

# TSA Handbook 1100.30-17

## Uniformed Services Employment and Reemployment

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### Approval



### *Signed*

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***NOTE:*** *This Handbook and all related Appendices and/or Attachments contain stipulations to implement the provisions of TSA MD 1100.30-17, Uniformed Services Employment and Reemployment. Until such time as TSA MD 1100.30-17 is rescinded, the Management Directive, Handbook, Appendices, and any Attachments are considered TSA policy and must be applied accordingly.*

### **Summary of Changes**

Section A. Revised definition of ‘management official(s),’ ‘service in the armed services,’ and ‘uniformed services.’ Added definitions for ‘State’ and ‘State active duty.’

Section B.(5)(f)(v). Removed statement that if the period of unauthorized absence would result in an employee’s removal under other circumstances, then the untimely application for reemployment would result in the employee forfeiting their entitlement to TSA restoration/reemployment.

Section C. Mentions of ‘retirement law’ amended to say ‘Civil Service Retirement System’ (CSRS) or ‘Federal Employees Retirement System’ (FERS) for clarity.

Section C.(1). Revised to clarify that leave is one of the types of civilian employment status that may be elected.

Section D.(7)(a). Added reference to the Civil Service Retirement Act and Federal Employees’ Retirement System Act of 1986.

Section F. Request for Personnel Action (RPA) Processing Guidance for HR Specialists, revised to reflect that TSA Form 1169 is optional.

Administrative changes throughout. Revisions made to use third person and gender neutral language throughout document.

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**A. Definitions:**

- (1) Management Official(s): Any TSA employee who is a higher-level official in the employee's chain of supervision such as a supervisor or manager (e.g., Executive Assistant Administrator, Deputy Executive Assistant Administrator, Assistant Administrator or equivalent position, Deputy Assistant Administrator or equivalent position, Federal Security Director, Executive Director, Supervisory Air Marshal in Charge).
  
- (2) Position of Record: The TSA position, as documented on the employee's most recent Standard Form (SF) 50, *Notification of Personnel Action*, and current Job Analysis Tool or Standard Job Description (i.e., job/position description), to which the employee was officially assigned at the time of their entry into uniformed service. The position of record is defined by the title, pay band, occupational category, occupational (job) series, work schedule type, and any other condition(s) that determine coverage under the TSA Core Compensation system. A position to which or in which an employee is temporarily detailed, acting, or temporarily promoted is *not* considered the position of record for that employee.
  
- (3) Reemployment or Restoration: Restoring an employee to TSA's employment rolls (if they are no longer on TSA employment rolls), or returning them to pay and duty status (if they are still on the rolls) after service in the uniformed services. For the purposes of TSA MD 1100.30-17 and this handbook, restoration and reemployment have the same meaning.
  
- (4) Service in the Uniformed Services: Performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority. Service in the uniformed services includes active duty, active and inactive duty for training, full-time National Guard, State active duty for a period of 14 days or more, State active duty in response to a national emergency declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170), a period for which a person is absent from a position of employment for an examination to determine the fitness of the person to perform any such duty, a period for which a System member of the National Urban Search and Rescue Response System is absent from a position of employment due to an appointment into Federal service under section 327 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The term also includes a period for which a person is absent from employment to perform funeral honors duty as authorized by law (10 U.S.C. §12503 or 32 U.S.C. §115). The Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Public Law 107-188 Section 2811, provides that service as an intermittent disaster-response appointee upon activation of the National Disaster Medical System (NDMS) or as a participant in an authorized training program is deemed "service in the uniformed services."

- (5) State: Each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and other territories of the United States (including the agencies and political subdivisions thereof).
- (6) State active duty: Training or other duty, other than inactive duty, performed by a member of the National Guard of a State not under section 502 of Title 32 or under Title 10; in service to the Governor of a State; and for which the member is not entitled to pay from the Federal Government.
- (7) TSA Employee: For the purposes of TSA MD 1100.30-17 and this handbook, all persons appointed to a position with TSA.
- (8) Uniformed Services: The Armed Forces; the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty; the commissioned corps of the Public Health Service; the commissioned corps of the National Oceanic and Atmospheric Administration, Systems members of the National Urban Search and Rescue Response System during a period of appointment into Federal Service under section 327 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act and any other category of persons designated by the President in time of war or national emergency. For purposes of USERRA coverage only, service as an intermittent disaster response appointee of the NDMS when federally activated or attending authorized training in support of their Federal mission is deemed “service in the uniformed services,” although such appointee is not a member of the “uniformed services” as defined by USERRA.

## **B. Basic Procedures:**

- (1) Notice of Departure for Uniformed Service: In order to be entitled to reemployment as outlined in this section, TSA employees must provide advance written or verbal notice to a management official of their planned departure for uniformed service, unless giving such notice is precluded by military necessity or is otherwise impossible or unreasonable. This notice should be provided in writing if possible in order to establish reemployment rights upon the service member’s return from duty. TSA recommends that advance notice be provided at least 30 days prior to departure for uniformed service when feasible to do so, or as early as practicable. TSA employees departing for uniformed service should provide current contact information (to include a mailing address, telephone number and email address if available) to their office, and update this information if/when it changes.
- (2) Pre-Deployment Absence: A departing employee must be given sufficient nonduty time (to be documented and recorded in the payroll system as Absent-US, unless the employee requests and is approved to use another appropriate type of paid leave) so that they can travel safely to the military duty location and arrive fit to perform military service as required. A departing employee may also request a reasonable period of

unpaid absence before their military duty begins to attend to any personal affairs necessitated by the upcoming military service (also to be documented and recorded in the payroll system as Absent-US, unless the employee requests and is approved to use another appropriate type of paid leave). Personal affairs may include, but are not limited to, activities such as making alternative childcare arrangements, and/or to making or updating financial or legal arrangements related to the call to active duty. The amount of time considered reasonable will depend on the anticipated length and type of military deployment. For example, up to two weeks of nonduty time would be considered reasonable for an employee who is being deployed overseas for a period of several years.

- (3) Leave and other benefits: Management officials and employees will follow the provisions of [TSA MD 1100.63-1, \*Absence and Leave\*](#), and the associated [Handbooks](#), in determining the appropriate form(s) of paid and unpaid absence and/or leave (including use of paid military leave) available to those performing uniformed service. There are specific advance documentation requirements that must be met to use paid military leave. Employees should complete [TSA Form 1169, \*Checklist for Employees Entering Active Duty Military Service\*](#). Completion of this form will ensure the employee's benefits are properly tracked and maintained. Sections C, D and F of this handbook provide specific guidance on processing the required actions when an employee enters active duty, as well as, providing information on the effects of health and life insurance, retirement, Thrift Saving Plan, and other benefits.
- (4) Effect of absence on trial period, initial certification, performance appraisal, and recertification: The effect of periods of absence for uniformed service is addressed in [TSA MD 1100.31-1, \*Trial Periods\*](#), [TSA MD 1100.90-1, \*TSO Training Requirements for Retention\*](#), and [TSA MD 1100.43-3, \*Employee Performance Management Program\*](#).
- (5) Reemployment:
  - (a) General Provision: In most cases, a TSA employee whose reemployment request meets the requirements of section B.(1) and sections B.(5) (d - f) of this handbook will be reemployed upon return from uniformed service:
    - i. As soon as practicable (normally within two weeks of the employee's application for reemployment);
    - ii. By the TSA organization to which they were assigned before the absence, if possible;
    - iii. For the remaining (unexpired) portion only, if any, of their original temporary or time-limited appointment, if applicable (the time limit on the original temporary appointment will still apply; it is not affected/extended by the employee's military absence);
    - iv. In the position in which TSA can establish, with reasonable certainty, that

they would have attained, if not for the absence, subject to the provisions of section B.(5) (c), and (i – k); and

- v. With the pay, benefits, seniority, and other job-related privileges that they would have attained, if not for the absence due to uniformed service.
- (b) Pay: The employee’s salary upon return to duty will be adjusted to reflect any locality adjustments or other pay adjustments that other similarly situated employees received during the same period. The effective date of such pay increases and any applicable position-related pay changes will be the date the event would have occurred if not for the absence, rather than the date that the employee returns to TSA. This ensures that the employee maintains any seniority-related benefits or advantages. In addition, an employee absent for military duty is entitled to receive any lump sum awards they would have otherwise received if not for the absence.
- (c) Determining Position Attained: Where it can be determined with reasonable certainty that the employee would have attained a different position than the position of record (e.g., a position at either a higher or lower pay band, at a different location, or of a different work schedule type), then the employee will be reemployed in that position. The following factors will be taken into account in making this determination:
- i. Positions in TSA do not have guaranteed within band increases, promotion potential, career opportunity, or "career ladders." TSA would be obligated to promote an employee to a position at a higher pay band upon reemployment after uniformed service within the same job series and category only if it can be reasonably determined that they would have been promoted if not for their absence from TSA. Even where an employee might be eligible for noncompetitive promotion under [TSA MD 1100.30-4, \*Permanent Internal Assignments\*](#), there is no reasonable expectation of noncompetitive promotion from one position to a position at a higher pay band. In general, management officials are responsible for determining when an employee meets the performance requirements for promotion and for deciding whether there is sufficient continuing work at the higher pay band level to support the promotion. In no case is promotion in TSA presumed to “automatically” follow completion of any specific minimum or maximum service or waiting period and/or obtaining required minimum qualifications.
  - ii. The answers to these questions should also be considered:
    - Did other employees who demonstrated satisfactory performance in the same or similar positions receive within band increases or noncompetitive promotions after gaining similar amounts of additional experience?

