

Employment and Staffing

Uniformed Services Employment and Reemployment Rights Act (USERRA)

FOR THE GOVERNOR:

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California Army and California Air National Guard technicians plus commanders, managers and supervisors (military and civilian) with authority or responsibility over technician personnel management.

Proponent and Exception Authority. The proponent of this handbook is the Joint Force Headquarters, J1, Directorate for Human Resources. The proponent has authority to approve exceptions to this regulation when they are consistent with controlling laws and regulation.

Supplementation. Supplementation of this regulation is prohibited.

Suggested Improvements. Users of this regulation are invited to send comments and suggestions to Joint Force Headquarters, Directorate for Human Resources, 9800 Goethe Road, (Box 37), Sacramento, CA 95826-9101.

Distribution. Distribution of the regulation is Army - A and Air Force - F.

History. None

Summary. This regulation replaces the earlier version, dated 12 July 2010. It changes paragraph 4.b.; changes paragraph 13.b. to 13.c. and adds a new remark to 13.b; changes paragraph 13.c.; 14.a., 14.c., 14.d.; modifies paragraph 15.b., 17.b., and 18.b.

Applicability. California National Guard Full-time Personnel Regulation (CNGFPR) applies to all

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1. Purpose.

This technician personnel regulation establishes guidelines regarding the Uniformed Services Employment and Reemployment Rights Act (USERRA) as it relates to California National Guard technicians.

2. References.

- a. California National Guard Full-Time Personnel Regulation 630
- b. Department of Homeland Security Appropriations Act 2008
- c. Executive Order 13223
- d. Office of Personnel Management Compensation Policy Memoranda 2008-21
- e. Title 5 Code of Federal Regulations, Chapter I, Parts 353 and 630
- f. Title 5 United States Code, Chapter 55, Sections 5534, 5534a, and 5538
- g. Title 5 United States Code, Chapter 89, Section 8906(e)
- h. Title 10 United States Code, Chapter 1007, Section 10216(d)
- i. Title 38 United States Code, Chapter 43

3. Introduction.

On 13 October 1994, President Clinton signed into law the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) which provides protection of civilian job rights and benefits when entering and/or performing military service.

4. Basic Entitlement.

a. Any Federal employee who performs duty with a uniformed service (including active duty, active duty for training, or inactive duty for training), whether voluntary or involuntary, are entitled to be restored to the positions they left or would have attained, had the technicians not entered the uniformed service, provided they

- (1) Gave the Agency advance notice of departure except when prevented by military circumstances.
- (2) Were released from uniformed service under honorable conditions.
- (3) Served no more than a cumulative total of five years.
- (4) Applied for restoration within the appropriate time limits (see paragraph six).

b. While on duty with the uniformed service, technicians are in an authorized absence otherwise known as Absent – Uniformed Service (Absent-US) unless they request to be separated from the Agency due to Uniformed Service (Separation – US). Technicians who enter military service and become members of military units from other technician agencies do not qualify for Absent – US. However, technicians may still elect Separation – US (SEP-US). A separation under these circumstances does not affect restoration rights.

c. Uniformed Service as defined in 38 USC 4303(16) includes the Armed Forces of the Army and Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty plus any other category of persons designated by the President in time of war or emergency.

5. Exceptions to Five Year Limit.

The following service does not count toward the five year limit for reemployment, in accordance with (IAW):

- a. 38 USC 4312(c)(1). Service required beyond five years to complete an initial period of obligated service.
- b. 38 USC 4312(c)(2). Service from which a person, though no fault of their own, is not able to obtain a release within the five year limitation.
- c. 10 USC 10147 and 32 USC 502(a). National Guard regularly scheduled inactive duty training and annual training, or to fulfill additional training requirements determined and certified in writing by the Secretary concerned to be necessary for professional development, or for completion of skill training or retraining (War College, Air Command and Staff College, NCO Academy, Command and General Staff College, BNOC, and ANOC).
- d. 32 USC 503. National Guard active duty for encampments, maneuvers, or other exercises for field or coastal defense.
- e. 10 USC 12301(a) and (g); 12302, 12304, and/or 12305. Orders to or retained on active duty (other than for training) for national emergency up to 24 months; involuntary active duty for operational mission up to 270 days; involuntary retention of critical persons on active duty during a period of crisis or other specific conditions.

f. 10 USC 12406. Air and Army National Guard called into Federal service in case of invasion, rebellion or inability to execute Federal law with active forces.

g. 10 USC, Chapter 15. National Guard called into Federal Service to provide law enforcement to restore public order.

h. 38 USC 4312(c)(4)(D). Ordered to active duty in support of a critical mission or requirement of the uniformed service as designated necessary by the Secretary concerned.

