



DEPARTMENTS OF THE ARMY AND THE AIR FORCE
JOINT FORCES HEADQUARTERS – ALASKA
HUMAN RESOURCES OFFICE
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20 June 2013

MEMORANDUM FOR ALASKA NATIONAL GUARD TECHNICIANS AND SUPERVISORS

SUBJECT: Uniformed Services Employment and Reemployment Rights (USERRA) (HRO Policy Letter 13-10)

1. PURPOSE. This policy provides guidance on USERRA rights and responsibilities to employees transitioning to an active duty status regardless of length or use of paid leave. This letter supersedes HRO Policy Letter 12-10, dated 6 Aug 2012.

2. REFERENCES. Public Law 103-353 (1994), United States Code Chapter 43, Part III, Title 38. .

3. DISCUSSION. The USERRA requires the Human Resources Office to inform you of your rights and election opportunities prior to your entrance on active military service. Read the following information concerning the USERRA and your election rights and benefits. You must complete the USERRA Options Checklist (separate document) during a required briefing with an HRO representative. You must submit a Request for Personnel Action (SF52) requesting ABSENT-US and an open dated SF52 requesting Return to Duty (RTD) along with a copy of your orders at the time of your briefing. **Your request cannot be processed without these signed and dated forms.**

- The law prescribes the employment and reemployment rights of technicians who apply for return to technician employment after active military service. ***Advance written or verbal notification to the employer is required before entering military duty whenever possible. Reemployment rights may be denied without the proper request.*** It is important for you to understand your rights and responsibilities under the USERRA. The Employer Support of the Guard and Reserve (ESGR) website has additional information at <http://www.esgr.com/>. The Office of Personnel Management's (OPM) website at <http://www.opm.gov/oca/compmemo/2001/2001-09A.asp> provides an overview on the employment rights and benefits of federal civilian employees who perform active military duty.

- USERRA revised the period of time under the Veterans Reemployment Rights Act a service member can be absent from his or her job with a civilian employer while retaining reemployment rights. The reemployment rights and benefits are limited to five cumulative years of absence for military service. Service performed under section 12301(c and d) of Title 10 in direct or indirect support of Operation Noble Eagle, Operation Enduring Freedom, Operation Northern Watch, Operation Southern Watch or other missions and operations associated with the national emergency are exempt from the USERRA five-year cumulative active duty limit for reemployment rights. This exemption should be reflected in their orders: "The period of service under these orders is exempt from the five-year limit a provided in 38 USC 4312(4) (B)." [Note: Reemployment rights of temporary technicians are limited to the established not to exceed (NTE) date of the temporary appointment.] Reemployment is defined as a return to technician employment from ABSENT-US or SEPARATION-US when the military service interrupted otherwise creditable federal civilian service.

- You are eligible to apply for technician vacancies during the time you have reemployment rights in the same status as when you left. You will be reinstated in technician status to any applicable intervening within grade increases, cost of living allowances and classification up-grades should you exercise your reemployment rights upon termination of your active duty tour.

4. EMPLOYMENT STATUS. The OPM and the National Guard Bureau (NGB) regulations authorize you to select from several options concerning your status while on active duty. The effective date of processing will depend on the type of military duty you are performing and whether or not it qualifies for Reservist Differential. You will be on ABSENT-US effective the first day in a non-pay status if your military duty does not qualify for Reservist differential. You may elect to use Military, Annual, Compensatory and Travel Compensatory leave until the first day of non-pay status. All days for non-exempt service will count against the 5 year entitlement under USERRA regardless of whether or not you use paid leave. The effective date will be the start date of the order for military service that qualifies for Reservist Differential military service except for those exercising the regular Compensatory time workaround. You may also request SEPARATION-US from your technician position.

- You must provide written notice of your intent to separate from this agency by indicating in the Employee Remarks if you elect Separation-US. The SF-52 may be used for this purpose indicating in the Employee Remarks

section your request to separate and the statement “I am not being forced or coerced to take this action” and sign. Separation does not affect your statutory reemployment restoration rights. You may withdraw your FERS retirement contributions. You forfeit all annuity rights unless you redeposit funds into your FERS account.

5. PAY/LEAVE 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 commission. They will not receive any compensation from their civilian employing agency unless they elect to use leave. You must closely coordinate your leave status with HRO and your supervisor.