- Was there sufficient work available at the higher pay band level such that a position at the higher pay band level would have been established and promotion would have been approved?
  - Did others similarly situated to the employee in fact receive noncompetitive promotions during the employee's absence?
- iii. If a promotion would require competitive procedures (see [TSA MD 1100.30-4, \*Permanent Internal Assignments\*](#)) there is no reasonable expectation of promotion. Employees absent for uniformed service must apply for such competitive announcements during their absence and/or upon return and meet all application requirements and deadlines for consideration, just as other employees would be required to do. If a TSA employee absent for military duty applies for a position during their absence, they must be considered in the same way as all other employees. Absent employees with internet access are encouraged to check the TSA web site and the Office of Personnel Management's USAJOBS postings regularly and register for automatic alerts so they may be notified when TSA job announcements of potential interest are posted.

**NOTE:** Employees preparing to report for uniformed service may also want to arrange for another person to submit applications on the employee's behalf for announcements posted during their absence; however, if the employee makes such an arrangement, and the designated person fails to submit an application on behalf of the absent employee, this will not create a basis for any presumption of promotion upon reemployment.

- iv. If a position is, or has typically been, filled through the application of competitive procedures at management's discretion, even if competition is not required by TSA MD 1100.30-4, there is no reasonable expectation of promotion upon reemployment.
- v. The fact that an employee was acting in, or detailed or temporarily promoted to, a specific position does not establish a reasonable expectation of promotion.
- vi. Part-time employees are not automatically entitled to vacant full-time positions, nor is any employee guaranteed the opportunity for conversion to a vacant full-time position upon reemployment.
- vii. When interviews are being used as an evaluation tool in filling a position, reasonable efforts should be made to facilitate interviews of TSA employees who are unavailable to be interviewed in person because they are serving on military duty. Selecting officials should consider



alternatives such as using other interview locations, or telephone or video conferencing capabilities.

- viii. If a workforce reduction, airport privatization, closure, or other restructuring has occurred in the employee's absence, the employee will be treated for reemployment purposes, to the extent possible, similar to those who were present during the restructuring. For example, if all employees in similar positions were offered an opportunity to transfer to another TSA location with available vacancies, then the returning employee will be given the opportunity to elect a transfer to another TSA location; however, available locations may differ from those offered during the initial restructuring. In the same way, if all employees at a given location were involuntarily converted to part-time positions due to staffing reductions, the returning employee would also be subject to potential involuntary conversion to a part-time position upon their return. Employees absent or recently reemployed under the provisions of this policy may be eligible for greater protection from involuntary separation due to workforce reduction. See [HCM 351-2, \*Transportation Security Officer \(TSO\) Involuntary Workforce Reduction Procedures\*](#), and [HCM 351-4, \*Procedures for Workforce Adjustment \(PWA\) for Non-Transportation Security Executive Service \(TSES\), Non-Transportation Security Officer \(TSO\) Positions\*](#), for more information.

(d) Service Limits: Reemployment provisions apply only if the employee's cumulative service in the uniformed services while employed by TSA does not exceed five years. Certain types of service in the uniformed services, however, do not count towards this five-year limit, and are listed at 38 U.S.C. § 4312(c). In addition, TSA will refer to 20 CFR §§ 1002.100 and 1002.103 for guidance on these exceptions to the five-year limit.

(e) Character of Service: Reemployment provisions do not apply to service members receiving a discharge from military service that is other than honorable. TSA will refer to 20 CFR § 1002.135 for guidance regarding the types of uniformed service discharge that may disqualify an employee for reemployment.

(f) Time Limits for Reemployment Requests:

- i. Period of uniformed service less than 31 days or for a period of any length for the purpose of a fitness examination: The employee must contact their supervisor or other designated management official and be prepared to report to work not later than the beginning of the first full regularly-scheduled work period on the first full calendar day following:
- The completion of the period of service; and
  - The expiration of eight hours after a period allowing for safe

transportation from the place of that service to the employee's residence.

**Example:** Jane completes a period of military service and travels home, arriving at ten o'clock on Thursday evening. Her normal shift is Tuesday through Saturday from 4 a.m. until noon. Jane cannot be required to report to work until Saturday at 4 a.m. Her regular shift on Friday would be documented in the payroll system as Absent-US (nonpay, nonduty time) unless Jane requested and was approved to use another appropriate form of paid leave, such as annual leave.

- In order to ensure employees have the opportunity to rest and recuperate sufficiently from military duty, TSA will not allow employees to return to work for partial shifts, or require employees to report to work for shifts beginning any earlier than as outlined in section B.(5)(f)(i).
  - If it is impossible or unreasonable for the employee to report within such time period through no fault of their own, they must report as soon as possible after the completion of the military service, travel, and eight-hour rest period.
- ii. Period of uniformed service more than 30 days but less than 181 days:
- The employee must submit an application (written or verbal) for reemployment to their supervisor, or another management official, not later than 14 days after completing service.
  - If it is impossible or unreasonable for the employee to apply within 14 days through no fault of their own, they must submit the application not later than the next full calendar day after it becomes possible to do so.
- iii. Period of uniformed service more than 180 days: The employee must submit an application (written or verbal) for reemployment to their supervisor, or another management official, not later than 90 days after completing service.
- iv. There are some circumstances that may extend the time periods above. TSA has adopted exceptions similar to those found in 20 CFR §§ 1002.116-117.
- v. If an employee's application for reemployment is untimely, i.e., fails to meet the time limits specified in section B.(5)(f), then the period of time by which the application is untimely will be treated as a period of unauthorized absence (absence without leave, or AWOL). The appropriate management official will address the unauthorized absence in a manner consistent with how they address unauthorized non-uniformed service-related absences of similar length by other employees.

- (g) **Loss of Reemployment Entitlement:** A TSA employee who fails to meet the requirements and exceptions specified in sections B.(1) (Notice of Departure for Uniformed Service), B.(5)(d) (Service Limits), B.(5)(e) (Character of Service) and B.(5)(f) (Time Limits for Reemployment Requests), is not entitled to restoration/reemployment. Their employment with TSA will be terminated based on their failure to meet reemployment requirements. Refer to section G for more information on procedures. However, they may at any time apply and be considered for future employment with TSA in the same manner as other former TSA employees.
- (h) **Documentation:** For periods of service exceeding 30 days, the employee is responsible for providing proper documentation that establishes the timeliness of their application for reemployment, and length and character of uniformed service. However, if documentation is not immediately available, TSA will restore the employee to duty pending receipt of the documentation, and make corrections as needed when the documentation is received. TSA management officials may contact the employee's military unit commander for verification of the military service period and/or nature of the employee's discharge. TSA will require documentation for military service for absences of less than 30 days if the employee asks to use paid military leave during the period of absence.
- (i) **Position for Reemployment/Restoration:** Assuming that a funded, vacant position can be identified, the appropriate position to be offered a TSA employee whose request for reemployment meets the conditions of sections B.(1) and B.(5) (d - f) of this handbook will be identified based on the criteria in this section. Policies which maintain pay and other benefits, such as [TSA MD 1100.53-8, \*Setting Pay After Appointment\*](#), will apply. If more than one possible position is identified, the employee should be given the opportunity to choose from among the available options if possible.
- i. Period of uniformed service less than 91 calendar days:
- First, the position in which TSA can establish that they would have been employed had they remained continuously employed (see section B.(5)(c), as long as the employee is qualified for the job or can become qualified with reasonable efforts by TSA to qualify them. If the employee is not or cannot become qualified, then;
  - The employee's position of record as long as the employee is qualified for the job or can become qualified with reasonable efforts by TSA to qualify them. If the employee is not or cannot become qualified, then;
  - A position which is the closest available approximation (considering factors such as occupational category, pay band, location and work schedule type) to the position described in section B.(5)(i) i. as long as the

employee is qualified for the job or can become qualified with reasonable efforts by TSA to qualify them. This might mean, for example, a position at the same pay band and work schedule but in a different location, or a position at a lower pay band in the same location. If the employee is not or cannot become qualified, then;