6. Time Limits for Reemployment.

a. Technicians who serve in the uniformed services

(1) Less than 31 days must report back to work at the beginning of the next regularly scheduled work day following their completion of service and expiration of eight hours after a time for safe transportation back to their residences.

(2) More than 30 days but less than 181 days must apply for reemployment no later than 14 days after completion of service.

(3) More than 180 days have 90 days after completion of service to apply for restoration.

b. Technicians who fail to meet these time limits are subject to disciplinary action.

c. Technicians must provide documentation showing length and character of service plus timeliness of the reemployment application.

d. Agencies must reemploy as soon as practicable but no later than 30 days after receiving requests to restore.

7. Loss or Ineligibility of Reemployment Rights.

a. Technicians exceeding the five year cumulative limit or those who do not report back within time limits specified in paragraph six will be terminated from National Guard employment.

b. Employing agencies are not required to provide reemployment rights if:

(1) Reemployment is impossible or unreasonable.

(2) Technician positions are for brief or nonrecurring periods of time or are not expected to continue indefinitely or for significant periods.

(3) Reemployment would impose undue hardship on employers.

c. The Adjutant General of each state may refuse to reemploy technicians if reemployment is impossible or unreasonable for the following reasons:

(1) Loss of military membership or inability to obtain military or unit membership.

(2) Expiration of indefinite or temporary appointment during military duty period.

d. Technicians with reemployment rights who fail to meet the military requirements of continued employment such as compatibility, inability to obtain required security clearance, and weight exceeding allowable weight/physical standards will be reemployed then separated, in accordance with Technician Personnel Regulation (TPR) 715.

8. Reemployment Position.

a. Positions to which technicians return after restoration under USERRA depend on the length of that service. If the period was less than 90 days, technicians must be placed in positions for which they qualify and would have attained, if not for the interruption by military service. After military service of more than 90 days, technicians will be placed in the above position types **or** ones of like seniority. If two or more technicians are entitled to restoration in the same position, the one who left the position first has prior right to restoration. The other technician would be placed according to order of priority described above.

b. Technicians are not subject to a reduction in force while they are serving in the uniformed services. If they served for more than 180 days, they may not be separated, except for cause, for one year after their return. If they served for more than 30 but less than 181 days, they may not be separated, except for cause, for six months. (Reduction in force is not considered "for cause" under OPM's regulations.) The law expressly prohibits any kind of discrimination or act of reprisal against applicants or technicians because of their applications, membership, or service in the uniformed services.

c. Employees performing military duty remain eligible to apply for advertised technician positions and are encouraged to submit applications under normal procedures along with all other applicants.

9. Service Credit. Upon restoration, technicians are generally treated as though they had never left the position. This means that time spent in the uniformed services counts for seniority, within-grade increases, completion of probation, career tenure, retirement, and leave rate accrual. Technicians do not earn sick or annual leave while off the rolls or in a non-pay status.

10. Retirement.

a. Technicians placed in approved absence status while performing military duty continue to be covered by the retirement law. Death and disability benefits continue whether covered under the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS). Technicians who separate are not covered under their retirement system in case of death or disability.

b. To receive civil service retirement credit for military service, a deposit to the retirement fund is required to cover the period of military service. Only active, honorable military service is creditable for retirement purposes.

c. Title 10 military service is creditable for CSRS and FERS retirement, but a deposit for post 1956 may be required under CSRS to receive credit for eligibility and computation of retirement benefits. Post 1956 military service is never creditable for FERS retirement purposes unless a deposit is made.

d. Title 32 Active Duty National Guard service is creditable under CSRS and FERS when a deposit is made and only when the service meets all of the following conditions:

- (1) It must interrupt civilian service creditable under CSRS or FERS.
- (2) It must be followed by reemployment that occurs on or after August 1, 1990, in accordance with Title 38 USC, Chapter 43.
- (3) It must be full time, not inactive duty.
- (4) It must be under Title 32 USC, Sections 316, 502, 503, 504, or 505.
- (5) It must be performed by an Army or Air National Guard member from the United States or one of its territories; the Commonwealth of Puerto Rico; or the District of Columbia.
- (6) Individuals must be entitled to pay from the United States (or have waived pay from the U.S.) for the service.

e. Upon restoration, technicians may make deposits for military service. Deposits payable under USERRA may not exceed amounts that would have been deducted and withheld during civilian service which would have been performed during this time. In computing military deposits for service under USERRA, the Agency must make comparisons between 3% (for FERS) or 7% (for CSRS) of the military basic pay and calculations of what employee contributions would have been for the civilian service had the individuals not entered into the military. Employees will pay the lesser amount. There is a two-year interest-free grace period on all military deposits. After the two-year grace period, interest is accrued and compounded annually. Military deposits must be paid in full before retirement to receive credit.