- **ABSENT-US.** USERRA generally requires an agency to place an employee entering the military on ABSENT-US unless the technician requests SEPARATION-US. Full-time employees do not earn annual or sick leave in a pay period in which they have accumulated 80 non-pay hours. The effective date of the ABSENT-US/SEPARATION-US will depend on the eligibility for Reservist Differential (RD). The start date of your orders will be the effective date for RD eligible service unless you are using regular comp time that will expire before you return. The use of other paid leave intermittently will not change this non-pay status. The first non-pay duty day will be the effective date for all other ABSENT-US/SEPARATION-US. You are entitled by law to use all available military leave prior to the start date of SEPARATION-US.

- **INTERMITTENT LEAVE.** You may use the following paid leave intermittently while in Absent-US All regular deductions will continue to be taken from your pay for employee benefits such as health/life insurance, TSP, retirement, allotments etc. FEHB costs normally paid for during will be deducted from your pay if you are on intermittent leave during a contingency operation and will not be paid by the federal government for any pay period in which you receive pay.

- **MILITARY LEAVE.** Employees who perform active military duty may request paid military leave, as specified in 5 U.S.C. 6323(a) under ABSENT-US. Eligible full-time employee accrues 120 hours of military leave each fiscal year. See OPM’s fact sheet at <http://www.opm.gov/oca/leave/HTML/military.HTM>.

- **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 while in ABSENT-US. 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 refund for all accrued and accumulated annual leave. See <http://www.opm.gov/oca/leave/HTML/ANNUAL.HTM> for more information on annual leave.

- **SICK LEAVE.** IAW 5 CFR 353.208, the use of accrued sick leave (consistent with the statutory and regulatory criteria for using sick leave) is allowable for employees performing service with the uniformed services while in ABSENT-US. Your supervisor should contact HRO prior to inputting the sick leave to review whether the use is appropriate or not.

- **REGULAR COMPENSATORY TIME and TIME OFF AWARDS.** Compensatory time and Time off Award is only available for 26 pay periods after its effective date and cannot be extended. Any unused compensatory leave which expires while in ABSENT_US, may be reissued, upon request.

- **OTHER LEAVE.** In addition to the option of using military leave (LM), annual leave (LA), travel compensatory time (CF), ABSENT-US (KG), you may also be eligible for law enforcement leave (LL) and/or 44-day leave (LV) to cover the period of active duty, depending on the nature of the Active Duty. Confer with your HRO regarding your specific situation.

6. HEALTH BENEFITS. Employees who enter ABSENT-US or SEPARATION-US for the purpose of military duty for more than 30 days may keep their Federal Employees Health Benefits (FEHB) coverage for up to 24 months from the date the absence to serve on military duty begins. When you are on ABSENT-US your FEHB coverage will continue for up to 24 months unless you elect to terminate the coverage. If you do not take action to terminate the coverage, your enrollment will continue and you will be responsible for the premiums. The 24-month period begins the day you are absent from your technician position to perform military service even if paid leave is used. Note: Termination is not considered a break in coverage for purposes of meeting the 5-year/first-opportunity requirement to continue FEHB into retirement. Refer to <http://www.opm.gov/insure/health/eligibility/reservists.asp> and Frequently Asked Questions about FEHB for Federal Civilian Employees Called to Active Duty Service.

- **CONTINGENCY OPERATION.** The federal government will pay the employee’s share of the FEHB premiums covered technician who is called or ordered to active duty (voluntarily or involuntarily) in support of a contingency operation as defined in section 101(a)(13) of Title 10, U.S.C. (i.e. Operations Joint Endeavor, Joint

Guard, Southern Watch, Northern Watch, Enduring Freedom, Noble Eagle, etc.) for up to 24 months. Technicians on ABSENT-US using paid leave intermittently will not be reimbursed for premiums deducted while in a paid status.

- **NON-CONTINGENCY OPERATION.** If the employee's military service is not in support of a contingency operation, he/she is responsible for paying the employee share of the premium for the first 12 months and 102% for the final 12 months of continued coverage. During the first 12 months, employees may pay on a continuing basis (generally with after-tax monies) or incur a debt to be paid upon their return (generally on a pre-tax basis if the employee participates in premium conversion). The final 12 months must be paid as incurred.

