



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

Friday, September 14, 2001
CPM 2001-09

MEMORANDUM FOR: Heads Of Executive Departments And Agencies

FROM: Kay Coles James, Director

Subject: Rights and Benefits of Reservists Called to Active Duty

Under title 10, United States Code, and Executive Order 13223 of September 14, 2001, the President has authorized the Department of Defense and the Department of Transportation to respond to the continuing and immediate threat of further attacks on the United States by ordering any unit and any member of the Ready Reserve to active duty for not more than 24 consecutive months.

The Federal Government is by far the largest single employer of members of the Armed Forces Reserves, and we as Federal employees are proud of the dedication and commitment of these fellow workers in a time of international crisis. Our first obligation as an employer is to make sure that those friends and colleagues who perform active military duty are able to leave their employment temporarily with the knowledge that their affairs are in order and their rights protected. Federal law provides many important rights and benefits for Federal employees who perform active military duty. An overview of these rights and benefits, as required by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), is provided in [Attachment 1](#). I urge agencies to share this information with all affected employees as soon as possible.

[Attachment 2](#) reminds agencies of their authority and obligation to provide certain premium pay benefits to civilian employees who perform emergency work in support of this national emergency.

Updated June 2003

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

Civilian Federal employees who are members of the Uniformed Services and who are called to active duty (or volunteer for active duty or full-time National Guard duty) are entitled to the following rights and benefits:

1. PAY.

Employees performing active military duty will receive compensation from the Armed Forces in accordance with the terms and conditions of their military enlistment or commission. 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 2 and 3, below. As usual, agencies should continue the payment of availability pay for criminal investigators and annual premium pay for administratively uncontrollable overtime (AUO) work, or regularly scheduled standby duty, on days of military leave or annual leave.

2. MILITARY LEAVE.

Employees who perform active military duty may request paid military leave, as specified in 5 U.S.C. 6323(a). Under the law, an eligible full-time employee accrues 15 days (120 hours) of military leave each fiscal year. See OPM's fact sheet on military leave at [opm.gov/oca/leave/HTML/military.HTM](http://www.opm.gov/oca/leave/HTML/military.HTM) and Frequently Asked Question on Military Leave at <http://www.opm.gov/oca/LEAVE/HTML/MILQA.asp>.

3. ANNUAL LEAVE.

Employees who perform active military duty may request the use of accrued and accumulated annual leave to their credit (under 5 U.S.C. 6303 and 6304), and such requests must be granted by the agency. In addition, requests for advanced annual leave may be granted at the agency's discretion. See [opm.gov/oca/leave/HTML/ANNUAL.HTM](http://www.opm.gov/oca/leave/HTML/ANNUAL.HTM) for more information on annual leave.

Employees who use annual leave will receive compensation from their civilian position for all hours charged to annual leave in addition to their military pay for the same period. Employees who enter into active military duty may choose to (1) have their annual leave remain to their credit until they return to their civilian position, or (2) receive a lump-sum payment for all accrued and accumulated annual leave. See [opm.gov/oca/leave/HTML/lumpsum.htm](http://www.opm.gov/oca/leave/HTML/lumpsum.htm) for more information on lump-sum payments for annual leave.

4. LEAVE WITHOUT PAY (LWOP).

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) generally requires an agency to place an employee entering the military on leave without pay (LWOP) unless the employee chooses to be placed on military leave or annual leave, as

appropriate, or the employee requests to be separated. Full-time employees do not earn annual or sick leave in a pay period in which they have accumulated 80 hours of LWOP. In addition, part-time employees on LWOP also earn less annual and sick leave, since they earn leave based on the number of hours in a pay status.

5. HEALTH BENEFITS.

Employees who are put in a nonpay status or separated while on military duty for more than 30 days may keep their Federal Employees Health Benefits (FEHB) coverage for up to 18 months from the date the absence to serve on military duty begins. For further information on FEHB coverage see <http://www.opm.gov/insure/health/eligibility/reservists.asp> and Frequently Asked Questions About FEHB for Federal Civilian Employees Called to Active-Duty Service at opm.gov/insure/health/qa/reservists.asp.

NOTE: Many agencies, including the Department of Defense, are paying the employee's health benefits premium share, in addition to the employer's health benefits premium share for covered employees ordered to active duty in support of a contingency operation. Employees should check with their human resources office to see if their agencies offer this benefit.

6. LIFE INSURANCE.

Employees who are put in a nonpay status while on military duty may keep their Federal Employees' Group Life Insurance (FEGLI) coverage for up to 12 months. This coverage is free. At the end of 12 months in nonpay status, the coverage terminates. Employees get a free 31-day extension of coverage and have the right to convert to a nongroup policy. For more information on life insurance benefits see opm.gov/insure/life/calledup.asp and insurance.va.gov/sgliSite/default.htm.