11. Earned Leave.

a. Technicians in Absent – US or SEP – US have the right to the following:

(1) Use accrued annual leave, compensatory time off for travel, and military leave during Absent – US; and prior to, but not during, SEP – US.

(2) Have annual leave remain to their credit until they return to former technician positions from Absent – US, but not SEP – US.

(3) Sick leave may be used while in Absent – US, in accordance with statutory and regulatory criteria for using sick leave. Otherwise, sick leave will be restored to technicians upon return to technician positions.

(4) Receive a lump-sum payment for all accrued annual leave. However, technicians electing SEP – US will not receive lump-sum payment for any military leave, sick leave, all compensatory time off, and time off awards.

b. When technicians return to their technician positions prior to the end of the period covered by the lump-sum payment, they must refund amounts equal to pay that covers periods between dates of reemployment and expiration of the lump-sum leave period. Restored leave will not be reaccredited.

12. Military Leave.

Technicians under permanent and indefinite appointments are entitled to specific Military Leave such as the 120 hours of paid military leave, 22 days of non-paid military leave (Law Enforcement Leave), and 44 additional days of non-paid military leave. Refer to CNGFPR 630 – Hours of Duty, Absences, and Leave for more information.

13. Life Insurance.

a. *Federal Employees Group Life Insurance* (FEGLI) for technicians who are Absent – US or SEP – US of more than 30 days will continue for up to 24 months, IAW the Department of Homeland Security (DHS) Appropriations Act 2008, Section 1102. There is no cost to technicians for the first 12 months. Technicians who remain in the uniformed services beyond 12 months may continue FEGLI for an additional 12 months but must pay

both the employee and Agency shares of premiums for their basic coverage. If technicians elect optional insurance (there is no agency share), they must pay the entire cost for the additional months of coverage.

b. Technicians may elect to reduce their FEGLI coverage during the second 12 month period. This reduction in coverage is not the same as cancelling coverage.

c. When technicians are reinstated after military duty, they resume whatever life insurance coverage they had before going into non-pay status even if they voluntarily reduced their coverage for the second 12 month period.

14. **Health Insurance.**

a. Technicians who enter the uniformed services may elect to have their *Federal Employees Health Benefits* (FEHB) coverage continue for up to 24 months. They continue to pay only their share of the premium for the first 12 months. Technicians who remain in the uniformed services beyond 12 months may continue health insurance for an additional 12 months by paying 102% of the premium (i.e., the technician share, the Government's share, and a 2% administrative fee). If technicians elect to continue health benefits while on military duty, they may pay premiums on a current basis or incur a debt to the Government then repay it when they return to active Federal service.

b. Technicians called to active duty in support of designated contingency operations (e.g. BOSNIA, ENDURING FREEDOM, IRAQI CRISIS, KOSOVO, NOBLE EAGLE) are eligible for their FEHB premiums to be paid by the Agency (both the employee and government contributions) for a period not to exceed 24 months. To be eligible for payment of the technician share of the FEHB premium, technicians must

(1) Be enrolled in FEHB and elect to continue that enrollment.

(2) Be called or ordered to active duty (voluntarily or involuntarily) in support of contingency operations as defined in 10 USC, section 101(a)(13).

(3) Be placed in Absent – US or SEP – US to perform active duty.

(4) Serve on active duty for a period of more than 30 consecutive days.

c. After 24 months the Health benefits are terminated, and there is an automatic 31-day extension.

d. Technicians who begin military duty under Title 32 and later switch to Title 10, the period of active duty under Title 32 counts towards the 24 months of coverage. There is no new 24 months of coverage when switching from one statutory authority to another (e.g. going from Title 32 to Title 10 and back to Title 32).

15. **Thrift Savings Plan (TSP).**

a. Technicians who perform uniformed service may make up any contributions they missed due to such service to the Thrift Savings Plan. These contribution amounts will be determined by using the TSP Election Form (TSP-1) that is in effect prior to entry into military service. All make up technician contributions deducted from pay in a current calendar year are subject to the IRS annual limit, effective for the year to which makeup contributions are attributable. Technicians can stop makeup contributions; however, the decision to stop is irrevocable. If covered by FERS, retroactive agency matching contributions are received as technicians make up TSP contributions. Technicians will receive retroactive automatic agency 1% contributions for the entire period missed as a result of military service, whether or not they make up employee contributions or contributed to their military TSP account. If technicians contribute to TSP while on military duty, contributions from military basic pay will offset contribution amounts that can be made up. To make up missed contributions or other TSP actions taken due to military service, technicians must request it in writing within 60 days of the reemployment date to the Human Resources Office, ATTN: Employee Benefits and Entitlements Branch, 9800 Goethe Road (Box 37), Sacramento, CA 95826-9101.