- **ENROLLMENT CONSIDERATIONS.**

- **Continuing Enrollment:** If you elect to pay the premiums while on non-pay status, you will be provided with the payroll office address of where to send your check. The *minimum* payment will be the employee's share of the premium for two pay periods. If you elect to incur a debt, upon your return to technician status, the payroll office will begin to deduct two employee premiums each pay period (one for current payment and one towards the debt) until the debt is repaid. After the 24-month period, your coverage will be terminated. You will be entitled to a 31 day extension of coverage (at no cost to you) during which you may convert to an individual policy offered by the carrier of your health plan. FEHB coverage will be restored on the day you return to technician status.

- **Terminating Enrollment:** If you elect to terminate your enrollment *before* you go on active duty, the termination will be effective at the end of the day before you separate or are placed on a leave of absence (paid/unpaid leave). Requesting termination during the 24-month period will depend on whether or not you are participating in the FEHB's premium conversion:

- If you are not participating in premium (pre-tax) conversion, you have the option to terminate your health coverage at any time during the 24-month period. The effective date of the termination will be at the end of the pay period in which your request is received by HRO.

- If you are participating in premium (pre-tax) conversion, you may not terminate your coverage at any time during the 24-month period. This means that within 60 days of beginning your ABSENT-US, you have the option to terminate your coverage and/or waive your participation in premium conversion.

- **TRICARE.** You may be eligible for TRICARE up to 90 days prior to deploying and also for transitional TRICARE (known as TAMP – Transitional Assistance Management Program) for 180 days after separating from active duty. If you are, you can postpone automatic reinstatement of your health benefits by signing a Waiver of Immediate Reinstatement of FEHB. We will provide you with the FEHB waiver upon your return.

7. FEDERAL EMPLOYEES GROUP LIFE INSURANCE (FEGLI). IAW Public Law 110-181 and OPM Benefits Administration Letter (BAL) 08-023, employees who are put in a non-pay status while on military duty may now keep their Federal Employees' Group Life Insurance (FEGLI) coverage for up to 24 months. The first 12 months of FEGLI coverage continues free. Employees can now continue their FEGLI enrollment for an additional 12 months, for a total of 24 months. However, employees must pay both the employee and agency share of premiums for their Basic coverage, and pay the entire cost (there is no agency share) for any Optional insurance for the additional 12 months of coverage. If the employee declines to elect the additional FEGLI coverage at the end of 12 months in non-pay status, the coverage terminates. The employee will still get a free 31-day extension of coverage if not electing the additional 12 months and have the right to convert to a non-group policy. For members that are affected, the HRO will provide the official notification by issuing the SF 2819 (Notification of Conversion Privilege) and the SF 2821 (Agency Certification of Insurance Status). For more information on FEGLI benefits see <http://www.opm.gov/insure/life/calledup.asp>.

- Accidental Death and Dismemberment (AD&D) benefits are also payable under Basic Life and Option A coverage, unless you were in actual combat (or unless nuclear weapons are being used) at the time of the injury that caused your death. If you die while on active duty, FEGLI death benefits are paid to your beneficiaries. Accidental death benefits are in addition to regular death benefits. The regular FEGLI death benefits are payable even if accidental benefits are not.

- Your FEGLI coverage will be reinstated on the day you return to technician status. There is no opportunity to elect additional coverage unless you had *separated* for at least 180 days.

- **Consider enrolling now!** You may enroll anytime after 1st year of employment but a complete physical is required at your expense. You would become eligible when the SF2822, Request for Insurance, is approved by FEGLI. Once FEGLI receives your completed SF2822, it takes approximately three to four weeks of processing time. To ensure you are enrolled prior to deploying, your SF2822 must be submitted to the HRO 45 days prior to your deployment.

- **Contingency Operations:** You may enroll or make changes to your FGLI coverage if you are deploying in support of a contingency operation. You may elect Basic; add Option A, and/or B; or increase current multiples of Option B. You may not add Option C.

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 an ABSENT-US status or SEPARATION-US. Refer to <http://www.tsp.gov/forms/oc95-4.pdf>, “Effect of Nonpay Status on TSP Participation.”

