



# RIGHTS & BENEFITS OF EMPLOYEES CALLED TO OR VOLUNTEERING FOR ACTIVE MILITARY SERVICE

*Working for America*

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT



# Message from the President

*“America needs the Guard and Reserves more than we have had in decades. We’re at war. Yet we’re fortunate that so many of our citizens have heeded the call to serve a cause greater than themselves.”*

**- George W. Bush**



# Message from the Director



*“As members of the best trained and volunteer military in the world, veterans have demonstrated an appreciation and competence for excellence and teamwork, and I cannot think of a better source of talent for the federal government than those who have completed their service in uniform.”*

**- Kay Coles James**

# Introduction

- **The Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994 guarantees certain rights and benefits to Reservists and National Guard Members when they are called to or volunteer for active military duty**
- **We will discuss those rights, how federal benefits are affected, and elections that employees must make**



# Agenda

- **Status Upon Entry Into Active Duty**
- **Leave**
- **Reemployment Rights**
- **Effect on other federal benefits**
- **Employee Assistance Program**
- **Appeal Rights**



# Acronyms

- **USERRA – Uniformed Services Employment and Reemployment Rights Act**
- **FEHB - Federal Employees Health Benefits Program**
- **FEGLI – Federal Employees’ Group Life Insurance Program**
- **CSRS – Civil Service Retirement System**
- **FERS – Federal Employees’ Retirement System**
- **NOAA – National Oceanic and Atmospheric Administration**
- **PHS – Public Health Service**
- **EAP – Employee Assistance Program**



# Status Upon Entry Into Active Duty

- **The federal employer must place the employee on leave without pay (LWOP) unless the employee specifically chooses in writing to be:**
  - placed on military leave
  - placed on annual leave
  - separated from employment



# Military Leave

- **5 USC 6323(a) - 15 days per fiscal year**
- **5 USC 6323(b) - 22 additional workdays per calendar year:**
  - **when in support of civil authorities in protection life/property or**
  - **as a result of a call or order to active duty in support of a contingency operation also qualify for the additional leave (amendment applies to military service performed on or after November 24, 2003)**



# Military Leave (Cont'd)

**(22 additional workdays)**

- **Contingency Operation is a military operation that:**
  - **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**



# Military Leave (Cont'd)

**(22 additional workdays)**

- **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.**



# Military Leave (Cont'd)

(22 additional workdays)

- **Employees using this type of military leave are NOT entitled to both civilian and military pay for the period of leave use. 5 USC 5519 requires that the military pay received while the employee is using this type of military leave be credited against the civilian pay for the period.**
- **Agencies may offset the civilian pay by the amount of military pay (less travel, transportation and other per diem allowances) while the employee uses this military leave, or they may pay the full civilian pay and require that the employee refund the amount of military pay received during this period.**



# Military Leave (Cont'd)

- **5 USC 6323(c) – unlimited for DC National Guard Members for certain types of duty**
- **5 USC 6323(d) – 44 additional workdays per calendar year for Reserve and National Guard Technicians only for certain overseas duty**



# November 2003 Memo

- **Five days' administrative leave:**
  - **President directed executive agencies to grant five days of excused absence to employee returning from active duty in the “Global War on Terrorism”**

**Operation Noble Eagle,  
Operation Enduring Freedom,  
Operation Iraqi Freedom, or  
other operations established**



# Prorated Military Leave

## Prorated Military Leave Examples

Hours in the regularly scheduled biweekly pay period	Ratio of hours in the regularly scheduled pay period to an 80-hour pay period (the number of hours in the pay period ÷ 80)	Hours of military leave accrued each fiscal year	Pay Periods of military leave accrued each fiscal year.
40	.5 (40 ÷ 80)	.5 x 120 = 60 hours	1.5 40-hour pay periods
106	1.325 (106 ÷ 80)	1.325 x 120 = 159 hours	1.5 106-hour pay periods
120	1.5 (120 ÷ 80)	1.5 x 120 = 180 hours	1.5 120-hour pay periods
144	1.8 (144 ÷ 80)	1.8 x 120 = 216 hours	1.5 144-hour pay periods



# Annual Leave

- The employee must choose to have annual leave remain to his/her credit, or receive a lump sum payment of all accrued and accumulated annual leave.
- The agency is required to make a lump sum payment for restored annual leave.



