

LABOR RELATIONS



April 1, 1998

Mr. William Burrus  
Executive Vice President  
American Postal Workers  
Union, AFL-CIO  
1300 L Street, NW  
Washington, DC 20005-4128

APR 1998  
5:00 PM

Dear Mr. Burrus:

This is a final response to the June 17 correspondence requesting a time table finalizing a program to allow employees who served in Desert Storm to contribute lost earnings to the Thrift Savings Plan.

For your information, attached is a draft of the procedure that will be implemented in the field to allow employees the appropriate opportunities under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). The procedure will be issued as soon as it is cleared by the appropriate departments here at Postal Service Headquarters.

This satisfies your request for the information. If there are any questions, do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Samuel M. Pulcrano".

Samuel M. Pulcrano  
Manager  
Contract Administration (APWU/NPMHU)

Attachment

cc: Alan Ruof



February 17, 1998

**MANAGERS, HUMAN RESOURCES (DISTRICTS)  
MANAGERS, REMOTE ENCODING CENTERS**

**SUBJECT: Interim Guidelines For The Employment Restoration Of Individuals Who Served In  
The Uniformed Services**

Enclosed is a copy of the policy which regulates the restoration of employees returning from military service. This policy supersedes Handbook EL 311, Section 218, Restoration, and ELM, Section 365.234, Restoration After Military Service.

With the introduction of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), employees restoration rights and employers obligations have been substantially enhanced.

USERRA has the following critical provisions :

- Prohibits discrimination against employees or applicants with a military obligation.
- Requires that employees departing for active military service, voluntary or involuntary, be placed on leave without pay, NOA 460—consult CMS Update 97:70,12/6/97 (copy enclosed).
- Requires the restoration of the employee to the position as if he or she had never left for military service.
- Requires that active duty employees are given the opportunity for career progression. This stipulation requires locations to set up an administrative framework, including audit trail, in order to actualize leave-behind bids and/or PS Forms 991.
- Is enforced by the Department of Labor and has provisions for restitution and punitive action.

With the issuance of this policy, locations which maintained a manual list of employees currently on active duty should process a PS Form 50 (NOA 460) to identify these employees.

We are working on tools to facilitate the implementation of this policy. These aids include an employee brochure for those who are being called to active duty.

If you have any questions, please contact Gerry Brasche at (202) 268-3962. Locations with a need for further explanation of the policy should notify Mr. Brasche via cc:Mail by February 27 in order to be included in a telecon training session.



**Stephen A. Moe**  
**Manager**  
**Selection, Evaluation, and Recognition**

**Enclosures**

**cc: Managers, Human Resources (Areas)**  
**Manager, Field Policies and Programs**  
**Manager, Corporate Personnel Management**  
**Manager, Management Association Relations**  
**Area Human Resources RBCS Coordinators**

**INTERIM GUIDELINES FOR THE EMPLOYMENT RESTORATION  
OF INDIVIDUALS WHO  
SERVED IN THE UNIFORMED SERVICES**

**I. POLICY**

It is the responsibility of Postal Management to restore to employment at the previous installation employees who served in the uniformed services and who are eligible under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), P.L. 103-353, signed October 13, 1994. The statute became effective on December 12, 1994. However, benefit aspects of the statute are made retroactive as follows:

1. to August 1, 1990, for retirement credit;
2. to August 2, 1990, for the Thrift Savings Plan;
3. to October 13, 1994, for health benefits and life insurance.

**II. ELIGIBILITY**

Reemployment rights are extended to employees who were absent from work because of service in the uniformed services.

**A. UNIFORMED SERVICES**

The uniformed services consist of the following military branches:

- Army, Navy, Marine Corps, Air Force, Coast Guard, and their respective reserve components.
- Army National Guard or Air National Guard.
- Commissioned Corps of the Public Health Service.
- Any other category of persons who are designated by the President as uniformed services in time of war or emergency.

**B. TYPES OF UNIFORMED SERVICE**

Service in the uniformed services can be on a voluntary or involuntary basis for a variety of purposes

- Active duty.
- Active duty for training, including initial training.
- Inactive duty training.
- Full-time National Guard duty.
- Time needed for an examination to determine fitness for any of the above types of duty.

