

Information Guide

On

Employment Rights

Benefits and Entitlements

For Federal Civilian Employees

Who Perform Active Military Duty

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Purpose

On October 13, 1994, the Uniformed Services Employment and Reemployment Rights Act (USERRA) was passed. USERRA expanded the rights of employees entering uniformed services, therefore, giving employees options related to their employment and benefits. Federal civilian employees who are members of the Uniformed Services and who are called to active duty (or volunteer for active duty) are entitled to certain rights as well as continued benefits and entitlements.

This guide provides information for employees and managers about those rights and benefits and employee responsibilities to initiate certain actions and make elections when options are available.

Employee should address questions regarding their rights to their manager. Questions regarding benefits and entitlements should be referred to a counselor at the Army Benefits Center – Civilian (ABC-C) at the following numbers:

CONUS	1-877-ARMY-CTR (276-9287)
Belgium	0800-78245
Germany	0800-1010282
Italy	800-780821
Japan	00531-1-20378
Korea	00798-14-800-4766
Netherlands	0800-0232739
United Kingdom	08-000857723
Saudi Arabia	1-877-276-9287

Counselors are available from 6 a.m. to 6 p.m. Central Standard Time to assist employees and managers.

Information regarding employee benefits and entitlements is also available on the ABC-C Web Site at <https://www.abc.army.mil>.

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 short-term counseling and referral services to help with financial, emotional and dependent care problems. These services are available to employees who have been called to active military duty (or who volunteer for such duty) and to employees who are family members of those who are performing active military duty. In addition, many EAPs offer services to family members of employees.

Pay. 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 military leave or annual leave as described in paragraphs 3 and 4, below. As usual, agencies should continue the payment of availability pay for criminal investigators and annual premium pay for administratively uncontrollable overtime (AUO) work, or regularly scheduled standby duty, on days of military leave or annual leave.

Military Leave. Employees who perform active military duty may request paid military leave, as specified in 5 U.S.C 6323(a). Under the law, an eligible full-time employee accrues 15 days (120 hours) of military leave each fiscal year. In addition, an employee may carry over up to 15 days (120 hours) of unused military leave from one fiscal year to the next. When the 15 days of military leave that are carried over are combined with the 15 days of military leave accrued at the beginning of the new fiscal year, this produces a maximum military leave benefit of 30 days in a fiscal year. However, since an employee cannot carry over more than 15 calendar days to the next fiscal year, any unused military leave in excess of 15 days will be forfeited at the beginning of the next fiscal year. Part-time career employees accrue military leave on a prorated basis. Employees who elect to use military leave will receive full compensation from their civilian position for each hour charged to military leave, in addition to their military pay for the same period. Agencies are reminded that 5 U.S.C. 6323 was amended in 2001 to require charges for military leave to be made on an hour for hour basis for all hours the employee would have worked. Additional information on charging military leave can be found in Office of Personnel Management's (OPM) memorandum of January 25, 2001, at OPM's website at www.opm.gov/oca/compmemo/2001/cpm2001-2.html. Employees who perform active military duty may be granted an additional 22 days of military leave under 5 U.S.C. 6323 (b) if such leave is granted for the purpose of providing military aid to assist domestic civilian authorities to enforce the law or protect life and property.

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. In addition, request for advanced annual leave may be granted at the agency's discretion. 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.

Leave Without Pay (LWOP). The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) generally requires an agency to place an employee entering the military on LWOP unless the employee chooses to be placed on military leave or annual leave,

as appropriate, or the employee requests to be separated. Full-time employees do not earn annual or sick leave in a pay period in which they have accumulated 80 hours of LWOP. In addition, part-time employees on LWOP also earn less annual and sick leave, since they earn leave based on the number of hours in a pay status.

Lump-Sum Leave Payments. 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 payment for all accrued and accumulated annual leave. However, an agency must make a lump-sum payment for any restored annual leave under 5 U.S.C. 6304(d). There is no requirement to separate from a civilian position in order to receive a lump-sum leave payment under 5 U.S.C. 5552.

Return to Active Federal Service – Affect on Lump-Sum Leave Payments. When an employee who has been on military duty returns to active Federal service prior to the end of the period covered by the lump-sum payment, the employee must refund an amount equal to the pay that covers the period between the date of reemployment and the expiration of the lump-sum leave period. Agencies may not recredit any restored annual leave to the employee's leave account. Further guidance on the repayment of a lump-sum payment for annual leave can be found at <http://www.opm.gov/oca/leave/html/lumpsum.pdf>.