- 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. If fully vested, FERS employees are entitled to receive retroactive agency automatic (1 percent) contributions and, if they make up their own contributions, retroactive agency matching contributions. For additional information see the TSP Fact Sheet – “Benefits that Apply to Members of the Military Who Return to Federal Civilian Service” at <http://www.tsp.gov/forms/oc95-5.pdf> and <http://www.tsp.gov/cgi-bin/byteserver.cgi/bulletins/02-7.pdf> (bulletin for HRO representative).

- No contributions can be made to the TSP unless you are using intermittent leave from your technician position to perform duty with the uniformed services. However, when you are restored to your technician position, retroactive contributions and TSP elections may be made to cover the period of service. ***To make up missed TSP contributions, you must submit a written request to HRO within 60 days of the date of your reemployment/restoration to civilian service.*** Employees interested in making retroactive contributions must contact their servicing payroll office to set up a payment plan. FERS employees are entitled to receive matching funds based on contributions made from basic pay while in the uniformed services, if the employee is restored to his/her civilian position. Make-up contributions are equal to four times the period of deployment. (**NOTE:** If you contribute to a Military TSP account while on active duty, those contributions will reduce/offset the amount of retroactive contributions that can be made to your Civilian TSP account. You should receive the 1% automatic for the duration of your deployment whether or not you make up employee contributions. Additionally, you will receive MATCHING (on any military TSP) into your civilian TSP account up to your IRS limit.)

- TSP Loans: If you elect to be placed on ABSENT-US, your loan payments will be suspended until you return to a pay status. Although the loan payments will not be due before then, interest will continue to accrue for the entire period. You cannot repay your Civilian TSP loan by making loan allotments from your uniformed services pay. The maximum time limits for repayments (five years for general purpose loans or 18 years for residential loans) will be extended by the length of your military service. In order for these rules to apply, the TSP Service Office must be notified with the beginning and ending dates of your non-pay status. If the TSP Service Office is not notified of your non-pay status, your loan payments can only be suspended for up to one year due to Internal Revenue Service (IRS) requirements. If no payments are made at that time, the TSP Service Office will request that you repay your loan in full or you will be liable for income tax on the outstanding balance of your loan. ***If you have a TSP loan, please complete a TSP-41 (<http://www.tsp.gov/cgi-bin/byteserver.cgi/forms/tsp-41.pdf>) and forward it to HRO along with your SF 52 and orders. HRO will process the form and fax it to the TSP Service Office.*** However, if you elect to separate to perform the military service, you will be required to repay your loan in full, including interest, or the loan will be declared a taxable distribution. An outstanding loan may delay the processing of a withdrawal from your TSP account if you have requested one. If you have both a civilian TSP and military TSP account and wish to combine them when you separate, you must repay any outstanding loans in full in the account you will be closing before the two accounts can be combined.

- Uniformed services accounts are maintained separately from civilian accounts. However, if an employee contributes to both, the sum of the contributions to the two accounts during the same calendar year cannot exceed the applicable IRS annual deferral limits. Members of the uniformed services have access to the TSP loan program. However, reservists who drill only monthly should think seriously before taking a loan from their military accounts because they may be unable to repay the loan in the time frame required by law. Employees are prohibited from repaying a uniformed services TSP loan from civilian pay, or vice versa. Once an employee separates from either the uniformed services, or the Federal civilian service, the employee will be able to combine the TSP accounts by contacting the TSP Service Office.

9. RETIREMENT. An employee who is placed in an ABSENT-US 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 ABSENT-US and has the minimum amount of civilian service necessary for disability benefits (5 years for CSRS, 18 months for FERS), the employee

would be entitled to disability benefits under the retirement law. Upon 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 elects SEPARATION-US 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 post-56 military service.

- Under ABSENT-US, there is no provision for a refund of retirement contributions. If you elect to separate, you may receive a refund of your retirement contributions. However, taking a refund will *void* all rights (to include survivor's benefits) to the retirement system unless you are appointed to another federal position and redeposit the funds plus any interest due. In addition, FERS technicians who take a refund, and do not redeposit, will not receive credit for the refunded period.