# Right to Reemployment

- **The employee has the right to be reemployed after completion of qualifying military duty.**
- **Reemployment means return to duty if the individual was in a LWOP pay status or rehired if the individual was separated.**
- **The employee must apply for reemployment within the time limits established by law.**



# Right to Reemployment

- **The employee's job is protected if (he/she performs qualifying military service and exercises the right to reemployment with the specified time period.**
- **Active duty military service does not extend time-limited appointments. Such individuals have the right to complete any time left on the time-limited appointment.**



# Right to Reemployment

- **If the employee's active duty was for 90 days or less, the agency must return him or her to the position (he/she would have held if employment had not been interrupted).**
- **If the employee's active duty was for over 90 days, the agency may place the employee in a position of the same seniority, status, and pay of the position (he/she would have held if employment had not been interrupted (rather than the actual position)).**



# Federal Employees Health Benefits (FEHB)

- **Employees enrolled in the FEHB program may continue such coverage for up to 18 months while performing active duty military service.**
- **The 18-month period of eligibility begins the date the employee leaves the civilian position to enter active duty, without regard to his or her pay status.**



# FEHB

- **Employees must elect to terminate or to continue FEHB coverage during the active duty military service period.**
- **Agencies automatically continue the FEHB coverage if the employee does not make a decision regarding termination or continuance. The employee is responsible for payment of any required premiums.**



# FEHB

- **Termination of FEHB coverage to perform honorable active duty military service is NOT a break in continuity of coverage.**
- **It is a termination - not a cancellation.**
- **Employees who terminate coverage have a 31-day extension of coverage and have the right to convert to an individual policy.**



# FEHB

- **Employees who continue FEHB coverage are generally responsible for:**
  - **paying the employee share of the premium for the first 12 months, and**
  - **paying the full cost (employee and government share) plus a two percent administrative fee for the remaining 6 months.**
- **Agencies have the authority under 5 USC 8906(e)(1)(B)(ii) and 5524a(c) to waive the employees' shares and pay on their behalf.**



# FEHB

- Upon exercising reemployment rights by return to duty from non-pay status or rehire from separation:
- The FEHB coverage the employee previously had will be ***reinstated*** for those employees who terminated coverage or whose coverage terminated at the end of 18 months
- The FEHB coverage the employee previously had will ***resume*** for those employees who continued coverage during active duty military service.



# FEHB

- **Upon exercising reemployment rights by return to duty from non-pay status or rehire from separation:**
- **The employee has a 60-day opportunity to make changes to his or her FEHB enrollment.**



# FEHB

- **Employees begin a new 18-month period of eligibility if they are subsequently recalled or volunteer for active duty after they have exercised reemployment rights.**
- **The 4-month rule that applies to regular leave without pay does not apply.**



# Federal Employees' Group Life Insurance (FEGLI)

- Premiums automatically withheld from pay if the employee is in a pay status (military leave, annual leave, etc.)
- FEGLI continues at no cost for employees in nonpay status for up to 12 months.
- FEGLI continues at no cost for employees who separate from employment for up to 12 months or until 90 days after military service ends, whichever date comes first.



# FEGLI

- **The 4-month rule governing non-pay DOES apply to FEGLI.**
- **That means that the employee must be in pay status for a period of 4 months before he/she is entitled to begin a new 12-month period of FEGLI coverage at no cost.**



# FEGLI

- **When the FEGLI coverage terminates, the individual has a 31-day extensive of coverage.**
- **The individual has the right to convert his or her FEGLI coverage to a non-group policy during the 31-day period.**



# FEGLI

- **While on military active duty, all the provisions of FEGLI coverage apply unless the death or dismemberment results from actual combat (or nuclear weapons were being used).**
- **If death or dismemberment results from injuries received in actual combat (or use of nuclear weapons), the accidental death and dismemberment provision does not apply.**



# FEGLI

- **Upon reemployment, the prior FEGLI coverage is reinstated (unless reemployment in a position that excludes FEGLI coverage).**
- **No opportunity to elect additional coverage unless the person was separated for at least 180 days.**



# Civil Service Retirement Plans



- For purposes of CSRS and FERS, “military service” means honorable active duty with:
  - United States Army
  - United States Navy
  - United States Marine Corps
  - United States Coast Guard
  - PHS Regular and Reserve Corps after June 30, 1960
  - NOAA commissioned officer after June 30, 1961



# Civil Service Retirement Plans

- **For purposes of CSRS and FERS, “military service” means honorable active duty as a member of the National Guard but only when such service:**
  - **Is service for the United States (rather than the State),**  
**Or**
  - **Full-time service that interrupts federal civilian service that is creditable for CSRS/FERS AND is followed by reemployment under chapter 43 of title 38, USC on or after August 1, 1990.**