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:

- (a) 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.
- (b) Employee who served more than 30 days, but less than 181 days, must apply for reemployment within 14 days of release by the military.
- (c) 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 had never left for purposes of rights and benefits based upon length of service. This means that 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.

Appeal Rights. An employee or former employee of an agency in the executive branch 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. If resolution is not possible, the Department 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.

Retirement. An employee who is placed on LWOP while performing active military duty and covered under CSRS (Civil Service Retirement System) or FERS (Federal Employees Retirement System) continues to be covered by the retirement law. If an employee separates to perform active military duty, he or she would generally receive retirement credit for the period of separation when the employee exercises restoration rights to his or her civilian position, (For information regarding restoration requirements, see paragraph 7(c). If the separated employee does not exercise his or her restoration rights, but later re-enters Federal civilian service, the military service may be credited under the retirement system, subject to the rules governing credit for military service.

Deposit to retirement system. 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. To avoid interest payments, it is generally in the employee's best interest to inquire about making a deposit to CSRS or FERS immediately upon return to duty in the civilian position. If the military deposit is paid before the interest accrual date (within 3 years of returning to a position covered by CSRS or FERS) no interest is charged on the military deposit. The deposit would equal the lesser of 1) 7% for CSRS or 3% for FERS of the military basic pay OR 2) 7% for CSRS or .8% for FERS of the civilian pay. The Army Benefits Center – Civilian (ABC-C) web site <https://www.abc.army.mil> provides details about service credit payments and retirement system rules for military service in the Retirement section under Information.

Disability benefits. If the employee becomes disabled for his or her civilian position during the LWOP or separation 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.

Death benefits. Death benefits under the civilian retirement systems will continue to apply for periods of LWOP.

Thrift Savings Plan (TSP). No contributions can be made to the TSP while on LWOP or if separated from the civilian position. However, if the employee is restored to his/her civilian position, retroactive contributions and TSP elections may be made to cover that period of service. Employees interested in making retroactive contributions must contact their servicing Customer Service Representative (CSR) to set up a payment plan (the employee's timekeeper will be able to provide contact information for the CSR). Employees should be aware that the amount of money they can contribute retroactively to their civilian accounts will be offset by any contributions made to their uniformed services TSP account while on active duty. 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 or her civilian position.

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 (\$12,000 in Calendar Year 2003). 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 (see TSP Bulletin 02-7, “TSP Participation of Individuals Who Return to Civilian Service or Pay Status Following Military Service” at www.tsp.gov, Civilian option then “Info for Agency Reps”).

Employees can go to the Uniformed Services section on the ABC-C web site <https://www.abc.army.mil> to obtain more detailed information about TSP as it pertains to employees on LWOP-US.

Federal Employees Group Life Insurance (FEGLI). Employees who separate or are placed on LWOP to perform active duty service continue to be covered by the Federal Employees Group Life Insurance (FEGLI) for up to 12 months at no cost to the employee. At the end of the 12 months in a non-pay status, the coverage terminates. Employees get a free 31-day extension of coverage and have the right to convert to a non-group policy.

If a Federal civilian employee with FEGLI is called-up to active military duty and is killed, death benefits are payable to the employee’s beneficiaries. Accidental death and dismemberment benefits are also payable under Basic insurance (and Option A, if the employee had that coverage) unless the employee was in actual combat at the time. Accidental death benefits are in addition to regular death benefits. Even if accidental death benefits are not payable, regular death benefits are payable. The Office of Federal Employees Group Life Insurance determines all payments and individually reviews any claim that may be questionable.

Return to active Federal service. When an employee who has been on military duty returns to active Federal service, he or she gets back whatever types of life insurance he or she had before going into non-pay status (as long as the position is not excluded from coverage).

Federal Employees Health Benefits Program (FEHB). Employees who are covered by the Federal Employees Health Benefits Program (FEHB) and are either separated or placed in a LWOP status to perform military service may continue to be covered by FEHB for up to 18 months (if placed on active duty for more than 30 days), unless the employee elects in writing to have the enrollment terminated. If the employee chooses to continue the FEHB, and the employee has been called to active duty under Title 10 in support of a contingency operation, the agency will pay the employee share of the premium. 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 6 months of continued coverage. During the first 12 months, employees may pay currently (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 cost for the final 6 months must be paid currently.

Uniformed Service for 30 Days or Less. When an employee enters one of the uniformed services for 30 days or less, the FEHB enrollment will continue without change. Withholdings for the employee's share of the premium and government contributions will also continue, as long as the employee remains in a pay status or until the military orders are changed to a period of duty for more than 30 days.