- A position which is the closest available approximation to the position identified under section B.(5)(i) i., as long as the employee is qualified for the job or can become qualified with reasonable efforts by TSA to qualify them.
- If the employee cannot become qualified for a position under section B.(5)(i) i. because of a disability incurred in or aggravated by uniformed service, see section B.(5)(j).
- If no suitable vacant, funded position can be identified which meets the criteria of section B.(5)(i) i., see section B.(5) (k - m).

ii. Period of uniformed service of more than 90 calendar days:

- First, the position in which TSA can establish that they would have been employed had they remained continuously employed (see section B.(5)(c), or an equivalent (same occupational category, series, pay band, work schedule type and location) position, as long as the employee is qualified for the job or can become qualified with reasonable efforts by TSA to qualify them. If the employee is not or cannot become qualified, then;
- The employee's position of record or an equivalent (same occupational category, series, pay band, work schedule type and location) position, as long as the employee is qualified for the job or can become qualified with reasonable efforts by TSA to qualify them.
- If the employee cannot become qualified for a position under section (B.(5)(i) ii., then the employee will be reemployed in a position which provides the closest available approximation (considering factors such as occupational category, pay band, location and work schedule type) to the position identified under section B.(5)(i)(ii) as long as the employee is qualified for the job or can become qualified with reasonable efforts by TSA to qualify them. This might mean, for example, a position at the same pay band and work schedule but in a different location, or a position at a lower pay band in the same location.
- If the employee cannot become qualified for a position under section B.(5)(i) ii., then the employee will be reemployed in a position which

provides the closest approximation to the position identified under section B.(5)(i) ii., as long as the employee is qualified for the job or can become qualified with reasonable efforts by TSA to qualify them.

- If the employee cannot become qualified for a position under section B.(5)(i) ii. because of a disability incurred in or aggravated by uniformed service, see section B.(5)(j).
  - If no suitable vacant, funded position can be identified which meets the criteria of section B.(5)(i) ii., see Section B.(5)(k - m).
- (j) Disability Related to Uniformed Service: If a TSA employee cannot become qualified for any position under section B.(5)(i) due to a permanent disability incurred in or aggravated during uniformed service, TSA will make reasonable efforts to accommodate the disability. If reasonable efforts are unsuccessful, notwithstanding the provisions of [TSA MD 1100.73-4, Reasonable Accommodation Program](#), the employee will be reemployed in another vacant, funded position for which they qualify or can become qualified with reasonable efforts by TSA to qualify them that will provide the nearest approximation consistent with the circumstances in each case. Reasonable efforts will not include: creating a position of a type and/or in a location which would not otherwise exist in TSA; assigning an employee to a position under light duty or limited duty conditions for an indefinite period; waiving established promotion procedures; or waiving or modifying qualification requirements or certification standards that are necessary to perform the essential duties or functions of a position. Placement of individuals in jobs for which they cannot qualify is prohibited.
- (k) Placement Considerations:
- i. When considering the appropriate position to which to return an eligible employee under these procedures, management officials must consider the potential availability and appropriateness of work of various types, at all pay band levels, and in other TSA locations/offices.
  - ii. The fact that another employee was hired to perform the duties of the absent employee does not, in and of itself, make reemployment impossible or unreasonable. Reemployment entitlement may require that the position be vacated by the current incumbent.
  - iii. TSA is not required to reemploy/restore a disabled employee if, after making reasonable efforts to accommodate the disability, such reemployment would impose an undue hardship on the agency. Although TSA will make reasonable efforts to accommodate disabilities where possible, some positions with established physical and medical

qualification requirements cannot be modified/accommodated except on a very limited, temporary basis and consistent with applicable TSA policies and statutory requirements. Temporary adjustment or modification of essential job functions similar to those outlined in [TSA MD 1100.00-9, \*Light Duty Assignments\*](#), may be applied on a temporary basis, either to address a temporary disability, or to maintain employment while permanent placement options are reviewed.

(l) Denial of a Reemployment/Restoration Request:

- i. Management officials who, after considering all available options, believe no placement is possible under the guidelines of this handbook, and/or that a specific reemployment must be denied because it would be impossible, unreasonable, or present an undue hardship to TSA, may recommend that a reemployment request be denied based on the reasoning that:
  - TSA's circumstances have changed so as to make reemployment impossible or unreasonable; or
  - Such reemployment presents an undue hardship (it would be unduly costly, extensive, disruptive, or would fundamentally alter the nature or operation of TSA).
- ii. An assertion that reemployment or restoration would be impossible, unreasonable or present an undue hardship to TSA must be sufficiently justified. Management officials must outline all options considered and explain why these measures did not or could not address the placement requirements.
- iii. Management officials who believe a reemployment request should be denied must develop and submit a justification through the process outlined in section B.(5)(m), which:
  - Explains their reasoning;
  - Includes alternative placement recommendation(s); and
  - Provides supporting documentation (if any).

(m) Process for Review and Approval/Denial of Reemployment/Restoration Requests: The following process applies to any formal or informal request, complaint or unresolved inquiry related to reemployment of TSA employees returning from uniformed service.

i. First Level Review/Action

- Within five business days of the date of receipt of the employee's reemployment request, the management official with delegated hiring authority for the organization must review and make an initial recommendation. The management official may request that the employee provide additional documentation (such as military discharge orders) but only to the extent that this information is necessary to act on the request. If these documents are not readily available, the management official must proceed with the appropriate action in the meantime and make any necessary adjustments later. Management officials are encouraged to review this handbook, the applicable statute and regulations, and to consult with their local HR representative, Field Counsel, HC (via [TSAVets@tsa.dhs.gov](mailto:TSAVets@tsa.dhs.gov) or the ServeU Help Desk mailbox [HC-ServeU@tsa.dhs.gov](mailto:HC-ServeU@tsa.dhs.gov)), and Chief Counsel (CC) if necessary.
- If the management official with hiring authority approves the request, they are responsible for informing the employee of the approval. This approval can be done in person, by telephone, or in writing—whichever is most expeditious. They are also responsible for ensuring that the personnel action, and/or other appropriate action(s) necessary to reemploy the individual, are initiated and completed immediately. If the management official believes TSA cannot comply with the request, or believes it should be denied, they will immediately forward it directly to their immediate supervisor. The forwarded information will include:
  - A statement that the management official has reviewed the request and supporting documentation;
  - Any documented issues related to the employee's reemployment request; and
  - The management official's reason for denying the request.

ii. Second Level Review/Action:

- The official with supervisory responsibility over the management official who conducted the initial review will review a denied request within five business days of receipt to determine if it meets the requirements set forth in this policy. The second level management official is encouraged to consult with HC and CC for guidance, especially if they believe the request should be denied.
- Approved: If the second-level management official approves the employee's application for reemployment, then the second level management official will inform the employee of the approval. This

approval can be done in person, by telephone, or in writing— whichever is most expeditious. The second level management official is responsible for ensuring that the personnel action and/or other appropriate action(s) necessary to reemploy the individual are initiated and completed immediately.

- Denied: If the second level management official believes the application for reemployment should be denied, they will forward the denial determination directly<sup>1</sup> to the AA/HC for final decision.

iii. Third/Final Level Review/Action:

- The AA/HC or their designee will review the request and will make a final decision within five business days unless unusual circumstances exist. If the action is in the form of a complaint or case from either the Department of Labor's Veterans' Employment and Training Service (DOL VETS) or the Office of Special Counsel (OSC), HC will request a legal review of the recommended action from the designated employment attorney in CC before the AA/HC reviews/approves the recommendation.
- Approved: If the request for reemployment is approved, HC staff will instruct the appropriate local HR representative to initiate the appropriate personnel action(s) to reemploy the returning employee.
- Denied: If the request is denied, the AA/HC will notify the employee in writing of the decision and justification.

(6) Unresolved Complaints: Employees may contact DOL VETS for information concerning the USERRA complaint process. Information about the complaint process is available from DOLVETS at <http://www.dol.gov/vets> or by calling: 1-866-4-USA-DOL. Employees may also bypass the DOL VETS process and file an action directly with the Merit Systems Protection Board.

(7) Discharge After Reemployment/Restoration: TSA will refer to 20 CFR § 1002.247-248 for guidance regarding restrictions on the termination of employees reemployed or restored after a period of uniformed service. These restrictions generally protect returning employees from discharge *except for cause* for either 180 days or one year, depending on the length of their period of uniformed service.