b. If an employee elects to be placed on SEP-US and later returns to duty without a break in service, if the automatic 1% contributions were removed because technicians were not vested (three years of Federal employment), they are entitled to get them back. Technicians should notify the Human Resources Office if the 1% contributions were forfeited. Technicians in this situation are also due the Agency Automatic 1% Contributions for the period on SEP-US.

c. If technicians are placed in non-pay status to perform military service and have a TSP loan, they must notify the Human Resource Office. Payments will be suspended for the period of military service (if technicians are placed in non-pay status for any reason other than military service, payments may be suspended only up to one year). However, interest will continue to accrue during the period of military service. The time period for repaying the loan is extended by the length of military service. Technicians who had loans that were closed as taxable distributions because they separated to perform military service may be eligible to have taxable distributions reversed after they return to duty. Retroactive earnings are not paid on this amount.

d. Technicians who received automatic cash-outs of their TSP accounts because they separated to perform military service may return the full amount of the payment to TSP and have the taxable distribution reversed.

16. Reservist Differential. Technicians may be eligible to receive a Reservist Differential payment if they are in support of *contingent* operations under one of the following authorities: 10 USC 331, 10 USC 332, 10 USC 333, 10 USC 688, 10 USC 12301(a), 10 USC 12302, 10 USC 12304, 10 USC 12305, and 10 USC 12406. If a technician's civilian basic pay exceeds the amount of their military pay allowances during a pay period they may be eligible to receive a differential sum equal to the amount of their civilian salary to offset their military pay and allowances as long as they are in authorized absence.

17. Request for Personnel Action (Standard Form-52).

a. Prior to the start and finish of active duty military service, technicians must submit a Request for Personnel Action (SF-52) along with a copy of applicable military orders and/or DD-214 (for Return To Duty actions), and the appropriate USERRA Technician Checklist to the Human Resources Office.

b. The effective date of Absent-US will be the same date of your military orders or notification and not prior to or after entering military service. If compensatory time is being used at the beginning of the military duty, the effective date of the Absent-US will be the day after the compensatory time is exhausted. The effective date for SEP – US election can be the same date of or after your military orders or notification and not prior to entering military service.

c. The effective date of return to duty actions must be in compliance with paragraphs six, eighteen, and nineteen.

18. Terminal/Transition/PDMRA Leave.

a. Technicians who have performed active service and who are in terminal/transition leave pending separation from or release from active duty under honorable conditions may accept or return to duty to a civilian position and are entitled to such civilian pay in addition to pay and allowances from the unexpired portion of military service.

b. Technicians who are performing active military service and are on Post Deployment Mobilization Respite Absence (PDMRA) are not authorized to return to technician duties until after the PDMRA period has ended.

19. Use of Five Day Excused Absence.

a. In November 2003, the President of the United States directed agencies to grant five days of excused absence to Federal employees returning from Title 10 military duty in connection with the Global War on Terrorism, including Operations ENDURING FREEDOM, IRAQI FREEDOM, NOBLE EAGLE, or any military mission subsequently established under Executive Order 13223. The Five Day Excused Absence is available each time technicians return to duty (RTD) from such military service with the following criteria, IAW CPM 2008-21:

(1) Technicians must have spent at least 42 or more consecutive days in active military service. An accumulation of 42 or more days does not constitute eligibility for the Five Day Excused Absence.

(2) Authorization and issuance of the Five Days Excused Absence is limited to one time per every 12-month period. The 12-month period begins on the first day of the excused absence and ends 365 days later.

b. Upon receiving member notification of their intended RTD on a specific date, the Agency must grant the five days of excused absence to technicians immediately prior to the actual resumption of technician duties. The commencement of the five days of excused absence represents a RTD (or reemployment date, if SEP – US) and technicians are obligated to work at the end of the five day period. This absence may not be "saved" for use at a later date and must be used consecutively. A RTD action must be processed by the Directorate for Human Resources to use the five day excused absence.

c. Technicians activated for Title 10 military service in connection with Operations IRAQI FREEDOM, ENDURING FREEDOM, NOBLE EAGLE, or in connection with Executive Order 13223 but was not deployed overseas are also entitled to the five day excused absence.

d. Technicians never granted the Five Days of Excused absence for a second or subsequent period of active duty or who were unable to use it upon RTD, may request and schedule the excused absence at a time mutually agreeable to both the Agency and them.

e. All periods of time must be appropriately documented on the Time and Attendance Report. The proper code for an excused absence for Time and Attendance purposes is "LV."