Uniformed Service for More than 30 Days. Employees must be placed on active duty or active duty for training in one of the uniformed services for more than 30 days, for the FEHB enrollment to be continued for up to 18 months, unless the employee elects to terminate his or her FEHB enrollment as of the day before entering active duty. If the employee terminates FEHB enrollment, the servicing Civilian Personnel Operations Center (CPOC) will promptly process a Notice of Change in Health Benefits Enrollment (SF 2810) to notify the health benefits carrier of the termination. Employees who terminate their FEHB coverage due to LWOP-US or Separation-US are immediately eligible for FEHB coverage upon their return or restoration to duty. Employees must access the ABC-C via the Employee Benefits Information System (EBIS) at <https://www.abc.army.mil> and select "Benefit Change", Health, Personal Transactions and "New Permanent Employee" option to reenroll in FEHB. Employees may also reenroll in FEHB via the telephone at 1-877-276-9287 in CONUS (see OCONUS numbers on page 3) and use the Interactive Voice Response System (IVRS). Employees should follow the prompts to input their Personal Identification Number (PIN) and first select "Federal Employees Health Benefits (Option 1). Once in the FEHB module, select Option 3, "To elect New Employee coverage" Employees may also transfer to a Benefits Counselor by pressing "0".

This election must take place within 60 days of the return or restoration to the Federal civilian position.

If the employee continues FEHB enrollment during military service, but is not called to active duty in support of a contingency operation under Title 10, the employee is responsible for the employee share of the premiums for the first 12 months, just like any other employee in leave without pay status. During the last 6 months of the 18-month period, the employee must pay both the employee and the government shares of the premium, plus an additional 2 percent of the total premium, on a current basis.

Termination of FEHB Coverage. At the end of the 18 months, FEHB coverage terminates. Typically, FEHB coverage must terminate following 12 months in a LWOP status. Because USERRA limits FEHB coverage to 18 months the full premium payment (for those who meet eligibility) cannot exceed 18 months. Employees get a free 31 day extension of coverage during which they can convert to a non-group policy. (These employees are not eligible for Temporary Continuation of Coverage- TCC). Termination is not considered a break in coverage for purposes of meeting the 5-year/first opportunity requirement to continue FEHB into retirement.

Active duty service members and their families are entitled to medical care under the military health care systems. Employees serving on active duty and their families will not be without health coverage following a termination of FEHB at the end of the 18 month maximum period of continued coverage.

FEHB eligibility will automatically be reinstated upon return to duty in the civilian position or upon restoration to a civilian position under the provisions of USERRA. Employees whose FEHB coverage was terminated following the 18-month eligibility period and want to obtain FEHB coverage must access the ABC-C via the Employee Benefits Information System (EBIS)

at <https://www.abc.army.mil> and select “Benefit Change”, Health, Personal Transactions and “New Permanent Employee” option to reenroll in FEHB. Employees may also reenroll in FEHB via the telephone at 1-877-276-9287 in CONUS (see OCONUS numbers on page 3) and use the Interactive Voice Response System (IVRS). Employees should follow the prompts to input their Personal Identification Number (PIN) and first select “Federal Employees Health Benefits (Option 1). Once in the FEHB module, select Option 3, “To elect New Employee coverage” Employees may also transfer to a Benefits Counselor by pressing “0”.

This election must take place within 60 days of the return or restoration to the Federal civilian position.

18-month eligibility period effective dates and procedures.

- (a) The 18-month period of eligibility for continued FEHB coverage begins on the day the employee is placed on LWOP or separated to perform active duty, (the 18-month period of eligibility for continued FEHB coverage does not begin on the day the military orders are issued, unless the LWOP effective date and the issue date of the orders are the same).
- (b) Employees who choose to remain in a paid leave status cannot begin the 18-month period of eligibility for continued FEHB coverage until the first day of non-pay status (separation or LWOP).
- (c) The 18-month period of eligibility is not extended by use of paid leave intermittently with LWOP.
- (d) There is no provision in the law to allow the 18-month period of eligibility for continued FEHB coverage to be extended.
- (e) A new 18-month period of eligibility may only begin when new orders (not an extension or amendment of orders) are issued AND you have returned to duty or have been restored to duty. There is no requirement that you return to a pay and duty status for 4 consecutive months under civilian employment before a new 18-month period of service begins.
- (f) Full agency premium payment will begin the first pay period during which an employee is LWOP-US or separation-US for the full pay period. However, the first day of the 18-month period of eligibility will begin on the first day of the LWOP or separation, whether or not the employee is paying their share of the FEHB premium for the pay period in which the LWOP or separation begins.