### C. DURATION OF UNIFORMED SERVICE

Under USERRA, the cumulative length of absence from employment because of service with the uniformed services is limited to five years. There are several categories of service which are excluded from the five-year limitation. These exceptions are:

- Service required in excess of five years to complete the initial period of obligated service.
- Service from which a person, without control over the circumstances, is unable to obtain a release within the five-year limit.
- Required training for reservists and National Guard members. This training includes the monthly weekend drills, the two-week annual session, and any additional training mandated as essential to the professional development of service members by the specific Secretary of a uniformed service.
- Service required under an involuntary order to active duty or to be retained on active duty because of domestic emergencies or national security matters.
- Service as the result of an order to active duty or to remain on active duty during a war or national emergency declared by the President or Congress.
- Active duty performed in support of an operational mission for which selected reservists have been involuntarily activated.
- Active duty performed in support of a critical mission or critical requirement during the time of no involuntary call up, no war, or national emergency. The Secretary of a uniformed service has the authority to designate a military operation as a critical mission or requirement.
- Federal service by members of the National Guard called into action by the President to suppress an insurrection, repel an invasion, or execute the laws of the United States.
- Service time prior to the effective date of USERRA, December 12, 1994, will not be applied to the five-year limit unless it would have counted under the previous law, The Veteran's Reemployment Rights Statute.

### D. CHARACTER OF DISCHARGE

Under USERRA, persons separated from the uniformed services with a dishonorable, bad conduct, or other than honorable conditions discharge are not eligible for restoration of employment or any other benefit the law provides.

### E. EFFECTS OF PERFORMANCE AND CONDUCT ON RESTORATION

Restoration may be denied on the basis of performance or conduct that occurred prior to the employee's departure from the uniformed service, if such conduct or poor performance is not related to the uniformed service. Further, restoration rights may be denied if the conduct of the employee while on uniformed service was such that the returnee would be disqualified for employment under postal regulations.

## **F. ADVANCE NOTIFICATION OF ENTERING THE UNIFORMED SERVICES**

To ensure entitlement to reemployment rights and benefits, employees must notify their immediate supervisor of the impending absence from work because of service in the uniformed service.

The advance notice can be given by the employee orally or in writing to the immediate supervisor.

- Notification can also be made orally or in writing by the employee's military command. This situation may arise because military necessity may prevent the employee from giving notification.
- No advance notice is required if it is precluded by military necessity or it is otherwise impossible or unreasonable to give notice.

Upon receipt of notification, the responsible Human Resources office must be contacted by the immediate supervisor to assure continuation of appropriate benefits. This notification is made in writing regardless of the way the employee's departure for military service became known. Typical employee identifiers such as full name, pay location, and social security number are to be included.

The employee's military authority/postal supervision written notification are to be retained in the Official Personnel Folder (OPF) on the right side.

It is important to note that employees serving in the military and the Postal Service have a mutual responsibility under USERRA. Given the nature of the employee's obligation and the operational needs of the Postal Service, it is essential that both parties make a good faith effort to avoid conflict. Employees with reserve obligations are expected to work with their military unit to minimize the burden on postal operations because of the frequency and duration of reserve duty. Employees must give as much advance notice as possible to allow time for management to plan for coverage. In the event that managers face a legitimate operational burden, they may contact the employee's military command to express their concerns and to determine if the military duty can be rescheduled for the reservist. However, the military authority determines the schedule for duty; USERRA clearly reflects that the nature of duty, its time, or frequency is not relevant to compliance with USERRA, as long as the employee has given proper notice and the time limits stated above have not been exceeded. Military command contacts for the purpose of rescheduling are not to be made during the time when the President's mobilization authority has been exercised.

## **G. NOTIFICATION OF THE EMPLOYEE'S RIGHTS AND OBLIGATIONS**

Managers are responsible for notifying employees orally or in writing of their rights, obligations, and benefits before departing and upon return from active service. This notification includes any appeal and grievance rights. However, this does not relieve the employee from the responsibility to exercise due diligence to request this information from management or the appropriate Human Resources office.

Additionally, the law requires that individuals on military duty are to be given the opportunity for career advancement as if they are actively present to the job. To assure compliance, local Human Resources offices need to include the following in the discussion as appropriate:

## **1. Bargaining Unit Positions**

While on military service, employees continue to accrue seniority and may bid on positions that may become vacant during the employee's absence. A written or electronic notice must be submitted by the employee to Human Resources, or if appropriate, to the manager-in-charge, such as Postmaster, indicating the departee's interest to bid on specific positions. The bid needs to be processed and awarded in accordance with the appropriate Collective Bargaining Agreement (CBA) as if the employee is actively employed. If awarded, a personnel action needs to be initiated to place the employee in the newly gained position and pay scale and to assure that seniority is credited as specified by the appropriate CBA.

