



U.S. Office of Personnel Management

October 29, 2001

Frequently Asked Questions on Military Leave

Also see: [Military Leave Fact Sheet](#)

Q1: Is a Federal employee who is called to active duty as a member of the National Guard or Reserves entitled to military leave?

A1: Yes. A Federal employee who is a member of the National Guard or Reserves is entitled to 15 days (120 hours) of paid military leave under 5 U.S.C. 6323(a) each fiscal year for active duty, active duty training, or inactive duty training. An employee on military leave under section 6323(a) receives his or her full civilian salary, as well as military pay. This leave accrues at the beginning of each fiscal year, and all Guard or Reserve members, including those on extended active duty, should have been credited with an additional 15 days of paid military leave on October 1, 2001.

An agency now may charge military leave only for hours the employee otherwise would have worked. An employee no longer “loses leave” on weekends and other nonworkdays and will be paid his or her full civilian pay for all 120 hours. (See fact sheet on Military Leave at <http://www.opm.gov/oca/leave/HTML/military.HTM>. This guidance does not apply to employees of the U.S. Postal Service.) Employees also are entitled to use any accrued or accumulated annual leave for periods of active military duty. Employees using annual leave will receive their full civilian pay, as well as compensation for their military service.

Q2: May an employee on active duty or active/inactive duty training choose to use annual leave or military leave intermittently with leave without pay each pay period to maintain sufficient income?

A2: Yes. OPM’s regulations at 5 CFR 353.208 implementing the Uniformed Service Employment and Reemployment Rights Act (USERRA) state that an employee performing service with the uniformed services must be permitted, upon request, to use any accrued annual or military leave during such service. An employee is entitled to use annual leave or military leave intermittently with leave without pay while on active duty or active/inactive duty training.

Q3: When are employees eligible for the additional 22 days of military leave to support civil authorities in the protection of life and property?

A3: Reservists or National Guard members who perform military duty in support of civil authorities in the protection of life and property are eligible for an additional 22 workdays of military leave under 5 U.S.C. 6323(b). An employee is eligible for the additional 22 days of leave only when activated for full-time military duty under sections 331, 332, 333, or 12406 of title 10, or other provision of law, as applicable, or when activated for full-time military service for his or her State. We have conferred with the Office of the Assistant Secretary of Defense for Reserve Affairs and determined that military orders based on 10 U.S.C. 12301(d) or 12302, which cover most of the National Guard members and Reservists called up under Presidential authority, are not entitled to the additional 22 days. Each agency must determine on a case-by-case basis whether an employee is being activated in support of civil

authorities. Agencies may ask for military orders or any other evidence (such as a statement by the appropriate military command) to make this determination.

Q4: I have an employee who is a military policeman in the Reserves. He is being activated to perform base security at Andrews AFB. Is he entitled to the additional 22 days of military leave?

A4: No. Although the employee is being activated to protect life and property (in this case Andrews AFB), he is supporting military activity on an Air Force base and will not be working in support of civil authorities.

Q5: I have an employee who is a member of the National Guard. His unit has been activated, at the request of the Governor of his State, to provide additional security at local airports. Is he entitled to the additional 22 days of military leave?

A5: Yes. The President has authorized the Governors of several States and territories to use National Guard forces to provide supplemental security personnel for airport operations. Guard members ordered to such duty under 32 U.S.C. 502(f) are clearly assisting civil authorities in the protection of life and property. Therefore, in addition to military leave available under 5 U.S.C. 6323(a) for active duty and active and inactive duty training, a member of the National Guard also may be authorized military leave under 5 U.S.C. 6323(b) for assisting civil authorities in the protection of life and property.

Q6: Are employees entitled to both their military and civilian pay during periods of military leave to support civil authorities in the protection of life and property (i.e., during the 22 days of military leave available under 5 U.S.C. 6323(b))?

A6: No. An employee is entitled to the greater of his civilian or military pay, not both. Under 5 U.S.C. 5519, the military pay received by an individual who has been activated to support civil authorities in the protection of life and property must be credited (less any travel, transportation, or other per diem allowances) against any Federal civilian pay the employee received during the 22 workdays of military leave. An agency may calculate the amount of military pay (less any travel, transportation, or per diem allowances) an employee will receive for the time period that corresponds to the 22 workdays of military leave and reduce the employee's civilian pay by that amount during the 22 workdays of military leave. In contrast, many agencies choose to continue to pay the employee his or her full civilian pay during the 22 workdays of military leave. At the end of the 22-day period of military leave, the agency requires the employee to refund to the agency an amount equal to the amount of military pay received (less any travel, transportation, or per diem allowances) up to the amount of his or her civilian pay for the time period that corresponds to the 22 workdays of military leave.

Q7. May a Federal civilian employee who has been called to active duty continue to work as a civilian at his or her Federal agency?

A7. No. The Comptroller General has ruled that an individual on active duty military service may not be employed in a civilian capacity with the Government. The Comptroller General has held that the rendition of services to the Government in a civilian capacity by a member of the armed services on active duty is incompatible with the member's actual or potential military duties and payment for such services is not authorized in the absence of specific statutory authority. This is the case even though the civilian services are rendered during the military member's hours of relaxation or time provided to attend to personal affairs. (See 64 Comp. Gen. 395, 399-400 (1985), and 47 Comp. Gen. 505-506 (1968).)

Q8. Is a member of the National Guard of the District of Columbia eligible for additional military leave under 5 U.S.C. 6323(c)?

A8. Yes. However, military leave under 5 U.S.C. 6323(c) may be used only for limited purposes. A Federal civilian employee who is also a member of the DC National Guard is entitled to additional military leave as provided in 5 U.S.C. 6323(c) to participate in a “parade or encampment.” The law provides that this type of duty must be authorized under title 39 of the District of Columbia Code. Generally, this category of military leave is limited to drills and training under the authority of the Commanding General of the DC National Guard and is not appropriate for extended active duty in connection with the current national emergency.

Q9. What kinds of personnel actions should an agency process when an employee is using annual leave, military leave, and/or leave without pay to perform duties with the uniformed services?

A9. Agencies do not need to process any personnel actions (SF 50s) for periods of annual leave or military leave, since the payroll system documents an employee’s use of paid leave. Agencies should document an employee’s use of leave without pay (LWOP) to perform duty with the uniformed services by processing a personnel action (SF 50) using nature of action “LWOP-US” (nature of action code 473). The effective date is the first day the employee begins to use leave without pay for duty with the uniformed services.

Employees may use annual leave or military leave intermittently with leave without pay while performing duty with the uniformed services. OPM does not require that agencies process return-to-duty actions for each period of paid leave. Periods of “LWOP-US” may be interrupted by periods of annual leave or military leave without the need to process any additional personnel actions.

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