(8) Effect of Uniformed Service on Priority Reemployment Programs: A TSA employee separated through involuntary workforce reduction procedures or similar action who

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<sup>1</sup> The requirement for direct forwarding to the AA/HC is intended to expedite processing the request. Although intervening management officials should be informed of the request and the recommendation of the reviewing officials, the process should not be delayed by having each intervening manager formally concur in the second level management official's recommendation.



became eligible for a TSA reemployment priority program (see [TSA MD 1100.30-6, TSO Priority Employment Program](#) and [HCM Policy No.351-4, Procedures for Workforce Adjustment \(PWA\) for Non-Transportation Security Executive Service \(TSES\), Non-Transportation Security Officer \(TSO\) Positions](#)) and entered uniformed service after their TSA separation but before the expiration of their TSA reemployment priority eligibility period, will remain eligible for reemployment priority under the appropriate program/policy for the time period originally established at separation. Uniformed service that begins after the former employee's involuntary (workforce reduction) separation will not extend the time period for reemployment priority.

### **C. Benefits Information for Employees Entering Active Uniformed Service**

This information is being provided to assist employees in completing the [TSA Form 1169](#), and to provide employees with information prior to exiting TSA to perform active duty military service. For information on reemployment provisions, please refer to [TSA MD 1100.30-17](#) and section B of this [Handbook](#).

#### (1) Employment Status

USERRA requires that we place employees in a leave without pay (LWOP) status when they leave to perform service in the Uniformed Services unless they choose to be placed on military leave, annual leave, compensatory time off, or use any time off awards. Employees may also choose to separate from employment. Employees must make a written election of the type of civilian employment status (leave, separation, or LWOP) they will be retained in during their absence. This election is made on TSA Form 1169. There are some significant differences in benefits coverage that employees need to consider before making this important decision.

##### (a) Effect of LWOP:

- i. If employees are in a LWOP status while performing service in the uniformed services, they will still be covered by the appropriate retirement program, i.e., the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS), FERS-Revised Annuity Employee (RAE), or FERS-Further Revised Annuity Employee (FRAE).
- ii. In the event of an employee's death, survivor benefits would be paid as though they were still actively employed in their civilian position.
- iii. If an employee were to become disabled and unable to perform the duties of their civilian position, they may be entitled to disability benefits under CSRS or FERS, provided they had the minimum amount of civilian service to entitle them to disability benefits (five years under CSRS and 18 months under FERS).

- iv. The period an employee is in a LWOP status will be creditable under either CSRS or FERS, subject to the rules for crediting military service. If an employee meets all the eligibility requirements for retirement, they may retire without returning to their civilian position. However, if they are entering on active duty under Title 32 U.S.C., their service is not creditable military service unless and until they exercise their reemployment rights and return to their civilian position. If their active duty is under the authority of Title 32 U.S.C. and they retire under CSRS or FERS without returning to their civilian position, they do not receive military service credit for the period of LWOP. Employees may receive civilian service credit for the LWOP period; however, such credit is limited to the lesser of the actual period of LWOP or six months per calendar year.

(b) Effect of Separation:

- i. If an employee separates (resigns from TSA) to perform active duty military service, they are not considered to be employed in their civilian position while they are on active duty military service.
- ii. In the event of their death, survivor benefits from TSA would not be paid. They would not qualify for disability benefits under FERS or CSRS if they were to become disabled.
- iii. If an employee exercises their reemployment rights following military service, the period of separation from Federal service is creditable under either CSRS or FERS, subject to the rules for crediting military service. If they do not exercise their reemployment rights but return to Federal employment later, the actual period of military service under Title 10 U.S.C., will be potentially creditable military service, subject to the rules for crediting military service. National Guard, Title 32 U.S. C. service, is ONLY creditable if they exercise their restoration rights.

(2) Military Leave

This section provides a brief summary of military leave provisions. Consult [TSA MD 1100.63-1, \*Absence and Leave\*](#), and the associated [Handbooks](#) for complete information.

Any Federal civilian employee whose appointment is not limited to one year or less is entitled to military leave. The leave policy provides four types of military leave; however, the two types listed below are the most commonly used.

(a) Military Leave (regular) – 15 days per fiscal year:

The most common type of military leave under this provision of the law is 15 days (120 hours) of military leave per fiscal year. Employees are eligible for this military leave if they are performing active duty, active duty for training, or inactive duty training and

necessary travel. Employees are eligible to receive the 15 days at the beginning of each fiscal year even if they are currently in a leave without pay status performing qualifying military service. Employees can carry over a maximum of 15 days into the next fiscal year. Please note: Military leave is prorated for part-time employees based on the number of hours in the employee's regularly scheduled biweekly pay period (tour of duty reflected on the SF-50, *Notification of Personnel Action*). If an employee uses this type of military leave, they receive full pay from their Federal civilian position for the period of time they are using military leave as well as full military pay.

(b) Military Leave (emergency) – 22 additional workdays per calendar year:

- i. This provision of law was amended to provide that employees performing full-time military service on or after November 24, 2003, as a result of a call or order to active duty in support of a contingency operation also qualify for this additional leave. A contingency operation is defined in 10 U.S.C. § 101(a)(13) as 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
  - Results in the call or order to, or retention on, active duty of members of the Uniformed Services as authorized in 10 U.S.C. §§ 688, 12301(a), 12302, 12304-5, 12406, 10 U.S.C. Chapter 15, or any other provision of law during a war or during a national emergency declared by the President or Congress.
- ii. If an employee uses this type of military leave, they are not entitled to receive their full civilian pay and their full military pay for the period of leave use. The law requires that the civilian pay that they receive must be reduced by the amount of military pay (less any travel, transportation or per diem allowances) that they received for the period that corresponds to the 22 workdays of military leave.

(3) Annual Leave and Other Paid Leave

- (a) If an employee is on LWOP while serving in the military, they may have their annual leave remain to their credit until they return, or they may elect to have it paid in a lump-sum payment. If an employee decides to have their annual leave remain to their credit, they may schedule use of some or all of their annual leave. The agency must automatically make a lump-sum payment for any restored annual leave unless the employee chooses to donate it to someone through the Voluntary Leave Transfer Program (VLTP). An employee may schedule and use some or all of any time-off awards to their credit. Any time-off award hours must be used within one year of the effective date of the award, or they will be forfeited. Time-off awards may not

be paid out under any circumstances.

- (b) If an employee chooses to separate (resign), any accrued and accumulated annual leave will be paid in a lump-sum. Any time-off awards must be used, or they will be forfeited. Time-off awards may not be paid out under any circumstances.
- (c) In calculating a lump-sum payment, the agency must project an employee's annual leave for all the workdays they would have worked if they remained in their civilian position. By law, we count holidays as workdays in projecting the lump-sum leave period.

#### (4) Sick Leave

Any accrued and accumulated sick leave balance they had prior to departure for military service will remain to the employee's credit until they return to their civilian position.

#### (5) Compensatory Time Off

##### (a) Compensatory Time Off in Lieu of Overtime Pay

- i. Exempt and non-exempt employees placed in an Absent-US status when called to or volunteering for active military duty, or separating from TSA when called to or volunteering for active military duty, will receive a lump sum payment for unused compensatory time off in lieu of overtime pay hours.
- ii. Payments will be made at the overtime rate in effect when the compensatory time off in lieu of overtime pay hours were earned.

##### (b) Compensatory Time Off for Travel

- i. Unused compensatory time off for travel will be held in abeyance under the following circumstances:
  - The employee separates from Federal service or is placed in an Absent-US status to perform service in the uniformed services;
  - The employee returns to service with TSA through the exercise of a reemployment right provided by law, Executive order, or regulation; and
  - The employee has no intervening civilian service with another Federal agency.
- ii. Employees must use all of the compensatory time off for travel by the end of the 26th pay period following the pay period in which they return to duty with TSA, or such compensatory time off will be forfeited.

(c) Compensatory Time Off for Religious Observances

- i. Exempt and non-exempt employees placed in an Absent-US status when called to or volunteering for active military duty, or separating from TSA when called to or volunteering for active military duty, will receive a lump sum payment for unused compensatory time off for religious observance hours.
- ii. Payments will be made at the non-overtime rate in effect when the compensatory time off for religious observance hours were earned.