Unsuccessful bids are retained until the desired position is gained or the employee resumes active employment upon return from the military service. Training will be deferred for employees who gain a position for which there is contractually required training until they return. Upon their return, the employee will be required pursuant to the respective CBA to meet the training requirements. No personnel action is to be initiated until the training requirement is completed. In these cases, every effort must be made to train the employee upon return to work. The employee would only be awarded the position upon satisfactory completion of the required training. An audit trail documenting the bid submissions must be maintained.

## **2. Nonbargaining Positions**

Nonbargaining and bargaining unit employees on military service interested in being considered for EAS positions are required to submit completed PS Forms 991 for specific position descriptions to Human Resources reflecting the desired position(s) and location(s). Human Resources will activate the application as soon as the desired position and location has a vacancy. The application is considered in accordance with the EAS Selection Policies for local and national positions and in accordance with the area of consideration noted on the announcement. Applications resulting in a non-selection will be considered as vacancies occur in the specified occupation until the applicant has been successfully selected. Applications from employees who are on active duty with the uniformed services will be accepted at any time for subsequent consideration when an appropriate vacancy is announced.

EAS employees on active duty may also request reassignments to lateral or lower level positions in accordance with the EAS SELECTION POLICY.

Selected individuals will be placed in the new position and the appropriate pay level by initiating a personnel action while in the LWOP status.

An audit trail of the selection activity needs to be established and retained by Human Resources.

Upon return from active military service, the responsibility for submitting bids or applications for EAS positions reverts to the employee.

## H. PERSONNEL ACTION

1. Employees called for active duty are to be placed in a leave without pay status, using NOA 460 and Special Benefit Code "U" as stated in CMS Update 97:70, dated December 5, 1997.
2. Individuals who exercise a written option to resign with the intention of not returning to the Postal Service must be advised that their restoration rights are not affected by the resignation. In these cases, a resignation military, NOA-313, is to be initiated. These individuals have the right to return; however, they do not accrue any seniority while they are off the rolls. These individuals need to be advised of the loss of seniority before initiating the personnel action.

## I. RETURN TO WORK

The following time limits have been established for returning to work after the completion of military service:

### 1. Service of 1 to 30 Days

- The employee needs to report by the beginning of the first regular scheduled day of work following eight hours after return home from the military service.
- If an employee's return to work within this time frame is unreasonable or impossible and he or she is not at fault for the delay, the employee must return to work as soon as possible.

### 2. Service of 31 to 180 Days

- A written request for reemployment must be submitted no later than 14 days after the employee's completion of the military service.
- If submission of a written request for reemployment is impossible or unreasonable through no fault of the employee, it must be submitted as quickly as possible.

### 3. Service of 181 or More Days

- A written request must be made within 90 days from the date of discharge.

Individuals who fail to request reemployment in writing within the above specified time frames do not forfeit their rights automatically. However, they are subject to discipline because of unexcused absences.

### 4. Service Connected Hospitalization or Convalescence

- Members of the uniformed services who are hospitalized or are convalescing because of a service-connected disability incurred during active military service are required to return to work once recovered. They are to report or apply in accordance with their length of service as stated in Section II, Paragraph I, "Return to Work." The recovery period may not exceed two years, except as stated below.

The two-year period will be extended in order to accommodate circumstances which prevented the returnee from reasonably reporting or applying. This extension will be of minimum duration to reasonably resolve the difficulty beyond the returnee's control.

#### J. DOCUMENTATION TO RETURN TO WORK

1. USERRA requires the restoration of returnees in a 'prompt fashion.' The following documentation is to be requested from a service returnee who was absent in excess of 30 days.
  - The person's timely application.
  - DD214 or other official documentation showing that the returnee did not exceed the five-year limitation.
  - DD214 or other official documentation showing that the separation was under honorable conditions (see Section II D).
  - Documentation relating to convalescence or hospital confinement which resulted in a delay of returning to employment.
  
2. In the event that a returnee is unable to provide satisfactory documentation
  - The returnee is to be 'promptly' reemployed.
  - Subsequently, if the returnee is not able to provide documentation that meets the eligibility requirements for restoration, the individual can be separated.