7. RETIREMENT.

An employee who is placed in a LWOP status while performing active military duty 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 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 rules governing credit for military service.

8. THRIFT SAVINGS PLAN.

For purposes of the Thrift Savings Plan (TSP), 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. Agencies should refer to the Thrift Savings Plan Bulletin for Agency TSP Representatives, No. 01-22, dated May 3, 2001. For additional information, agency representatives may contact the Federal Retirement Thrift Investment Board at (202) 942-1460. Employees should refer to the TSP Fact Sheet - Effect of Nonpay Status on TSP Participation. Both issuances are available from the TSP Internet web site at tsp.gov/forms/index-factsheets.html.

If employees are subsequently reemployed in, or restored to, a position covered by FERS or CSRS pursuant to 38 U.S.C. chapter 43, they may make up missed contributions. FERS employees are entitled to receive retroactive Agency Automatic (1 percent) Contributions and, if they make up their own contributions, retroactive Agency Matching Contributions.

Also, if FERS employees separate and their Agency Automatic (1 percent) Contributions and associated earnings are forfeited because they did not meet the TSP vesting requirement, the employees are entitled to have these funds restored to their accounts after they are reemployed. In addition, if employees separate and their accounts are disbursed as automatic cashouts, the employees may return to the TSP an amount equal to the full amount of the payment after they are reemployed. For additional information see the TSP Fact Sheet - "Benefits that Apply to Members of the Military Who Return to Federal Civilian Service" at tsp.gov/forms/index-factsheets.html.

9. RETURN TO CIVILIAN DUTY.

An employee who enters active military duty (voluntarily or involuntarily) from any position, including a temporary position, has full job protection, provided he or she applies for reemployment within the following time limits:

- (A) Employees who served less than 31 days must report back to work at the beginning of the next scheduled workday following their release from service and the expiration of 8 hours after a time for safe transportation back to the employee's residence.
- (B) Employees who served more than 30 days, but less than 181 days, must apply for reemployment within 14 days of release by the military.
- (C) Employees who served more than 180 days have 90 days to apply for reemployment.

Employees who served less than 91 days must be restored to the position for which qualified that they would have attained had their employment not been interrupted. Employees who served more than 90 days have essentially the same rights, except that the agency has the option of placing an employee in a position for which qualified of like seniority, status, and pay.

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 serves out the remaining time, if any, left on the appointment. (The military activation period does not extend the civilian appointment.)

An employee 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. 12304 for more than 30 days, but less than 181 days, 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.

NOTE: Employees in the intelligence agencies have substantially the same rights, but are covered under agency regulations, rather than the Office of Personnel Management's regulations, and have different appeal rights.

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 an agency's failure to properly carry out the law directly to the Merit Systems Protection Board (MSPB), or the employee may first submit a complaint to the Department of Labor, which will attempt to resolve it. If resolution is not possible, the Department may present the case to the Office of the Special Counsel, which may represent the employee in an appeal to the MSBP. Appeals to the Board must be submitted within 30 calendar days after the effective date of the action being appealed.

11. EMPLOYEE ASSISTANCE PROGRAMS (EAPs).

Employee Assistance Programs 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.

All military services provide extensive support to family members, and Federal employees affected by deployment should take time to learn about what is available to them. There is research-based guidance on how best to handle the family issues that occur during deployment, as well as a wide array of practical information and support resources. The web links below provide a gateway to information and service for families of deployed service members.

Information for all services

Comprehensive information and links on family support:
deploymentlink.osd.mil/deploy/guard_reserves/rng_fsp.shtml

Information on health care coverage for Reservists and families under the Tricare program:
tricare.osd.mil/reserve/index.cfm

Guidance on putting the family's legal affairs in order prior to deployment. Fact sheets on regions where Reservists and National Guard members are likely to be deployed:
deploymentlink.osd.mil/deploy/prep/deploy_checklist.shtml

Information about mobilization, healthcare options, family support and much more can be found at the Office of the Assistant Secretary of Defense for Reserve Affairs Web site at: <http://www.defenselink.mil/ra>.

Service-specific information on family support. The sites include practical information, resource links, and guidance for families on coping with the stresses related to deployment.

Army: aflo.org/data/modules/pbm/rendered/operation_ready.asp

Navy: lifelines2000.org/services/deployment/index.asp?AttribID=510

Air Force: afcrossroads.com/html/famseparation/index.cfm

12. DOCUMENTING PERSONNEL ACTIONS.

Leave without Pay.

