
Duty in Support of Operation Uphold Democracy

On September 15, 1994, the President signed an order authorizing the Secretary of Defense to call up for active military duty military reserve personnel to assist in the international effort to restore democratic government in Haiti. The Federal Government is by far the largest single employer of members of the Armed Forces Reserves, and our first obligation as an employer is to make sure that the rights of employees who perform active military duty are protected. The attachment is an overview of the rights and benefits of these employees.

Given the uncertain duration of the recent call to active duty, we believe the most appropriate course of action, in most cases, is to retain these employees in a leave without pay (LWOP) status rather than to separate them from Federal service. This will ensure that employees' health benefits and life insurance are protected during this period of service. Of course, employees may also choose to be placed on paid military leave or annual leave, if available.

Questions concerning this bulletin should be directed to the Personnel Policy Division (M-16) on (202) 366-9450.



Director of Personnel

Attachment

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EMPLOYMENT RIGHTS AND BENEFITS OF CIVILIAN FEDERAL EMPLOYEES WHO PERFORM ACTIVE MILITARY DUTY SERVICE

Civilian Federal employees who are members of the Armed Forces Reserves and who are called to active duty (or volunteer for active duty) are entitled to the following rights and benefits, provided they are:

- (1) serving under a career or career-conditional appointment in the competitive service; or
- (2) serving under an appointment in the excepted service that does not have a specified ending (Not To Exceed (NTE)) date. Employees serving under an appointment with a NTE date are not entitled to these rights and benefits.

1. EMPLOYEE ASSISTANCE PROGRAMS (EAPs). EAPs can be very helpful to employees and their families in coping with the stress and disruption associated with a call to active military duty. EAPs provide short-term counseling and referral services to help with financial, emotional, and dependent care problems. These services are available to employees who have been called to active military duty (or who volunteer for such duty) and to employees who are family members of those who are performing active military duty. In addition, many EAPs offer services to family members of employees.

2. PAY. While in a leave without pay (LWOP) status, employees performing active military duty will receive compensation from the Armed Forces in accordance with the terms and conditions of their military enlistment or appointment. They will not receive any compensation from their civilian employing agency unless they elect to use military leave or annual leave as described in paragraphs 3 and 4 below. As usual, agencies should continue the payment of annual premium pay for administratively uncontrollable overtime (AUO) work, regularly scheduled standby duty, or Sunday premium pay on days of military leave or annual leave.

3. MILITARY LEAVE. Employees who perform active military duty, as specified in 5 U.S.C. 6323(a), may request the use of paid military leave. Under the law, an eligible full-time employee accrues 15 calendar days of military leave each fiscal year, and any unused military leave at the end of the fiscal year (up to 15 calendar days) is carried forward for use in addition to the 15 days credited at the beginning of the new fiscal year. Part-time career employees accrue military leave on a prorated basis. Full-time employees may have up to 30 calendar days of military leave for use during a fiscal year. However, an employee who has more than 15 calendar days of unused military leave must use the excess amount of leave before the end of the fiscal year in order to avoid forfeiture. Employees who elect to use military leave will receive full compensation from their civilian position for each workday charged to military leave, in addition to their military pay for the same period.

Employees who perform active military duty in support of Operation Uphold Democracy may not be granted an additional 22 days of military leave under 5 U.S.C. 6323(b) because that form of military leave is for the purpose of providing military aid to assist domestic civilian authorities to enforce the law or protect life and property.

4. ANNUAL LEAVE. Employees who perform active military duty may request the use of accrued and accumulated annual leave to their credit or may request advance annual leave. As in the case of military leave, employees who elect to use annual leave will receive full compensation from their civilian position for each workday charged to annual leave in addition to their military pay for the same period. Generally, employees do not earn annual or sick leave while in a nonpay status (e.g., LWOP for 2 weeks (80 hours) or more for most full-time employees).

5. LUMP-SUM LEAVE PAYMENTS. Employees who enter into active military duty may choose: (1) to have their annual leave remain to their credit until they return from active duty, or (2) receive a lump-sum payment for all accrued and accumulated annual leave. There is no requirement to separate to receive a lump-sum leave payment under 5 U.S.C. 5552.

6. HEALTH BENEFITS. Individuals performing active military duty under orders specifying a period of more than 30 days are provided medical and dental services, and their dependents are covered by the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). If an employee covered by the Federal Employees Health Benefits Program (FEHBP) is placed in a LWOP status, his or her health benefits enrollment continues for up to 365 days unless the employee elects in writing to have the enrollment terminated. If the FEHBP enrollment continues, the employee is responsible for paying his or her share of the premium. However, employees may incur a debt rather than paying concurrently.

Leave Without Pay. If an employee in an LWOP status elects to have the FEHBP enrollment terminated or if the enrollment is terminated after 365 days in a nonpay status, the employee and the covered family members have a 31-day temporary extension of coverage to convert to a nongroup policy. These employees are not eligible for temporary continuation of coverage (TCC), as explained below, either at the time the LWOP begins or at the end of the 365-day period of coverage while in an LWOP status.