# Civil Service Retirement Plans

- **If in a paid leave or non-pay status, coverage under the retirement law continues (CSRS/FERS), and**
  - **Death benefits paid as though still in civilian position**
  - **Entitled to disability benefits if become disabled and meet minimum service requirements (5 years under CSRS – 18 months under FERS)**



# Civil Service Retirement Plans

- **If in a paid leave or non-pay status, coverage under the retirement law continues (CSRS/FERS), and**
  - **Period performing military is creditable, subject to military credit rule (National Guard-exception)**
  - **May retire from civilian position without returning to civilian position if meets all eligibility requirements (National Guard – exception)**



# Civil Service Retirement Plans

## **National Guard Exception:**

- **Active duty under title 32 USC is NOT creditable military service unless and until reemployment rights to civilian position are exercised**
- **Such individuals retiring without exercising reemployment rights receive civilian credit for non-pay period (up to 6 months per calendar year)**



# Civil Service Retirement Plans

- **If separated to perform honorable active duty military, the individual is deemed to be in non-pay status for the period ONLY after exercising reemployment rights, and**
  - **Death benefits will not be paid**
  - **Will not qualify for disability benefits if become disabled**



# Civil Service Retirement Plans

- **If separated to perform honorable active duty military and exercise reemployment rights, the period of separation is creditable under CSRS/FERS, subject to service credit rules.**
- **The period between separation from civilian position to entry into active duty and the period from release from active duty to reemployment is creditable under regular non-pay rules (up to 6 months per calendar year)**



# Civil Service Retirement Plans

- **If separated to perform honorable active duty military service and reemployed in federal civilian service but not under reemployment rights, the actual period of military service is generally creditable service, subject to military service credit rules.**

**There is one exception to this general rule.**



# Civil Service Retirement Plans

## **EXCEPTION TO SEPARATION RULE:**

- **Individuals covered by CSRS who separate for active military duty during a period of war or national emergency declared by Congress or proclaimed by the President are deemed as “not separated” from civilian position for retirement purpose unless they apply for and receive a refund of retirement deductions**



# Civil Service Retirement Plans

## **EXCEPTION TO SEPARATION RULE:**

- **5 USC 8332(g) must be specifically cited for this rule to apply.**
- **This has not occurred for any recent or current military operation.**



# Civil Service Retirement Plans

## **Military Service Credit Rules:**

- As a general rule, to be creditable service under CSRS or FERS, a military deposit must be paid for all periods of active duty military service.
- **EXCEPTION:** If military service is credited under CSRS rules and individual first hired in CSRS-covered appointment before 10-1-1982.



# Civil Service Retirement Plans

**First hired in CSRS-covered position prior to 10-1-82,  
and military deposit NOT made:**

## **Retire before age 62?**

- **Yes - Full credit until age 62; look at Social Security eligibility at age 62**
- **No – Look at Social Security eligibility on date of retirement**



# Civil Service Retirement Plans

First hired in CSRS-covered position prior to 10-1-82,  
and military deposit NOT made:

## Eligible for Social Security benefits?

- Yes - If retired before age 62, CSRS annuity recomputed to eliminate credit for military. If retired on or after age 62, no credit for military
- No – Full permanent credit for military without payment of deposit



# Civil Service Retirement Plans

**First hired in CSRS-covered position prior to 10-1-82,  
and military deposit IS made:**

- **Full permanent credit for military in CSRS annuity without regard to Social Security eligibility**



# Civil Service Retirement Plans

- **A military deposit is NOT required for any period covered by paid leave from the civilian position (annual leave, military leave)**
- **Employee who uses leave intermittently with non-pay is responsible for providing documentation of paid leave periods**



# Civil Service Retirement Plans

## Special USERRA Military Deposit Rule:

**Employees who exercise reemployment rights under USERRA pay the LESSER OF:**

- Deposit calculated under regular military deposit rules, or
- The amount of retirement deductions that would have been withheld from civilian pay if employee had remained in that position during the period of military service



# Thrift Savings Plan

## Contribution elections and allocations:

- **Cannot make contributions while in non-pay status or separated from civilian position**
- **May continue to make changes in fund allocations**
- **May continue to submit TSP-1, *Election Form*, during any TSP open season if in non-pay status, but not if separated**