LWOP must be documented on an SF 50, Notification of Personnel Action, with nature of action **473/LWOP-US**, and legal authorities **Q3K/5 CFR 353** and **ZJW/E.O. 13223 dated 9/14/01**.^{*} (Note: **ZJW** is a new legal authority that has been established to enable OPM and agencies to identify reservists who are involved in military operations under the authority of E.O. 13223, dated September 14, 2001.)^{**} These same authorities must also be used 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 absent for reasons related to military duty, enter in block 45 of the SF 50 remark **B66**:

Health benefits coverage will continue for 18 months unless you elect to terminate coverage. Contact your servicing Human Resources Office or see the FEHB Handbook at <http://www.opm.gov/insure> for detailed information.

For those reservists with Federal Employees' Group Life Insurance (FEGLI) coverage, enter in block 45 of the SF 50 remark **B72**.

FEGLI coverage continues until a reservist's time in nonpay status totals 12 months. Reservists should contact their servicing Human Resources Office or see the FEGLI Handbook at <http://www.opm.gov/insure> for detailed information.

Separations.

If the reservist requests separation rather than LWOP, the separation must be documented with nature of action **353/Separation-US** and legal authorities **Q3K/5 CFR 353** and **ZJW/E.O. 13223 dated 9/14/01**.^{*} Follow the instructions in Chapter 9 or 11 (as appropriate) of The Guide

^{*} Effective with the issuance of this memorandum, legal authority ZJW is revised from "Operation Enduring Freedom".

^{**} (This includes Operation Noble Eagle and Operation Enduring Freedom, and any other military operations subsequently established under Executive Order 13223.)

to Processing Personnel Actions, opm.gov/feddata/persdoc.htm, to document the reservist's restoration upon completion of his or her military service.

13. CONTACTS.

For further information on employment rights and benefits of civilian Federal employees who perform active military duty, agencies should contact the following offices:

- For information on military leave, agency human resources offices may contact the Pay and Leave Administration Group in OPM's Center for Pay and Performance Policy at (202) 606-2858 or by email at pay-performance-policy@opm.gov.
- For information on health benefits, life insurance, and retirement, contact the Insurance Officer or Retirement Counselor of your agency. Retirement Counselors may contact OPM's Benefits Officers Resource Center, (202) 606-0788. Insurance Officers may contact Insurance Services at (202) 606-0191.
- For information on the Thrift Savings Plan, agency headquarters human resources offices may contact the Federal Retirement Thrift Investment Board at (202) 942-1460. Field installations should contact their headquarters TSP Coordinator for guidance.
- For information on return to civilian duty and appeal rights, agency human resources offices should contact the Staffing Group in OPM's Center for Talent and Capacity Policy at 606-0960.
- For information on documenting actions related to entering active military duty, agency human resources offices should contact the Personnel Systems Group in OPM's Center for HR Systems Requirements and Strategies at (202) 606-4415.
- For information on labor-management relations issues, agencies should contact OPM's Center for Workforce Relations and Accountability Policy at (202) 606-2930.

Attachment 2

Updated February 2003

PREMIUM PAY FOR FEDERAL CIVILIAN EMPLOYEES WHO PERFORM EMERGENCY WORK IN SUPPORT OF THE NATIONAL EMERGENCY DECLARED BY PRESIDENTIAL PROCLAMATION OF SEPTEMBER 14, 2001

The purpose of this attachment is to provide **updated** information about premium pay for civilian employees who perform emergency work in support of the National Emergency declared by the Presidential Proclamation of September 14, 2001.

Under 5 U.S.C. 5547(a) and 5 CFR 550.105, General Schedule employees and other covered employees, including law enforcement officers, may receive certain types of premium pay for a biweekly pay period only to the extent that the sum of basic pay and premium pay for the pay period does not exceed the **greater** of the **biweekly** rate for (1) GS-15, step 10 (including any applicable locality rate or special salary rate), or (2) level V of the Executive Schedule. Please refer to our biweekly premium pay limitation fact sheet at opm.gov/oca/pay/HTML/03GSCap.asp for further information and guidance.

Agencies are reminded of their authority under the law (5 U.S.C. 5547(b)) and OPM regulations (5 CFR 550.106) to make exception to the biweekly premium pay limitation. (Please note that overtime pay under the Fair Labor Standards Act of 1938, as amended, does not count toward this limitation.) The head of an agency may apply an annual cap to certain types of premium pay for any pay period for (1) employees performing work in connection with an emergency, including work performed in the aftermath of such an emergency, or (2) employees performing work critical to the mission of the agency. Such employees may receive certain types of premium pay only to the extent that the aggregate of basic pay and premium pay for the calendar year does not exceed the **greater** of the **annual** rate for (1) GS-15, step 10 (including any applicable special salary rate or locality rate of pay), or (2) level V of the Executive Schedule. (Also see 5 CFR 550.107 for information on premium payments that remain subject to the biweekly limitation when other premium payments are limited to the annual limitation.)