#### III. REEMPLOYMENT POSITIONS

##### A. LENGTH OF SERVICE

Returnees from the uniformed services are to be reemployed promptly based on their length of military service as defined in the following categories:

##### 1. 1 to 90 Days of Service

Without exercising any other options, the returnee will be restored in accordance with the following priority:

- a) The returnee will be restored to the seniority, step, and position he or she would have held if he or she had remained continuously employed; this is known as the escalator position. This means that craft employees progress in accordance with the provisions of the appropriate contract as if they had been active with the Postal Service during the period of military service.

Employees who were serving their probationary period at the time of entry into active duty and who met the probationary time period while serving on active duty are considered as having met the probationary requirement.

- b) If the employee is unable to qualify, then the employee is assigned to:

- The position held prior to entry in the service with full seniority. If not qualified in that position after reasonable effort, then
- To any position of lesser status and pay, with full seniority, that the returnee is qualified to perform.

## **2. 91 Days and More Service**

Without exercising any other option, the returnee will be restored according to the following priority:

- a) To the escalator position with full seniority. If not qualified after reasonable effort, then
- b) To a position of like seniority, status, and pay. If not qualified after reasonable effort, then
- c) To the position held prior to entry in the uniformed service, with full seniority, status, and pay. If not qualified after reasonable effort, then
- d) To any position of lesser status and pay, with full seniority, that the returnee is qualified to perform.

## **B. RETURNEES WITH A SERVICE-CONNECTED DISABILITY**

The following is the priority for reemploying individuals who return from the uniformed service with a service-connected disability:

1. Restore the applicant to the escalator position with reasonable accommodation. If not qualified for the position after a reasonable effort to accommodate the disability, then
2. Employ in any other position equivalent in seniority, status, and pay which the applicant is qualified to perform with reasonable accommodation. If the applicant is not qualified after a reasonable effort to accommodate, then
3. Employ the applicant with full seniority, consistent with the circumstances of the individual's case, in a position which approximates as nearly as possible the equivalent position in number 2 above in terms of status and pay.

## **C. REASONABLE EFFORT TO QUALIFY - REASONABLE ACCOMMODATION**

Postal management is obligated to make reasonable efforts to qualify returning individuals who are not immediately qualified to assume employment in a position to which they are entitled. The qualifying efforts may include appropriate testing and training or refresher training to update skills where the employee did not have the opportunity to keep up with skills or technological advances.

Additionally, service members returning with a service-connected disability are entitled to reasonable accommodation into positions as stated in the above priority scheme, "Returnees With a Service-Connected Disability." Service members with non-service connected disabilities also are entitled to reasonable accommodation. Accommodations are to be accomplished in line with Handbook EL-307, "Guidelines on Reasonable Accommodation."

#### **D. TEMPORARY POSITIONS**

USERRA covers career and all temporary classifications. Temporary employees are reemployed for the remainder of their term if temporary employees are still used. The time spent in active service is not counted against the term of the temporary appointment.

#### **E. EMPLOYMENT PROTECTION AND SERVICE CREDIT**

1. While on military service, an employee may not be demoted or separated except for cause. Further, the employee does not participate in a reduction in force (RIF). If his or her position is abolished during the absence for military service, the employee must be reassigned to another position of like status and pay.
2. Reemployed service returnees with career status are protected from discrimination and retaliation. Furthermore, they are protected from discharge, except for cause, as follows:
  - For one year after the date of reemployment, if the period of military service was for more than 180 days.
  - For 180 days, if the military service period was for more than 30 days, but less and 181.
  - No protection is provided under this section for employees who served less than 31 days.
  - Temporary employees who are reemployed for the remainder of their term are not protected.

#### **IV. OTHER RIGHTS**

Service members are entitled to participate in the rights and benefits that are available to employees on a nonmilitary leave of absence. Furthermore, they are entitled to participate in any nonseniority right and benefit which became effective during their service time. Postal Service policy complies with USERRA and includes, but is not limited to, the features outlined below.

##### **A. HEALTH BENEFITS**

Employees in a leave without pay (LWOP) status or who separate to perform service covered by USERRA are eligible to continue health benefits coverage under FEHB for a maximum of eighteen (18) months.

For the first twelve (12) months, a career employee who chooses to continue health benefits coverage is responsible for paying the employee's share of the premium cost and the USPS will pay the employer's share. A noncareer employee who chooses to continue health benefits coverage must pay the full premium costs.