(6) Federal Employees Health Benefits (FEHB) Program

- (a) If an employee is enrolled in the FEHB program, they may elect to continue their coverage for up to 24 months or terminate that coverage. If an employee terminates their health insurance coverage, it will automatically be reinstated when they are restored to their civilian position unless they submit the TRICARE Waiver Form requesting a delay in FEHB reinstatement. Termination of coverage will not have an adverse effect on meeting the five-year participation requirement necessary for carrying health insurance into retirement; providing that health insurance coverage is reinstated when the employee returns to duty, they reenroll within 60 days after their return to duty, or they retire on an immediate annuity without returning to civilian duty. TRICARE coverage also counts towards meeting the five-year requirement.
- (b) When active duty is in support of a contingency operation, the 24-month period begins the date an employee enters an Absent-US status or separate from employment (Separation-US). TSA will pay the employee share of the FEHB premium for up to 24 months as long as the employee meets the specific requirement outlined in this handbook. When active duty is NOT in support of a contingency operation, the 24-month period begins the date of an employee's absence to perform the active duty, i.e., the date of entrance on active duty specified on their orders. This rule applies regardless of whether the employee uses annual leave or military leave prior to entering a non-pay status.
- (c) When an employee is called to active duty in support of a non-contingency operation, they are responsible for paying the employee share of the FEHB premium for the first 12 months. After the first 12 months, the employee may elect to continue coverage. The employee will be responsible for paying both the employee and government shares (plus a two percent administrative fee) for the remaining 12 months.
- (d) TSA pays for, an employee's FEHB enrollment premium for up to 24 months if they were called to active duty on or after September 14, 2001, and meet the following requirements. The employee must:
  - i. Be enrolled in an FEHB plan when they enter military service;
  - ii. Be a member of a reserve component of the armed forces;

- iii. Be called or ordered to active duty in support of a contingency operation (as defined in 10 U.S.C. § 101(a)(13));
  - iv. Be placed on LWOP or separated from service to perform active duty; and
  - v. Serve on active duty for a period of more than 30 consecutive days.
- (e) When called to perform active duty, an employee's options regarding FEHB are:
- i. Continuing the Enrollment and Agreeing to Pay the Premium-Non-Contingency Operations.
    - By electing to continue their coverage, they agree to pay the employee share of premiums for the first 12 months of eligibility directly to the agency or incur a debt in the amount of the unpaid premiums. The employee also agrees to pay 102 percent of the premium for the period of coverage beyond 12 months (not-to-exceed 24 months). Payment for these remaining 12 months must be made on a current basis, which means the premium payments are due after each pay period in which they are covered.
    - If the employee does not make a decision regarding termination or continuance of their FEHB, the agency will automatically continue the coverage. The employee will be responsible for payment of any required premiums, unless the active duty is in support of a contingency operation.
  - ii. Terminating the Enrollment.
    - If an employee elect to terminate their enrollment, it is effective on the day before entering active duty. FEHB coverage will continue, at no cost for the employee and their covered family members for an additional 31 calendar days. During the 31 days, the employee and their covered family members may convert to a nongroup contract. The election to terminate coverage is made on the TSA Form 1169. The action will be processed as a 'cancellation' if employee completes a SF-2809, *Employee Health Benefits Election Form*. 'Cancellations' of FEHB do not afford employees an opportunity to convert coverage and also counts as a break in coverage when determining the five-year participation requirement to continue coverage into retirement.

(7) Federal Employees' Group Life Insurance (FEGLI) Program

- (a) If the employee is in a LWOP status while on military duty, their FEGLI coverage continues for up to 12 months without cost to the employee. Public Law 110-181

Section 1102, the National Defense Authorization Act for Fiscal Year 2008, authorizes the continuation of FEGLI coverage for an additional 12 months for Federal employees called to active duty. The law allows employees who enter on active duty or active duty for training in one of the uniformed services for more than 30 calendar days to continue their FEGLI for up to 24 months. FEGLI coverage is free for the first 12 months; however, employees must pay both the employee and agency share of the premiums for the additional 12 months coverage.

- (b) At the end of the 12-month period, if the employee does not request the 12 month extension, they have a free 31-day extension of coverage and have the right to convert to a nongroup policy during that extension period.
- (c) If an employee is deployed in support of a contingency operation and previously waived some or all FEGLI coverage, they may elect to enroll in Basic FEGLI coverage outside an open season, without experiencing a qualifying life event, and without providing medical information. If the employee already has or elects Basic, they also may elect Option A (Standard) coverage, and/or Option B (Additional) coverage. To elect additional FEGLI coverage, the employee will need to submit a SF-2817, *Life Insurance Election*, to the TSA Shared Service Center within 60 calendar days following the date of notification of their deployment.
- (d) If an employee separates from employment while on military duty, they are considered to be in a nonpay status for FEGLI purposes. The employee's FEGLI coverage will continue for up to 12 months, or until 90 days after their military service ends, whichever date comes first. There is no charge for this coverage. At the end of 12 months (or 90 days after military service ends), the employee's coverage terminates unless they elect to continue coverage for the additional 12 months. This election must be made prior to the end of the first 12 months. The employee is responsible for the employee and agency share of the premiums for the additional 12 months of coverage. When the employee's FEGLI terminates, they will have a 31-day extension of coverage and the right to convert to a nongroup policy.
- (e) FEGLI Benefits: In the event of accidental death or dismemberment while serving in the military, 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 regular provisions of FEGLI apply but the accidental death and dismemberment provision does not apply.

(8) Thrift Savings Plan (TSP)

- (a) Contribution elections and allocations. Employees cannot make contributions to their civilian TSP account while they are in a LWOP status or separated from their civilian position to perform active duty military service; however, an employee may make changes to their contribution allocations. Employees may make contributions to their uniformed services TSP account while they are on active duty.

(b) TSP loans:

- i. If an employee has a TSP loan and enters a LWOP status, their loan payments will be suspended during the period they are on active duty military service, and the time period to repay the loan extended by the period of military service. It is very important that the TSP office is aware that an employee is in an approved nonpay status. Employees should make sure to document on TSA Form 1169 that they have an outstanding TSP loan. The TSA Shared Service Center will process Form TSP-41, Notification to TSP of Nonpay Status, to notify the TSP office to suspend loan payments.
- ii. If an employee wants to continue making payments, they can do so by sending a personal check or money order to the TSP. Employees should use the form TSP-26, Loan Payment Coupon, when they send in their payments. Any loan payments received by the TSP during the nonpay period will be taken into account when the loan is reamortized.
- iii. When the employee returns to pay status, their loan payments will resume, and the loan will be reamortized. The employee must provide the TSA Shared Service Center documentation, such as their DD Form 214, Certificate of Release or Discharge from Active Duty, to show the beginning and ending dates of their military service.
- iv. If an employee has a TSP loan, and they choose to separate from employment, they must pay the loan in full, plus interest. If the employee does not, the TSP must declare the outstanding balance and any unpaid interest as a taxable distribution to the Internal Revenue Service (IRS). The employee will be liable for income taxes on the amount reported to the IRS, and, depending upon their age and employment status, they may also be liable for the ten percent early withdrawal penalty.

(c) Reversing a taxable distribution: If the employee has TSP loans that are closed as taxable distributions because they separated or were in nonpay status to perform military service (and the TSP office was not notified), they may be eligible to have the taxable distribution reversed when they return to duty. The employee must notify the TSP record keeper within 90 days of their return to civilian employment to exercise this opportunity.

(9) Designations of Beneficiary

If necessary, employees should review and update all of their designations of beneficiary. Employees may update their beneficiary forms at any time (unpaid compensation – SF-1152, TSP-3, FEGLI– SF-2823, and lump-sum payment of retirement contributions – CSRS SF-2808 or FERS SF-3102 which applies if they have no survivor(s) eligible for survivor benefits under the retirement programs.



(10) Employee Assistance Program (EAP)

Employees and their family members are eligible for EAP services when they are called to or volunteer for active duty military service. EAP provides short-term counseling and referral services to help with financial, emotional, and dependent care problems. Call 1-800-222-0364 (TTY 1-888-262-7848), 24 hours a day, 7 days a week, 365 days a year, to talk with an EAP counselor.

**D. Benefits Information for Employees Returning from Active Uniformed Service:**

The following is designed to provide information regarding an employee's benefits and entitlements upon their return from leave without pay or separation due to military service. For information on reemployment provisions, please refer to [TSA MD 1100.30-17, \*Uniformed Services Employment and Reemployment\*](#) and section B. of this [Handbook](#).

(1) Annual Leave

- (a) Any unused annual leave balance will be available upon an employee's return to duty, unless they previously chose to receive a lump-sum payment for the balance when they entered into active duty military service.
- (b) If an employee elected to receive a lump-sum payment for their annual leave when they entered military service and they are reemployed before the expiration of the lump-sum leave period, they must refund the portion of the lump-sum payment that represents the period between the date of reemployment and the expiration of the lump-sum period. Upon receipt of their lump-sum payment, the agency will re-credit the amount of annual leave equal to the days or hours of work remaining between the date of their reemployment and the expiration of the lump-sum leave period.

