



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT  
Washington, DC 20415

The Director

Friday, October 26, 2001

**MEMORANDUM FOR: Heads Of Executive Departments And Agencies**

Subject: Frequently Asked Questions

Also see: [Military Leave Fact Sheet](#)

**Q1: Under what conditions is a Federal employee who is called to active duty as a member of the National Guard or Reserves entitled to military leave?**

A1: Employees who are called to active duty in support of the ongoing national emergency are entitled to military leave under two separate provisions.

A Federal employee who is a member of the National Guard or Reserves is entitled to 15 days (120 hours) of paid military leave under 5 U.S.C. 6323(a) each fiscal year for active duty, active duty training, or inactive duty training. An employee on military leave under section 6323(a) receives his or her full civilian salary, as well as military pay. This leave accrues at the beginning of each fiscal year, and all Guard or Reserve members, including those on extended active duty, should be credited with 15 days of paid military leave on October 1 of each year.

An agency now may charge military leave under 6323 (a) only for hours the employee otherwise would have worked. An employee no longer "loses leave" on weekends and other nonworkdays and will be paid his or her full civilian pay for all 120 hours. (See fact sheet on Military Leave at <http://www.opm.gov/oca/leave/HTML/military.asp>. This guidance does not apply to employees of the U.S. Postal Service.)

In addition, effective November 24, 2003, employees who perform full-time military service as a result of a call or order to active duty in support of a contingency operation\* as defined in section 101(a)(13) of title 10, United States Code are entitled to 22 days of military leave under 5 U.S.C. 6323(b). Under this provision the employee is entitled to the greater of his military or civilian pay. (See Question 6.)

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\* The term "contingency operation" means a military operation that -

- a. is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or
- b. results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12406 of title 10, United States Code, chapter 15 of title 10, United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress.

Employees also are entitled to use any accrued or accumulated annual leave for periods of active military duty. Employees using annual leave will receive their full civilian pay, as well as compensation for their military service.

**Q2: May an employee on active duty or active/inactive duty training choose to use annual leave or military leave intermittently with leave without pay each pay period to maintain sufficient income?**

A2. Yes. OPM's regulations at 5 CFR 353.208 implementing the Uniformed Service Employment and Reemployment Rights Act (USERRA) state that an employee performing service with the uniformed services must be permitted, upon request, to use any accrued annual or military leave during such service. An employee is entitled to use annual leave or military leave intermittently with leave without pay while on active duty or active/inactive duty training.

**Q3: When are employees eligible for an additional 22 days of military leave?**

A3. There are two conditions under which employees are entitled to an additional 22 days of military leave under the provisions of 5 U.S.C. 6323(b). Reservists or National Guard members who perform military duty in support of civil authorities in the protection of life and property are eligible for an additional 22 workdays of military leave. In addition, effective November 24, 2003, employees who perform full-time military service as a result of a call or order to active duty in support of a contingency operation\* as defined in section 101(a)(13) of title 10, United States Code, are entitled to 22 days of military leave under 5 U.S.C. 6323(b).

**Q4: I have an employee who is a military policeman in the Reserves. He is being activated to perform base security at Andrews AFB. Is he entitled to the additional 22 days of military leave?**

Q4. Yes. Effective November 24, 2003, all employees who have been activated in support of the national emergency declared by the President are entitled to the 22 days of military leave under 5 U.S.C. 6323(b).

**Q5: I have an employee who is a member of the National Guard. His unit has been activated, at the request of the Governor of his State, to provide additional security at local airports. Is he entitled to the additional 22 days of military leave?**

A5: Yes. The President has authorized the Governors of several States and territories to use National Guard forces to provide supplemental security personnel for airport operations. Guard members ordered to such duty under 32 U.S.C. 502(f) are clearly assisting civil authorities in the protection of life and property. Therefore, in addition to military leave available under 5 U.S.C. 6323(a) for active duty and active and inactive duty training, a member of the National Guard also may be authorized military leave under 5 U.S.C. 6323(b) for assisting civil authorities in the protection of life and property.