# Thrift Savings Plan

## Resuming TSP Participation:

- Employee **MUST** complete a new TSP-1, *Election Form*, within 60 days following reemployment to have TSP contributions withheld from pay
- TSP deductions will **NOT** automatically resume based on latest TSP-1 on file



# Thrift Savings Plan

## Agency Automatic (1%) Contributions (FERS employees only)

- **Agency MUST immediately credit TSP account with the Agency Automatic (1%) contributions that would have been paid if the employee had remained in civilian position.**
- **Agency MUST pay lost earnings on the Agency Automatic (1%) contributions**



# Thrift Savings Plan

## Employee Make-up Contributions (CSRS or FERS employees)

- Entitled to make up the contributions missed while on active military duty
- 60 Days to notify HR Office
- Retroactive elections (TSP-1) for each open season missed
- Make-up contributions offset by total contributed to Uniformed Services TSP account



# Thrift Savings Plan

## Agency Matching Contributions (FERS employees only)

- Agency must immediately “match” contributions the employee made from *basic military pay* (not from incentive/special pay)
- Agency matching contributions reduced by “matching” contributions received from the uniformed services



# Thrift Savings Plan

## Agency Matching Contributions (FERS employees only)

- Agency matches employee make-up contributions
- Agency pays lost earnings on matching contributions

**Total agency matching contributions cannot exceed the maximum employee would have received had he/she remained in civilian position**



# Thrift Savings Plan

## Lost Earnings

- **Agency must pay on retroactive agency automatic and matching contributions**
- **Not paid on employee make-up contributions**



# Thrift Savings Plan

## Lost Earnings

Employee elects to have lost earnings based on either:

- **The Government Securities Investment Fund (G), or**
- **Funds specified by contribution allocations in effect at the time contributions would have been made in the employee remained in civilian position**



# Thrift Savings Plan

## Restoration of Forfeited Agency Automatic Contributions

- **Employees who separate from employment may have forfeited the agency automatic contributions if they were not vested (usually 3 years civilian service to vest)**
- **Upon reemployment, such employees are entitled to have these funds restored to their accounts**



# Thrift Savings Plan

## TSP Funds Paid as Automatic Cashout

- **Employees who separated to enter military service may have had their TSP accounts automatically cashed out (less than \$3500)**
- **Upon reemployment, employees have 90 days to notify the TSP record keeper of their intent to repay the funds**



# Thrift Savings Plan

## TSP Loans

- **MUST** notify TSP record keeper when entering approved nonpay status to perform active duty military service
- Form TSP-41, *Notification to TSP of Nonpay Status*, used for this purpose
- Must provide documentation of beginning and ending periods of military service upon completion (DD-214)



# Thrift Savings Plan

## TSP Loans

- **Loan payments suspended during period of active military duty**
- **Time period to repay extended by period of military service**
- **Loan payments resume when employee returns to pay status**
- **May be required to reamortize loan if in nonpay status for 90 days or more**



# Thrift Savings Plan

## Reversing Taxable Distribution

- If TSP loans closed as taxable distributions while separated or in nonpay to perform military service, may qualify to have reversed
- Must notify TSP record keeper within 90 days of reemployment



# Other Issues

- **Remind employees of the importance of reviewing and updating all Designations of Beneficiary Forms**
  - **Unpaid Compensation (SF-1152)**
  - **FEGLI (SF-2823)**
  - **TSP (TSP-3)**
  - **FERS – SF-3102**
  - **CSRS - SF-2808**



# Other Issues

- **Remind employees that they and their family members are eligible for Employee Assistance Program services.**
- **EAP services provide short-term counseling and referral services for help with financial, emotional, and dependent care problems.**
- **EAP services are available 24 hours a day, 7 days a week, 365 days a year.**



# Appeal Rights

- With the exception of intelligence agencies, 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.



# Appeal Rights

- **If resolution is not possible, the Department of Labor 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.**



# Appeal Rights

- ***Legislative branch*** employees may enforce their reemployment rights under the procedures of the Congressional Accountability Act (CAA). There are no provisions for another federal agency will help the employee in enforcing rights under CAA.



# Appeal Rights

- ***Judicial branch*** employees may seek resolution of claims based on discrimination against or denial of rights and benefits under USERRA through the procedures of the employing court's dispute resolution plan.



# Appeal Rights

- **USERRA requires OPM to place in the executive branch employees of the judicial branch, legislative branch, and intelligence agencies when their former agencies find it “impossible or unreasonable” to reemploy them.**
- **If OPM fails to comply, the individuals have the right to appeal to MSPB.**



# Questions?



# Contact Information

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