**NOTE:** Payment of any restored leave cannot be re-paid by the employee so that the balance is re-credited.

(2) Compensatory Time Off

- (a) Compensatory Time Off in Lieu of Overtime Pay and/or Compensatory Time Off for Religious Observances hours paid out when the employee was placed in a LWOP (Absent-US) status cannot be re-credited to the employee.
- (b) Compensatory Time Off for Travel that was held in abeyance will be re-credited to the employee upon return to duty with TSA provided there was no intervening civilian service with another Federal agency. Employees must use all of the compensatory time off for travel by the end of the 26th pay period following the pay period in which they return to duty with TSA, or such compensatory time off

will be forfeited.

(3) Sick Leave

Any unused sick leave balance will be available for use upon an employee's return to duty. If for some reason, the employee's sick leave balance is incorrect, immediately contact the TSA Shared Service Center for correction.

(4) Federal Employees Health Benefits (FEHB) Program

An employee's health insurance automatically continued unless they terminated coverage when they entered on active duty. If the employee terminated their health insurance coverage, it will automatically be reinstated when they are restored to their civilian position unless they submit a Tricare Waiver Form to the TSA Shared Service Center. If the employee continued their health insurance for a period of time and later canceled it by submitting a SF-2809 for processing, their health insurance will not be automatically reinstated upon return to duty. However, regardless of their previous election to terminate or continue their coverage, or the fact that their health benefits coverage continued or was reinstated, the employee will be eligible to make a health benefits election within 60 days from the date of their restoration to civilian employment. The employee may change from not enrolled to enrolled in a self-only, self-plus one, or self-and family coverage, from one plan to another, or any combination. To enroll or change their enrollment, the employee must complete a SF-2809 and submit it to the TSA Shared Service Center.

(5) TRICARE

If an employee is participating in TRICARE's Transitional Assistance Management Program (TAMP) and wants to retain it, they may elect to postpone reinstatement of their FEHB coverage until their TAMP coverage expires. The employee must complete the Tricare Waiver Form. It will be their responsibility to coordinate the expiration or cancellation of their TAMP coverage when they reinstate FEHB coverage as employees cannot have dual coverage under both TAMP and FEHB.

(6) Federal Employees' Group Life Insurance (FEGLI) Program

When an employee returns to TSA, they will have the same FEGLI life insurance coverage they had before going into a nonpay status (as long as their position is not excluded from coverage). The employee will not be able to elect more coverage unless they have been separated from service for at least 180 calendar days.

(7) Federal Retirement Programs

(a) For the purposes of retirement credit, it is important to define military service under the retirement laws (Civil Service Retirement Act [Public Law 66-215] and Federal Employees' Retirement System Act of 1986 [Public Law 99-335]). Military service

means honorable active service in the armed forces (Army, Navy, Air Force, Marine Corps, and Coast Guard), in the Regular or Reserve Corps of the Public Health Service after June 30, 1960; or as a commissioned officer of the National Oceanic and Atmospheric Administration after June 30, 1961.

(b) In accordance with Public Law 103-353, the definition of military service includes National Guard service (other than when ordered to active duty in the service of the United States) only when it:

- i. Interrupts civilian service creditable under CSRS or FERS, as appropriate, followed by reemployment in accordance with chapter 43 of title 38 U.S.C, that occurs on or after August 1, 1990;
- ii. Full-time (and not inactive duty);
- iii. Performed by a member of the Army National Guard of the United States or the Air National Guard of the United States in the member's status as a member of the National Guard of a State or territory, the Commonwealth of Puerto Rico, or the District of Columbia;
- iv. Performed under §§ 316, 502, 503, 504, or 505 of title 32 U.S.C.; and
- v. Individual was entitled to pay from the U.S. (or have waived pay from the U.S.) for the service.

(c) Military Service Deposit Required

- i. The CSRS and FERS laws provide that a military deposit must be paid in order to receive credit. The only exception is CSRS covered employees (this includes those covered by CSRS Offset) who were first employed under CSRS before October 1, 1982. These individuals receive credit for active duty military service without payment of a military deposit until they reach age 62 or retirement, whichever is later. If they are eligible for Social Security benefits at age 62, the U.S. Office of Personnel Management will recalculate their CSRS (or CSRS Offset) annuity benefit to exclude credit for military service; thereby reducing their benefit. Those not eligible for Social Security at age 62 or retirement, whichever is later, continue to receive full credit for active duty military service without payment of a military deposit. Individuals who will be eligible for Social Security benefits at age 62 receive permanent credit for active duty military service if they pay a military deposit to the employing agency before separation.
- ii. Upon return to TSA as a civilian employee, employees should contact the TSA Shared Service Center immediately about making a military deposit. It is to their advantage to make the military service credit deposit as early as possible after their release from active military duty to avoid interest.

Employees will have a two-year interest-free grace period on the amount of their deposit due upon their return to civilian employment.

- iii. Interest will be applied on the Interest Accrual Date (IAD) which is three years from an employee's return to civilian employment. Additional interest will be applied and compounded each year on their IAD.

#### (8) Thrift Savings Plan (TSP)

There are several provisions to TSP that are important to understand when an employee is restored to their position, pursuant to title 38 U.S.C., chapter 43.

##### (a) TSP loans

- i. If an employee has a TSP loan and entered a LWOP status, their loan payments were suspended during the period they were on active duty military service. TSP will reamortize the employee's loan (includes interest) and extend the time frame for repayment by the period of military service. The TSA Shared Service Center will submit Form TSP-41 to the TSP office.
- ii. If an employee was contributing to the TSP prior to commencing LWOP, their contributions will automatically resume when they return to pay and duty status. If they wish to change their contributions, they must complete a new TSP-1, TSP Election Form, or change their election through the Employee Personal Page (EPP). Their election will be effective at the beginning of the pay period after it is received by the TSA Shared Service Center or processed through EPP.

- (b) Agency automatic (1%) contributions. If an employee is covered by FERS, their TSP account will be immediately credited the agency automatic (1%) contributions that would have been paid if they had remained in their civilian position, including lost earnings on those contributions.

##### (c) Make-up contributions

- i. Employees are entitled to make up the contributions they missed while they were on active duty. Employees have 60 calendar days following reemployment to make an election to make up missed contributions. The maximum amount employees may make up is based on the annual TSP limit (Internal Revenue Code elective deferral limit) and the amount they contributed to their uniformed services TSP account during the period of military service.
- ii. If an employee chooses to make up employee contributions, the TSA Shared Service Center will assist them with setting up a payment schedule. All contributions must be made by payroll deduction. The employee's make up

contributions will be invested according to their contribution allocation in effect at the time the contributions are posted to their account.

- (d) Agency matching contributions. FERS employees are entitled to agency matching contributions for periods of military service if they have contributed to their uniformed services TSP account or elected to make up employee contributions when they return from military service.

- (e) Lost Earnings

FERS employees will receive lost earnings on all retroactive agency automatic and matching contributions. They do not receive lost earnings on their employee make-up contributions.

- i. If an employee is eligible for lost earnings, they must elect to have those earnings based on either the rates of return for the fund(s) specified by their contribution allocation in effect at the time the contributions would have been made had they remained in their civilian position, or using the rates of return for the Government Securities Investment (G) Fund.
- (f) Restoration of forfeited agency automatic (1%) contributions. If an employee is covered by FERS and they separated from their civilian position to enter military service, they forfeited the agency automatic (1%) contribution if they were not vested in TSP. As a general rule, employees must have three years of Federal civilian employment to be vested. If contributions were forfeited, they are entitled to have the funds restored. Notify the TSA Shared Service Center to begin the process.

- (9) Employee Assistance Program (EAP)

Employees and their family members are eligible for EAP services when they are returning from active duty military service. EAP provides short-term counseling and referral services to help with financial, emotional, and dependent care problems. Call 1-800-222-0364 (TTY 1-888-262-7848), 24 hours a day, 7 days a week, 365 days a year, to talk with an EAP counselor.

## **E. Frequently Asked Questions on USERRA**

- (1) What is the Uniformed Services Employment and Reemployment Rights Act (USERRA)?

USERRA is the 1994 law enacted to provide job protections for individuals performing duty in the Uniformed Services. It provides those employees who are absent from their position of employment to perform service in the Uniformed Services with certain rights and benefits related to that employment, including the right to reemployment following such service if they meet specific requirements.

(2) What is qualifying Uniformed Service under USERRA?

- (a) All service, whether voluntary or involuntary, with the armed forces, including active duty, active duty for training, initial active duty for training, and absence for service fitness examination. The armed forces include the Army, Navy, Air Force, Marine Corps, and the Coast Guard (and the reserve components thereof);
- (b) National Guard service when engaged in active duty for training, inactive duty training, or full-time Guard duty;
- (c) Commissioned Corps of the Public Health Service; and
- (d) Other groups designated by the President in time of war or emergency.