**Q6: Are employees entitled to both their military and civilian pay during periods of military leave taken under 5 U.S.C. 6323(b) in support of civil authorities or of the national emergency?**

A6: No. An employee is entitled to the greater of his civilian or military pay, not both. Under 5 U.S.C. 5519, the military pay received by an individual who has been activated in support of civil authorities or a contingency operation must be credited (less any travel, transportation, or other per diem allowances) against any Federal civilian pay the employee received during the 22 workdays of military leave. An agency may calculate the amount of military pay (less any travel, transportation, or per diem allowances) an employee will receive for the time period that corresponds to the 22 workdays of military leave and reduce the employee's civilian pay by that amount during the 22 workdays of military leave. In contrast, many agencies choose to continue to pay the employee his or her full civilian pay during the 22 workdays of military leave. At the end of the 22-day period of military leave, the agency requires the employee to refund to the agency an amount equal to the amount of military pay received (less any travel, transportation, or per diem allowances) up to the amount of his or her civilian pay for the time period that corresponds to the 22 workdays of military leave.

**Q7: May a Federal civilian employee who has been called to active duty continue to work as a civilian at his or her Federal agency?**

A7: No. The Comptroller General has ruled that an individual on active duty military service may not be employed in a civilian capacity with the Government. The Comptroller General has held that the rendition of services to the Government in a civilian capacity by a member of the armed services on active duty is incompatible with the member's actual or potential military duties and payment for such services is not authorized in the absence of specific statutory authority. This is the case even though the civilian services are rendered during the military member's hours of relaxation or time provided to attend to personal affairs. (See 64 Comp. Gen. 395, 399-400 (1985), and 47 Comp. Gen. 505-506 (1968).)

**Q8: Is a member of the National Guard of the District of Columbia eligible for additional military leave under 5 U.S.C. 6323(c)?**

A8: Yes. However, military leave under 5 U.S.C.6323(c) may be used only for limited purposes. A Federal civilian employee who is also a member of the DC National Guard is entitled to additional military leave as provided in 5 U.S.C. 6323(c) to participate in a "parade or encampment." The law provides that this type of duty must be authorized under title 39 of the District of Columbia Code. Generally, this category of military leave is limited to drills and training under the authority of the Commanding General of the DC National Guard and is not appropriate for extended active duty in connection with the current national emergency.

**Q9: What kinds of personnel actions should an agency process when an employee is using annual leave, military leave, and/or leave without pay to perform duties with the uniformed services?**

A9: Agencies do not need to process any personnel actions (SF 50s) for periods of annual leave or military leave, since the payroll system documents an employee's use of paid leave. Agencies should document an employee's use of leave without pay (LWOP) to perform duty with the uniformed services by processing a personnel action (SF 50) using nature of action "LWOP-US" (nature of action code 473). The effective date is the first day the employee begins to use leave without pay for duty with the uniformed services.

Employees may use annual leave or military leave intermittently with leave without pay while performing duty with the uniformed services. OPM does not require that agencies process return-to-duty actions for each period of paid leave. Periods of "LWOP-US" may be interrupted by periods of annual leave or military leave without the need to process any additional personnel actions.

**Q10: We have an employee who has been on military leave without pay (LWOP-US) since October 2001. He is requesting to be paid for his 15 days of military leave for the new fiscal year. Is he entitled to this?**

A10: Yes. An employee who is a member of the Reserves or National Guard serving on active military duty which extends into a second or succeeding fiscal year may accrue and use the 15 days of military leave which accrue at the beginning of the second fiscal year and each succeeding fiscal year without return to civilian status. In addition, an employee who has been activated in support of the national emergency whose duty extends into the next calendar year will be entitled to up to an additional 22 days of military leave under 6323(b).