For the remaining six (6) months of allowance coverage, both career and noncareer employees who choose to continue health benefits coverage must pay the full premium, plus a two percent administrative charge, for a total of 102 percent of the premium.

Employees may pay premiums on a current basis or defer payment until returning to pay and duty status. The Postal Service, however, must pay the employer's cost on a current basis every pay period. When coverage terminates at the end of the 18-month period, employees are entitled to a 31-day extension of coverage and may convert to a non-group policy, but do not qualify for coverage under the temporary continuation of coverage (TCC) provision.

#### **B. LIFE INSURANCE**

USERRA provides for FEGLI coverage for employees on military leave without pay (LWOP) for up to twelve (12) months at no cost to the employee.

Employees who separate for military duty are considered to be in a military LWOP status for the purpose of FEGLI coverage. Life insurance coverage continues for up to twelve(12) months or until a date that is 90 days after the service with the uniformed service ends, whichever is earlier.

#### **C. FLEXIBLE SPENDING ACCOUNT**

An employee on military leave without pay (LWOP) must continue participating in the FSA program for as long as eight (8) consecutive full pay periods of LWOP, or until the end of the plan year, whichever comes first. Any eligible expenses incurred can still be paid through the FSA program, and the employee will be required to make up any contributions missed.

If LWOP lasts longer than eight (8) consecutive full pay periods, then on the first day of the ninth consecutive full pay period of LWOP, FSA participation ends. Likewise, if an employee separates, FSA participation ends. Whether FSA participation ends based on extended LWOP or separation, from that date on expenses that employees incur cannot be paid through the FSA program and employees will not owe any further FSA contributions. They are still required to make up any contributions missed before FSA participation ended.

#### **D. PENSION BENEFITS**

To receive retirement credit for military service, employees covered by the Federal Employees Retirement System (FERS) are required to contribute to the retirement fund either what they would have contributed had they not gone on military duty or a 3 percent deposit of their military earnings, whichever is less. Employees who were first covered by the Civil Service Retirement System (CSRS) on or after October 1, 1982, are required to pay a deposit of 7 percent of their military earnings. Employees who were first covered by CSRS prior to October 1, 1982, will continue to receive credit for their military service without being required to pay a deposit for this service until they qualify for social security benefits at age 62.

USERRA also expands retirement coverage to include all full-time National Guard duty if that duty interrupts creditable civilian service and is followed by reemployment on or after August 1, 1990.

#### **E. THRIFT SAVINGS PLAN**

**FERS, CSRS, AND CSRS Offset employees returning from the military under the USERRA criteria may make up employee contributions that were missed due to military service.**

**FERS employees will receive Automatic Agency (one percent) and matching contributions along with lost earnings (retroactive interest). Retroactive interest is calculated at the G Fund rate.**

**FERS employees who separated and were not vested may have any forfeited funds restored to their TSP accounts.**

**FERS, CSRS, and CSRS Offset employees who separated and were required by TSP to have their accounts paid out may redeposit these monies. They may also have any taxable distributions for TSP loans reversed.**

#### **F. USE OF ACCRUED LEAVE DURING MILITARY SERVICE**

**Employees on active military service are permitted to request earned leave, such as annual or sick, during the period of military service. However, these requests cannot be approved for the purpose of qualifying an employee who is on leave without pay for holiday pay (ELM, Section 434.432). Furthermore, military leave is authorized in accordance with ELM, Section 517, Military Leave.**

#### **V. ENFORCEMENT OF USERRA**

- USERRA prohibits discrimination against an applicant or an employee on the basis of service in the uniformed services and prohibits acts of reprisal for exercising a right stipulated in its provisions or for seeking its enforcement.**
- Employees and applicants may file a complaint with the Veterans' Employment and Training Service (VETS) of the Department of Labor, which has the responsibility for investigating and resolving complaints. VETS has the right of reasonable access to records that it deems relevant to the case and to examine and to duplicate them. VETS has been granted subpoena power for witnesses and documentation.**
- Responses to requests by VETS for information and/or records should be coordinated with Labor Relations and the Managing Counsel. Additionally, Selection, Evaluation, and Recognition will provide policy guidance.**
- If VETS cannot successfully resolve the complaint, VETS may ask the office of special counsel to represent the employee in an appeal before the Merit Systems Protection Board (MSPB). Further, the employee may bypass VETS and appeal directly to the MSPB.**

**The remedy for violations of USERRA may include the award of backpay, lost benefits, and legal costs.**