

EMPLOYEE HANDOUT

Benefits and Entitlements Impact of the Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994

AN OVERVIEW OF BENEFITS UNDER USERRA

Civilian Federal employees who are members of the Uniformed Services and who are called to active duty military service (or volunteer for active duty) may be entitled to the following rights and benefits:

PAY: While in 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 available military leave or annual leave.

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.

HEALTH BENEFITS: An employee covered by the Federal Employees Health Benefits (FEHB) Program who is placed in LWOP, can continue his/her health benefits enrollment for a total of 24 months. If the employee is called or ordered to active duty in support of a contingency operation, on or after September 14, 2001, his/her Agency is allowed to pay both the employee's share, and the government's share of the FEHB premium. If the employee's military service is not in support of a contingency operation, and he/she elects to continue FEHB coverage, the employee pays his/her share of the premiums and the Agency is responsible for paying the government share for the first 12 months of coverage. Thereafter, the employee pays 102% of the full premium for the last 12 months. After the 24-month period, the employee is not entitled to Temporary Continuation Coverage.

LIFE INSURANCE: An employee covered by the Federal Employees' Group Life Insurance (FEGLI) who is placed in LWOP or who separates to perform military service, will continue to be covered under the basic and all forms of optional coverage for up to 12 months at no cost.

After 12 months, the coverage is terminated and the employee has a 31-day temporary extension of coverage for conversion to a non-group policy.

RETIREMENT: An employee placed in LWOP continues to be covered by the retirement laws. The period of military service is creditable subject to the normal rules for crediting military service (see section below on National Guard service). 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. In some cases it will be necessary to make a military deposit for the period of military service in order for that period to be credited towards retirement eligibility and annuity computation.

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.

NATIONAL GUARD SERVICE: Service in the National Guard, except when ordered to active duty in the service of the United States (under title 10, United States Code (U.S.C.)), is generally not creditable. However, an employee may receive credit for non-Federal National Guard service (under title 32 U.S.C.), followed by Federal civilian reemployment that occurs after August 1, 1990, when all of the following conditions are met. The service must interrupt civilian service creditable under the Civil Service Retirement System (CSRS) or Federal Employees Retirement System (FERS). It must be full-time, active duty, and you must be entitled to pay from the U.S. (or have waived pay from the U.S.) for the service.

MILITARY LEAVE: Under 5 U.S.C. 6323 (a), an eligible full-time employee accrues 15 calendar days of military leave each fiscal year. Employees who elect to use their 15 days of 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. Any unused military leave remaining at the end of the year, limited to 15 calendar days, is carried forward for use in addition to the 15 days credited at the beginning of the new fiscal year.

Under 5 U.S.C. 6323 (b), an employee who is a member of a Reserve Component or the National Guard called to active duty in support of a contingency operation, on and after October 23, 2003, is entitled to 22 days of military leave per calendar year. However, military leave under 6323 (b) is subject to the provisions of 5 U.S.C. 5519, which provides that military pay received for service for days on which civilian pay is also received, must be offset. Any unused military leave under 6323 (b) is lost at the end of the calendar year.

ANNUAL AND SICK LEAVE: Employees who perform active military duty may request the use of accrued and accumulated annual leave to their credit. Requests for sick leave may be granted if appropriate under the normal requirements for such leave. Employees who use annual leave or sick leave will receive full compensation from their civilian position for all hours charged to annual or sick leave in addition to their military pay for the same period. Employees do not earn annual or sick leave while in an extended non-pay status.

POST-56 MILITARY DEPOSITS: Prior to USERRA, service credit deposits were based on a set percentage (7% for CSRS and 3% for FERS) of the amount of military base pay, plus interest. The rules for charging interest have not have changed. The law now states that in any case where military service interrupts creditable civilian service and reemployment pursuant to chapter 43 of title 38 occurs on or after Aug 1, 1990, the deposit payable may not exceed the amount that would have been deducted and withheld from basic pay during civilian service if the employee had not performed the period of military service. In computing the amount of the military deposit, the agency must make two calculations (1) 3% or 7% of the military base pay, for FERS and CSRS respectively, and (2) an alternative calculation of what the CSRS or FERS employee contributions would have been for the civilian service had the individual not entered into the military. The employee's deposit is the lesser of the two. Employees should carefully review military deposit estimates provided by the personnel office. Interest begins to accrue yearly subsequent to a 2 year interest-free grace period. Employees can eliminate the additional interest cost of such a deposit by making the deposit during the interest free grace period.

THRIFT SAVINGS PLAN (TSP): For the 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 the period of separation. However, if the employee is 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% Contributions and, retroactive employee contributions would be subject to applicable Agency Matching Contributions.

An agency must give an employee at least two (not to exceed four) times the length of his/her military service to make up the contributions. The employee is allowed to contribute the maximum amount he/she would have been allowed to contribute, subject to statutory maximums. All TSP contributions must be through payroll deductions. Lump sum payments or rollovers are not permitted.