Pay Periods when the full agency premium cannot be paid. Full agency premium payment will not be made for any pay period in which the employee chooses to use paid leave. The employee is not considered to be in a non-pay status for that pay period and therefore the full agency premium payment would not be allowable during. The full agency premium payment will revert during the next pay period in which the employee is in a non-pay status for the entire pay period. If an eligible employee dies while on active duty the agency full premium payment will be paid through the date of death.

Eligibility requirements for the full agency premium payment. To be eligible for payment of the employee's share of the FEHB premium, the employee must meet all of the following requirements:

- (a) Be enrolled in FEHB and elect to continue that enrollment.
- (b) Be a member of a Reserve component of the armed forces. The Reserve components are: The Army National Guard of the United States, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air National Guard of the United States, the Air Force Reserve, and the Coast Guard Reserve.
- (c) Be 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, United States Code.
- (d) Be placed on leave without pay or separated from service to perform active duty.
- (e) Serve on active duty for a period of more than 30 consecutive days. (Section 519, 2002 National Defense Authorization Act)
- (f) The statutory authority listed on the orders must be section 12301(a), 12302, or 12304 of title 10, United States Code.
- (g) The orders must state that the duty is in support of one of the contingencies/operations specifically identified below and the statutory authority is a provision of title 10, United States Code

Members of the Army National Guard or Air National Guard ordered to duty under title 32, United States Code, or any provision of state, territorial, or District of Columbia code are not eligible.

Designated Contingency Operations. The current contingencies and operations that are included in each are provided below. Due to mission changes, this list may not be comprehensive over time.

<i>Contingency</i>	<i>Authority</i>	<i>Effective date</i>	<i>Status</i>
Bosnia <ul style="list-style-type: none"> • Operation Joint Endeavor • Operation Joint Guard • Operation Joint Forge 	Executive Order 12982	December 8, 1995	Ongoing
<i>Iraqi Crisis</i> <ul style="list-style-type: none"> • Operation Southern Watch • Operation Northern Watch 	<i>Executive Order 13076</i>	<i>February 24, 1998</i>	<i>Ongoing</i>
<i>Kosovo</i> <ul style="list-style-type: none"> • Operation Allied Force 	<i>Executive Order 13120</i>	<i>April 27, 1999</i>	<i>Ongoing</i>
<i>9/11 Terrorist Attacks</i> <ul style="list-style-type: none"> • Operation Enduring Freedom • Operation Noble Eagle 	<i>Executive Order 13223</i>	<i>September 14, 2001</i>	<i>Ongoing</i>

Employee Responsibilities. Employees entering LWOP-US or Separation-US must complete and sign a copy of the document ELECTION/ACKNOWLEDGEMENT FOR EMPLOYEES

ENTERING EXTENDED MILITARY ACTIVE DUTY available on the ABC-C web site <https://www.abc.army.mil> and mail the document to the servicing CPOC. Employees must also provide proof of qualifying service for eligibility by including a complete copy of their military orders that specify he or she has been called to active duty under Title 10 U.S.C. in support of a contingency operation.

It is important to understand that the employee portion of the FEHB premium cannot be paid by the agency until both the employee election form and a copy of the military orders are received. Full payment of the FEHB premium for eligible employees cannot continue beyond the Return to Duty date.

Upon return from active duty, employees are responsible for notifying their manager/supervisor to initiate a Notification of Personnel Action (NPA), Return to Duty. Employees whose FEHB was terminated and desire to reenroll must access the ABC-C via the Employee Benefits Information System (EBIS) at <https://www.abc.army.mil> and select “Benefit Change”, Health, Personal Transactions and “New Permanent Employee” option to reenroll in FEHB. Employees may also reenroll in FEHB via the telephone at 1-877-276-9287 in CONUS (see OCONUS numbers on page 3) and use the Interactive Voice Response System (IVRS). Employees should follow the prompts to input their Personal Identification Number (PIN) and first select “Federal Employees Health Benefits (Option 1). Once in the FEHB module, select Option 3, “To elect New Employee coverage” Employees may also transfer to a Benefits Counselor by pressing “0”.

This election must take place within 60 days of the return or restoration to the Federal civilian position.

Retirement from civilian position during active duty. Employees who retire on an immediate annuity from their Federal civilian position while on active duty and meet the eligibility requirements to continue FEHB in retirement, may request reinstatement of the FEHB enrollment but must do so within 60 days after retirement. The OPM will automatically reinstate the FEHB enrollment on the day of separation from the uniformed services if the annuitant fails to request reinstatement.

Department of Defense Policy and Procedures Documents: Authorization and implementing guidance for FEHB full agency premium payment may be found on http://www.cpol.army.mil/library/dod/dod_051702.html.