- The time on active military service does not automatically count towards retirement service credit. For the period to be creditable, you will need to make a military service deposit prior to separation. The only exception to this is if you were first employed under the CSRS prior to 1 October 1982. For these technicians, the active military service is creditable for retirement. However, if the deposit is not made and the technician is eligible for Social Security benefits at age 62, the retirement annuity will be recomputed to remove the active duty service.

- Upon restoration to the civilian position, the employee may make a deposit for the military service. Under USERRA provisions, the military service deposit will be the **LESSER** of: (a) seven percent (CSRS technicians) or three percent (FERS technicians) of the estimated *military earnings* (base pay) during military service; **OR** (b) the CSRS or FERS *employee* contributions that would have been withheld from your Federal *civilian* pay had you not left to perform the military service.

- Computation Guidance: <http://www.opm.gov/retire/pubs/bals/2003/03-105.pdf> Benefits Administration Letter on Computing the Post-1956 Military Deposit for Employees on ABSENT-US Who Receive Civilian Pay During Their Active Military Duty.

- If the military deposit is paid before the interest accrual date (within three years of returning to a covered position), no interest is charged on the military deposit.

- Upon reemployment/restoration previous retirement coverage continues.

10. FLEXIBLE SPENDING ACCOUNTS (FSA). HRO does not directly manage this program. You must work directly with the program sponsor at website <https://www.fsafeds.com>. Activation for military duty falls under the qualified status change rule which gives you options:

- You may cancel coverage at the start of ABSENT-US. Allowable expenses you incur during leave will not be eligible for reimbursement.

- You may continue coverage per your qualified status change with a revised election amount during your leave period. Allowable expenses you incur during ABSENT-US will be eligible for reimbursement. You must fund your account in one of two ways:

- Prepay your allotment. You can accelerate deductions prior to ABSENT-US.

- Freeze your account and re-calculate payroll deductions upon return from ABSENT-US.

- If canceled, the member would be allowed to file for reimbursement for what has incurred. The employee can enroll again during the next Open Season.

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 free short-term counseling and referral services to help with financial, emotional, and dependent care problems. As a **technician**, you and your family member are eligible for service through Military One Source 24 hours a day, seven days a week, 365 days a year. Contact them at 1-800-342-9647 Websites:

www.GuidanceResources.com, (click on first-time user; on the registration profile screen, enter FEDSOURCE as the company's ID)

<http://www.militaryonesource.com/skins/MOS/home.aspx> Register for site to obtain User ID and Password under "Not a Member? Join Now" at top right.

- **SURVIVOR BENEFITS.** Survivors of deceased employees may be eligible for payments based on the deceased employee's civilian service to include FEGLI, TSP, unpaid compensation, lump sum leave, social security

(FERS & CSRS offset employees), and survivor benefits under FERS/CSRS. These benefits are in addition to the numerous active duty benefits payable.

- CSRS: Generally, the survivor annuity is 55% of what the employee's annuity would be at date of death.
- FERS: You may be eligible for a death benefit **or** an annuity depending upon length of service. If you have 18 months of credible service but less than 10 years of service, you would be eligible for a death benefit. The death benefit is \$15,000 plus 50% of the employee's final salary (or high-3 if more). With over 10 years of service, your spouse would be eligible for a survivor annuity which is generally computed as 50% of what the employee's basic annuity would be.

12. 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 and the Adjutant General can reemploy without doing harm to the agency:

- 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.
- Employees who served more than 30 days, but less than 181 days, must apply for reemployment within 14 days of release by the military.
- 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 never left for purposes of rights and benefits based upon length of service. This means 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.
- On November 14, 2003 President George W. Bush directed the heads of agencies to grant Federal employees who are returning from active duty 5 days of excused absence from their civilian duties (see guidance at <http://www.opm.gov/oca/compmemo/2003/2003-14.asp>). It **must** be taken immediately proceeding deactivation, prior to resumption of duties (duty status). Each employee is entitled to 5 days of excused absence when he or she returns from active military service in connection with Operation Noble Eagle, Operation Enduring Freedom, Operation Iraqi Freedom, or any other military operation subsequently established under Executive Order 13223 providing they meet eligibility rules.

13. Contact the HRO Employee Benefits Section at (907) 428-6351/6475 if you have any questions regarding your technician benefits while performing active duty. HRO Staffing Section will address questions regarding reemployment/restoration (907) 428-6459.

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