DEPARTMENTS OF THE ARMY AND THE AIR FORCE
NATIONAL GUARD BUREAU
1411 JEFFERSON DAVIS HIGHWAY
ARLINGTON, VA 22202-3231

NGB-J1-TN 13 August 2008

MEMORANDUM FOR THE HUMAN RESOURCES OFFICERS OF ALL STATES, THE COMMONWEALTH OF PUERTO RICO, THE U.S. VIRGIN ISLANDS, AND THE DISTRICT OF COLUMBIA

SUBJECT: Documenting the Five-Year Cumulative Service Start Date for Reemployment Rights under USERRA (TN-08-26)

1. This memorandum provides guidance for determining the start and end dates for the five-year cumulative service for reemployment rights under USERRA.

2. The effective date of the employee's active duty orders is considered the date the employee began "actually performing service in the uniformed services" (as indicated by the effective date on the military orders). In accordance with 20 CFR Part 1002, Section 1002.100, "the five-year period includes only the time the employee spends actually performing service in the uniformed services. A period of absence from employment before or after performing service in the uniformed services does not count against the five-year limit." Human Resources Offices will retain copies of each technician's military order set to track the accumulation of the five-year period. Due to the cumulative military service process, for those technicians' LWOP-US periods of 30 days or less, we recommend tracking the action in DCPDS (manually updating *LWOP Military Re-employment Rights Information, data descriptive flex-field, ddf*) and retaining the military orders on file.

3. Per OPM's regulations 5 CFR 353.208 (Use of Paid Leave During Uniformed Services) implementing the Uniformed Service Employment and Reemployment Rights Act (USERRA) state that an employee performing service with the uniformed services is permitted, upon request, to use any accrued annual leave, military leave, earned compensatory time off for travel, or accrued sick leave (consistent with the statutory and regulatory criteria for using sick leave), during such service. An employee is entitled to use annual leave, military leave, earned compensatory time off for travel, or sick leave intermittently with leave without pay while on active duty or active/inactive duty training. Tracking the five-year cumulative period is separate from the use of tracking other leave statuses. Enclosed with this memorandum are instructions for DCPDS record coding of the NOA 473 - LWOP-US/ NOA 473 – LWOP US (Operation Enduring Freedom & Operation Noble Eagle) which documents the USERRA time as referenced in the HROs' DCPDS Guide.

4. The effective end date of the five year cumulative period is (365 days X 5 years) 1825 days from the onset of uniform service. The "Last day of LWOP-US" is the day the service member is taken off LWOP-US, not the order date. It is the date that the service member is "Restored" to technician status for re-employment or termination processing. A service member, who completed his five year period of service and indicates that he is restoring to his technician status, has 90 days from the ending date of his five year period to *Return to Duty*. Technicians are promptly reemployed within 30 days after notifying the HRO (5 CFR 353.207). Technicians who fail to meet the USERRA return to duty time limits are subject to management action in accordance with TPR 715, Voluntary and Non-Disciplinary Actions.

5. The agency ensures that the service member/technician receives the agency's written notification of the intent to separate him, via certified mail (recommendation - 90, 60, and 30 days out) for the agency's documentation purposes. The agency has the overwhelming burden of proof that it adhered to the USERRA guidance.

a. Technicians, who indicate no intention of returning, are considered to have abandoned their positions and are separated effective one day following the last day of LWOP-US. The Nature of Action Code for termination is 357 and the Legal Authority Code is C7M (Regulation 715.202 Abandonment). The second Legal Authority Code is V8K (32 USC 709) reference (TPR 715, 1-4(a)).

b. Technicians who submit, in writing, their resignations prior to entering uniform service are separated on the date requested by the technician. The Nature of Action Code is 317, resignation, and the legal authority code is RPM (Regulation 715.202 resignation). The second Legal Authority Code is V8K (32 USC 709).

c. When the technician requests resignation upon completion of five years of uniform service, the separation is one day after the last day on LWOP-US. The Nature of Action Code is 317, resignation, and the legal authority code is RPM (Regulation 715.202 resignation). The second Legal Authority Code is V8K (32 USC 709).

d. Technicians whose intentions are not determined are removed for abandonment of position. Follow procedures outlined in TPR 715, 1- 4(a), reference (CFR 353-207(e) and 38 USC 4312(3)).

e. A person who does not report within the time limits specified does not automatically forfeit restoration rights, but, rather, is subject to whatever policy and disciplinary action the agency would normally apply for a similar absence without authorization 5 CFR 353.205

6. Please direct any questions or requests for additional information to the appropriate Employment and Pay, NGB-J1-TNS, Regional Program Manager, or CPT G. Robert Bravo, NGB-J1-TNS, DSN 327-1456, CML 703-607-1456, or E-mail: NGB-J1-TNS galo.r.bravo@us.army.mil. Any questions pertaining to DCPDS need to be directed to the DCPDS Helpdesk.