(3) Do these requirements apply when someone volunteers/enlists for uniformed service?

Yes. An employee who enlists in active duty service receives the same consideration and benefits as those involuntarily activated.

(4) Does the employee have to provide written notice of uniformed service obligations prior to military service? Are they required to provide their orders?

Written notice is strongly recommended and will help to document the employee's entitlement to future reemployment. Actual copies of orders may be provided but are not required prior to leaving for military service.

(5) Does the employee have to provide advance notice of uniformed service obligations?

In most cases, yes; employees should provide as much notice as possible to a management official. The notice may be either written or verbal and should be provided at least 30 days in advance if possible. In circumstances where advance notice is impossible or unreasonable, or military necessity prevents giving advance notice, this requirement would be waived.

(6) What kind of personnel action is processed?

Employees reporting for uniformed service are generally placed on a LWOP status that is documented as Absent-US. [TSA MD 1100.63-1, \*Absence and Leave\*](#), and the associated [Handbooks](#) contain information on Absent-US /LWOP-US. [TSA Form 1169](#) should be completed by employees entering uniformed service. Normal procedures for employee check-out (equipment, identification, etc.) for extended absences should be followed.

(7) Is there a difference between military leave and a military leave of absence?

Yes. A military leave of absence (Absent-US) is an unpaid period granted when the employee must be absent to perform military duty. Supervisors and other designated management officials are required to approve requests for absence from duty for employees who must complete an obligation to the military which meets the requirements of TSA MD 1100.30-17 and this Handbook. Management does not have the authority to mandate the receipt of military orders prior to the individual's absence. Management also cannot deny the employee's request to be absent from duty to complete a military obligation in the absence of such orders.

Military leave is a form of paid leave. There are two types of military leave: regular and emergency. Regular military leave is time off (at full pay) for eligible employees to participate in active duty, active duty training, or inactive duty training and necessary travel, as a member of the National Guard or as a Reservist of the Armed Forces. Emergency military leave is time off (with pay reduced by the amount of military pay) for eligible employees who perform military duties in support of civil authorities in the protection of life and property as ordered by a State Governor, or who perform full-time military service as a result of a call or order to active duty in support of a contingency operation as ordered by the President or the Secretary of Defense.

Employees may elect to use available military leave, annual leave, other available paid leave, or Absent-US during a period of absence to perform military duty. In order to use military leave (regular or emergency), the employee must provide the supervisor with a copy of the military orders, annual drill schedule or other documentation.

See [TSA MD 1100.63-1, \*Absence and Leave\*](#), and the associated [Handbooks](#), for more information.

(8) Does an employee have to resign to perform uniformed service?

No. An employee may choose to resign from TSA prior to or during performance of service in the uniformed services (if, for example, they expect their service period to exceed five years or they do not plan to return to TSA after their military obligation ends). For the resignation to be effective, however, TSA must provide the employee with specific information about their right to be placed on Absent-US during their service and their right to make a decision about reemployment with TSA once their service ends. An employee who desires to resign from TSA to perform service in the uniformed services should sign the appropriate section of [TSA Form 1169](#) before the separation action is processed. If an employee resigned without signing the disclaimer section of TSA Form 1169, they may be able to exercise reemployment rights upon completion of uniformed service if otherwise eligible.

(9) How does TSA keep track of when the employee will return?

When Absent-US actions are processed, the HR Specialist for the employee's organization must note the date the employee is expected to return from uniformed service by using the projected uniformed service discharge date and adding the amount of time the employee will have to request reemployment based on the length of the uniformed service, (see section B. of this handbook). This date may change if the employee's orders are amended. Once this date has passed, the HR specialist must attempt to contact the employee concerning their plans for returning to work. Such contact attempts must be fully documented. See section G. of this handbook for more procedural guidance related to reemployment situations.

(10) What if the timing, frequency or duration of an employee's uniformed service is inconvenient for TSA?

The employee is not required to accommodate TSA's interests or concerns regarding the timing, frequency, or duration of uniformed service. TSA cannot refuse to put the employee on Absent-US, or refuse to reemploy the employee, because TSA believes that the timing, frequency, or duration of the service is unreasonable. The employee's supervisor or another authorized TSA official however, is permitted to contact the employee's commanding officer on TSA's behalf to discuss the situation.

(11) Can I fill the job while the employee is away?

It depends. Managers must obtain approval from their program offices to establish and fill an additional position. However, even if a manager receives approval to hire an additional employee to handle the duties of the employee on leave to serve in the uniformed services, they should still expect to be obligated to reemploy the employee returning from uniformed service. Therefore, management should consider using temporary options such as details, temporary promotions, and/or temporary appointments in order to maintain maximum flexibility.

(12) What happens when an employee's military service is over?

TSA employees returning from uniformed service who meet all requirements will be entitled to be reemployed:

- (a) As soon as practicable (normally within two weeks of the employee's application for reemployment);
- (b) By the TSA organization to which they were assigned before the absence, if possible;
- (c) For the remaining (unexpired) portion only, if any, of their original temporary or time-limited appointment, if applicable (the time limit on the original temporary appointment will still apply; it is not affected/extended



- by the employee's military absence);
- (d) In the position in which TSA can establish, with reasonable certainty, that they would have attained if not for the absence due to the uniformed service; and
  - (e) With the pay, benefits, seniority, and other job-related privileges that he or she would have attained, if not for the absence due to uniformed service.

Refer to [TSA MD 1100.30-17](#) and sections B., F., and G. of this handbook for requirements and more specific procedural information.

- (13) What if the employee is due to return but never comes back? How do we take them off the rolls?

See section G. of this handbook for procedural guidance.

- (14) Is it true that an employee can only be away for military service for five years?

Yes. An employee can lose their reemployment rights if their cumulative period of uniformed service while working for TSA exceeds five years. However, many types of service do not count against the five-year total. 38 U.S.C. § 4312 (c) and 20 CFR § 1002.103 contain information on the types of service that must be exempted from a calculation of cumulative service. All of the employee's military orders should be compared against the list of exemptions to determine whether the five-year total has been exceeded. If the employee's service will exceed the limit even after the exempt periods are disregarded, see section G. of this handbook for procedural guidance.

- (15) What is the impact of uniformed service on benefits?

See sections C. and D. of this handbook for detailed information on benefits.

## **F. Request for Personnel Action (RPA) Processing Guidance for HR Specialists:**

- (1) The timely submission of RPAs is extremely important due to the sensitive nature of how benefits are treated. The RPAs should be submitted prior to the start of the employee's LWOP (Absent-US) or within 72 hours (three business days) of employee notification to the agency.
- (2) When submitting the RPA for the active duty one of the two Nature of Action Codes (NOAC) listed below will be used:
  - (a) Non-contingency Operation: NOAC 473, *Authority Code Q3K (5 CFR Part 353) – (RPA effective the first day of unpaid leave)*; or

- (b) Contingency Operation: NOAC 473, *Authority Codes Q3K and QRD* (5 CFR Part 353 and 5 U.S.C. 5538) – (RPA effective the beginning of the absence regardless of whether the employee is in a pay or non-pay status)
- (3) The effective date of the NOAC will never be before the date of entry into active duty. If an employee uses paid or un-paid leave prior to entering active duty, code the timecard appropriately.
- (4) An RPA is not completed if an employee is performing inactive duty, such as, weekend drills.
- (5) Attach the following documents to the RPA:
  - (a) Orders or other official military documentation of assignment to active duty; and
  - (b) TSA Form 1169 if completed by the employee. (**Note:** completion is optional).
- (6) When the employee returns from active duty, submit a timely Return-to-Duty (RTD) RPA. The effective date will be the first day the employee returns to work.
- (7) Upon RTD, employees must be made aware of the following:
  - (a) FERS, FERS-RAE, and FERS-FRAE employees must pay a military deposit to receive retirement credit for the period of active duty while in a non-pay status;
  - (b) Military buy-back information on the [ServeU website](#) (explains the retirement credit rules, calculation of the military deposit, procedures, and interest);
  - (c) Two-year interest free period on military deposits that starts the day after discharge from active duty RTD; and
  - (d) The Estimated Earnings During Military Service, RI 20-97, must include only the period of active duty while in a non-pay status. Employees are not required to make a military deposit for periods when they were in a pay status, such as, when using annual or military leave.

## **G. Reemployment Procedural Guidance for HR Specialists and Managers/Supervisors:**

**NOTE:** In the context of these procedures, the terms “return to duty”, “restoration”, and “reemployment” all have the same meaning. Regardless of whether the employee is still on TSA’s rolls, there are only two possibilities, and these determine what actions TSA

must take—either the employee is entitled to come back to work after a period of military service, or not. In most cases, an employee will be on Absent-US while performing military service and a return to duty action will be processed when they exercise their right to restoration (return to work). However, an employee who elected to resign might still be entitled to restoration (return to work at TSA) after performing military duty. For the purposes of this document, the term restoration will be used regardless of whether or not the employee returning from military duty is still on TSA’s rolls.