Separation. If an employee separates to enter active military duty, his or her health benefits terminate on the date of separation, subject to a 31-day temporary extension of coverage to convert to a nongroup policy. The employee is also eligible for TCC. Under TCC, a separating employee may continue health benefits for up to 18 months by paying the full premium--both the employee and the Government share--plus a 2 percent administrative charge.

7. LIFE INSURANCE. If an employee is placed in a LWOP status, his or her life insurance (both basic and all forms of optional coverage) continues for up to 12 months at no cost to the employee. If the life insurance coverage is terminated after 12 months in a LWOP status, the employee has a 31-day temporary extension of coverage for conversion to a nongroup policy.

If an employee separates to enter active military duty, his or her life insurance terminates on the date of separation, subject to a 31-day temporary extension of coverage for conversion to a nongroup policy.

8. RETIREMENT. If an employee is placed in an LWOP status while performing active military duty, he or she continues to be covered by the retirement law--i.e., the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS). Death benefits will be paid as if he or she were still in the civilian position. If the employee becomes disabled for his or her civilian position during the LWOP and has the minimum amount of civilian service necessary for title to disability benefits (5 years for CSRS, 18 months for FERS), the employee will become entitled to disability benefits under the retirement law. Upon eventual retirement from civilian service, the period of military service is creditable under either CSRS or FERS, subject to the normal rules for crediting military service.

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 the restoration right, but later re-enters Federal civilian service, the military service may be credited under the retirement system, subject to the normal rules governing credit for military service. However, if an employee covered by CSRS is separated to enter active military duty during a

period of war or national emergency as declared by Congress or proclaimed by the President, the employee is deemed not to be separated from his or her civilian position for retirement purposes, unless the employee applies for and receives a refund of his or her retirement deductions.

Thrift Savings Plan. For purposes of the Thrift Savings Plan, no contributions can be made, either by the agency or the employee, for any time in a LWOP status or for a period of separation. The separated employee is subject to the normal rules concerning roll-over and withdrawal.

9. RETURN TO CIVILIAN DUTY. An employee who enters active military duty (voluntarily or involuntarily) from a position that is not time-limited has full job protection. An employee who is placed in a LWOP status in lieu of separation as a result of a call to active military duty under 10 U.S.C. 673b (and implicitly in 10 U.S.C. 672(d)) in support of Operation Uphold Democracy will continue to occupy the position he or she left, and upon completion of the military duty, will have 30 days to return to his or her employment, as provided under section 4304, paragraphs (g) and (c), of title 38, United States Code.

An employee who separated is entitled to return to the position he or she left or to an equivalent one. The restoration right is agencywide. The employee must apply for restoration rights within 90 days after release from military service.

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 count for seniority, within-grade increase, probation, career tenure, annual leave accrual rate purposes, and severance pay calculations.

A separated employee with restoration rights (or an employee who is placed in a LWOP status while performing active military duty) is protected from reduction in force (RIF) and may not be discharged from employment for a period of 1 year following separation (6 months in the case of a reservist called to active duty under 10 U.S.C. 673b or ordered to an initial period of active duty for training of not less than 12 consecutive weeks), except for poor performance or conduct or for suitability reasons.

10. APPEAL RIGHTS. An employee or former employee of an agency in the executive branch (including the U.S. Postal Service) who is entitled to restoration in connection with military duty may appeal to the Merit Systems Protection Board the agency's failure to restore him or her. Improper restorations are likewise appealable. Appeals must be submitted within 30 calendar days after the effective date of the action being appealed.

11. DOCUMENTING PERSONNEL ACTIONS.

Leave without Pay. LWOP must be documented on an SF 50, Notification of Personnel Action, with nature of action **460/LWOP NTE (date)** and legal authorities **DAM/Reg. 630.101** and **ZJT/Operation Uphold Democracy**. (Note: **ZJT** is a new legal authority that has been established to enable OPM and agencies to identify reservists who are involved in the international effort to restore democratic government in Haiti.) These same two authorities must also be used on a **773/Ext of LWOP** action if the reservist's military service is extended and on the **292/RTD** action when the reservist returns to civilian employment.

Health Benefits and Life Insurance. For those reservists with health benefits coverage while on LWOP, enter in block 45 of the SF 50 remark **B40**: "Health benefits coverage will continue for up to 365 days in a nonpay status unless you cancel your enrollment. You are liable for your full share of the premiums for this period. Payments should be made to your

agency during your nonpay status or when you return to duty." For those with Federal Employees Group Life Insurance (FEGLI) coverage, remark **B39** ("FEGLI coverage continues for up to 12 months in a nonpay status") must be shown in block 45 of the SF 50.

Separations. If the reservist requests separation rather than LWOP, the separation must be documented with nature of action **353/Separation-MIL** and legal authorities **Q3K/5 CFR part 353** and **ZJT/Operation Uphold Democracy**. (Note that the nature of action for code "353" changes from "Termination-MIL" to "Separation-MIL" with Update 6 to "The Guide to Processing Personnel Actions," effective October 1, 1994.) Follow the instructions in Chapter 9 or 11 (as appropriate) of "The Guide to Processing Personnel Actions" to document the reservists's restoration upon completion of his or her military service.