Questions on the application of these procedures should be sent to: [HelpDesk@mailserver-hraccess.tsa.dhs.gov](mailto:HelpDesk@mailserver-hraccess.tsa.dhs.gov).

(1) General Procedures

- (a) Employee gives notice and deploys.
- (b) Employee is placed on Absent-US during all military service and for the defined period following military discharge which employees have before they must request reemployment.
- (c) Employee asks to come back to work within required time frame.
- (d) If military service was for more than 30 days, the HR representative requests military documentation to verify that all USERRA-related requirements for restoration are met. In brief, these include the following (see TSA MD 1100.30-17 and section B. of this Handbook for complete information):
  - i. Required notice was given (or the impossible/unreasonable exception applied);
  - ii. Five-year military service limit since working for TSA has not been exceeded (there are many types of service that do not count in calculating this limit—see 38 U.S.C. § 4312 (c) or 20 CFR § 1002.103 for service that should not be counted in computing the total);
  - iii. Time limit to request restoration was met (time limit depends on length of service; will generally be next day; 14 days; or 90 days; or longer if injured/convalescing); and
  - iv. Military discharge was honorable.

(2) Restoration Requirements Met: If all the USERRA restoration requirements are met, the HR representative will initiate a RPA Return to Duty (RTD) action to restore the employee to pay and duty status. Policy provisions regarding entitlement to pay and benefits during absence must be applied. If employee resigned but is entitled to restoration, their resignation action will be cancelled and replaced with Absent-US and RTD actions.

- (3) Restoration Requirements Not Met: If the USERRA restoration requirements are not met, the steps below for the applicable scenario should be followed. The HR representative should not return employee to pay and duty status until receiving guidance from HC.
- (4) Military Service Documentation Not Provided: See section B.(5)(h) of this handbook for more information. If the employee indicates that military documentation is not available, the HR representative should ask the employee to provide military unit contact information so that TSA can verify that the service was performed and completed in good character. The HR representative should then proceed with restoration based on information available; however, the HR representative should give the employee a letter requiring that they supply documentation of the military service as soon as possible. The employee should be given a reasonable period of time (i.e., 30 days) to respond with either the documentation (if available) or the contact information for their former military unit so TSA can help the employee obtain the documentation.
- (5) Physical Limitations: If the employee has physical limitations due to service-connected injury or illness, the HR representative should refer to [TSA MD 1100.30-17](#) and section B. of this Handbook, and seek HC guidance immediately for help with placement.
- (6) Specific Scenarios

**NOTE:** When the Agency is considering removing an employee for exceeding the five-year rule, the employee must be provided an Notice of Under Review letter prior to any removal action. Management must work with Employee Relations and/or the local Human Resource Representative when processing these actions to ensure that proper notice is provided to the employee.

- (a) **Scenario:** Employee has returned from military service and requested restoration. It appears they no longer have restoration rights for one of the following reasons:
  - i. They have exceeded the five-year service limit;
  - ii. They exceeded the allowable time limit to request restoration;
  - iii. They failed to give notice as required at military service departure and no exception applies; or
  - iv. They did not receive an honorable or general discharge.

**Resolution Steps:**

- i. HR representative should obtain military documentation from the employee and verify that USERRA requirements were not met.
- ii. HR representative will give the employee an initial notice (contact Employee Relations for template) which tells them that:

- They do not have a right to restoration;
  - TSA will remove the employee from TSA employment rolls through a non-disciplinary process; and
  - If employee wishes to return to TSA after termination, they may apply for reinstatement; this will be at management's discretion; subject to suitability requirements still being met (military discharge may affect rehire suitability), and effected after separation (employee will have a break in service).
- iii. HR representative will submit SF-52s terminating the employee's Absent-US status as of the military discharge date and putting the employee on LWOP NTE 60 days (Absent-US cannot be used for any time after the military discharge if the employee is not entitled to USERRA restoration);
- iv. The employee will be given seven calendar days to respond to the initial notice. If employee replies to the initial notice with corrected/updated documentation, the HR representative will determine if the documentation changes their eligibility for restoration;
- v. If the employee does not respond, or the response does not change their status with regard to restoration, management will issue a final notice (contact Employee Relations for template) to the employee which terminates the employee's appointment, reminds them that they may apply for reinstatement, and provides appropriate appeal rights;
- vi. The HR representative will submit an SF-52 to terminate their employment on the effective date indicated;
- vii. Termination will be processed as follows: NOAC/NOA: 330 Removal; Authority: ZVC PL 107-71; Remark: "Non-disciplinary termination based on failure to meet reemployment requirements of TSA MD 1100.30-17, *Uniformed Services Employment and Reemployment*; may apply for reinstatement";
- viii. If employee had an Other Than Honorable discharge, their period of military service is not creditable; therefore, the Service Computation Date must be recalculated to remove this service;
- ix. Leave (such as military leave), benefits, and pay actions processed up to the point of termination will generally be allowed to stand as

processed.

- (b) **Scenario:** Employee is deployed on military service and TSA’s documentation shows that employee has exceeded the five-year service limit outlined in section B.(5)(d) of this handbook.

Resolution Steps:

- i. HR representative should request and obtain military documentation and determine whether five-year limit has been reached (service exempt from the calculation must be taken into account—see 38 U.S.C. § 4312 (c) or 20 CFR 1002.103);
- ii. If limit has been reached, the HR representative will send employee an initial notice (contact Employee Relations for template) which tells them that:
  - They does not have a right to restoration based on exceeding five-year limit;
  - TSA will remove the employee from TSA employment rolls through a non-disciplinary process; and
  - If they wish to return to TSA after military discharge, they may apply for reinstatement to TSA; reinstatement will be at management’s discretion; if reinstatement is approved, it will be effective after separation (employee will have a break in service).
- iii. The employee will be given seven calendar days to respond to the initial notice. If employee replies to the initial notice with updated documentation, the HR representative will determine if the documentation changes their status in regard to five-year limit;
- iv. If the employee does not respond, or the response does not change their status with regard to restoration, management will issue a final notice (contact HC for template) to the employee which terminates the employee’s appointment, reminds them that they may apply for reinstatement, and provides appropriate appeal rights;
- v. The HR representative will submit SF-52 to terminate employment on the effective date indicated;
- vi. Termination will be processed as follows: NOAC/NOA: 330 Removal; Authority: ZVC PL 107-71; Remark: “Non-disciplinary termination based on failure to meet reemployment requirements of [TSA MD 1100.30-17, \*Uniformed Services Employment and Reemployment\*](#); may apply for reinstatement”;

- vii. Leave (such as military leave), benefits and pay actions processed up to the point of termination will generally stand as processed;
- viii. If employee later contacts TSA and requests reemployment, HR representative must review their status under USERRA policy. If the employee would have been entitled to restoration, retroactive correction of status to provide restoration and correction of pay, status, seniority, benefits, etc. is required.

(c) **Scenario:** TSA's documentation is unclear regarding employee's current military status and/or reemployment eligibility (e.g., employee was placed on Absent-US based on orders projecting three years of service, but the end date of those orders has passed)

Resolution Steps:

- i. HR representative must make and document attempts to contact employee, employee's last known military unit, and appropriate military information sources\* for update on status (employee may have been recalled/extended);
- ii. If unable to verify that employee is still in military, the HR representative will send the employee a letter (contact Employee Relations for template) which tells them that their employment status is under review and TSA is requesting updated military orders or other appropriate documentation in order for the employee to continue to stay on TSA's rolls in Absent-US status;
- iii. The employee should be given 60 days to respond with an update on their status. If the employee fails to respond, contact HC for assistance.

\*Military locator information sources:

Locate Military Members, Units, and Facilities: <https://www.usa.gov/military-personnel-and-installations>

Servicemembers Civil Relief Act (SCRA) website: <https://scra.dmdc.osd.mil>

Army: Commander  
U.S. Army Enlisted Records & Evaluation Center ATTN: Locator  
8899 East 56th Street  
Fort Benjamin Harrison, IN 46249-5301  
(866) 771-6357

Air Force: (210) 565-2660

Navy: (866) 827-5672 or (901) 874-3388

Marines: (800) 268-3710

Coast Guard: [ARL-PF-CGPSCCGlocator@uscg.mil](mailto:ARL-PF-CGPSCCGlocator@uscg.mil)

Employee Support of the Guard and Reserve (ESGR):  
(800) 336-4590  
or via website at: [www.esgr.mil](http://www.esgr.mil)