7. This memorandum will expire one year from the date of publication unless rescinded or superseded.

Encl
as

WILLIAM F. KOLBINGER
Colonel, USAF
Chief, Office of Technician Personnel

STEP	NOA 473 – LWOP US
1	Create the RPA from the Navigation List – Click on ***Request for Personnel Actions –> Non pay/Duty Change Status*** or open the existing 473 RPA from the Civilian Inbox.
2	Complete the **REQUESTING INFO** Tab of the RPA: • **Effective Date** • **SSN (with dashes)** • **NOA (use LOV or type it in)** = 473 • Authority Code (use LOV or type it in)
3	**Complete the** REMARKS AND ADDRESS **Tab** • Part F – Remarks for SF-50 – enter appropriate remarks. For those reservists with health benefits coverage while absent for reasons related to military Contingency, enter in block 45 of the SF 50 remark B66: • **B66** Health benefits coverage will continue for 24 months unless you elect to terminate coverage. Contact your servicing Human Resources Office or see the FEHB Handbook at http://www.opm.gov/insure for detailed information
4	Click on ***<Save>*** icon to save
5	Click on the **EXTRA INFORMATION** button and complete the following DDFs. Click **<OK>** and **<Save>** after completing each window. ***US FED AGENCY DATA*** Open the DDF to verify that blocks 41-44 have autopopulated, if not enter the correct data and save **US FED NON-PAY OR NON-DUTY** Type of Employment = **F** (Emp on LWOP/Furl/Susp in Non-Pay Stat for

	31/ More Cons Days **<u>LWOP CONTINGENCY INFO (For employees on Contingencies only) –</u>** If applicable LWOP Contingency Start Date = Enter appropriate date LWOP Contingency End Date = Auto populates with a date that is 24 months minus 1 day from the LWOP Contingency start date **<u>LWOP MIL REEMPL RIGHTS INFO (Do not enter for employees participating in Contingency Operations)</u>** LWOP Mil Reempl Pd Beg – This should be the same date that is on the Military Orders LWOP Mil Reempl Pd Exp Flag – Please input date. This should be the date on the order plus five years. Mil Reempl Pd Yrs Mos Dys Used – Will auto populate after the Return to Duty has processed
6	Close **<Extra Information>** window to return to the RPA.
7	Click on the **<Save>** icon to route the RPA or to Update HR.
8	If Applicable. After updating the RPA, you must now input the Contingency Code into the employee record as stated in letter HRI-03-30. Please follow the instructions below: Select People Enter & Maintain from the Navigator list Enter Employees SSAN and click Find When the employee record appears, click on the Extra Information button Select the Personal Contingency DDF and complete the following: CCPO Suspense Code 1 = Enter appropriate code as provided by TNI-R

	letter HRI-04-14 CCPO Suspense Date 1 = insert the NTE date for mobilization Contingency Code 1 = insert the M (Mobilization) Contingency Date 1 = insert the Date Start of the mobilization period In the member's position update the following: In the Remarks Area = "Mobilized eff DD MMM YY" Extra Position Information , Authorized Psn = "0"

NOA 473 – LWOP US
(Operation Enduring Freedom & Operation Noble Eagle)

Documenting Leave Without Pay

Leave without Pay. LWOP must be documented on an SF 50, Notification of Personnel Action, with nature of action 473/LWOP-US and legal authorities Q3K/5 CFR 353 and ZJW/Operation Enduring Freedom & Operation Noble Eagle.

Note: ZJW is a new legal authority that has been established to enable OPM and agencies to identify reservists who are involved in the effort under Operation Enduring Freedom. These same authorities must also be used on the 292/RTD action when the reservist returns to civilian employment.

Separations. If the reservist requests separation rather than LWOP, the separation must be documented with nature of action 353/Separation-US and legal authorities Q3K/5 CFR 353 and ZJW/Operation Enduring Freedom & Operation Noble Eagle. Follow the instructions in Chapter 9 or 11 (as appropriate) of The Guide to Processing Personnel Actions, to document the reservist's restoration upon completion of his or her military service.

STEP	ACTION
1	Create the RPA from the Navigation List – Click on Request for ***Personnel Actions –> Non pay/Duty Change Status*** or open the existing 473 RPA from the Civilian Inbox.
2	Complete the **REQUESTING INFO** Tab of the RPA: • **Effective Date** • **SSN (with dashes)** • **NOA (use LOV or type it in)** = 473 • **Authority Code 1 (use LOV or type it in)** = Q3K • Authority Code 2 (use LOV or type it in) = **ZJW**

3	Complete the **REMARKS AND ADDRESS** Tab of the RPA: **REMARKS:** For those reservists with health benefits coverage while absent for reasons related to military duty, enter in block 45 of the SF 50 remark B66: **B66** Health benefits coverage will continue for 24 months unless you elect to terminate coverage. Contact your servicing Human Resources Office or see the FEHB Handbook at http://www.opm.gov/insure for detailed information. **ZZZ** You may be eligible to continue your health benefits for up to 24 months at no cost to you. For those reservists with Federal Employees' Group Life Insurance (FEGLI) coverage, enter in block 45 of the SF-50 remark B72: **B72** FEGLI coverage continues until your time in nonpay status totals 12 months. Contact your servicing Human Resources Office or see the FEGLI Handbook at http://www.opm.gov/insure for detailed information.
4	Click on the **EXTRA INFORMATION** button and complete the following DDFs. Click **<OK>** and **<Save>** after completing each window. ***US FED AGENCY DATA*** Open the DDF to verify that blocks 41-44 have autopopulated, if not enter the correct data and save **US FED NON-PAY OR NON-DUTY** Type of Employment = **F** (Emp on LWOP/Furl/Susp in Non-Pay Stat for 31/ More Cons Days **LWOP CONTINGENCY INFO (If applicable)** LWOP Contingency Start Date = Enter appropriate date LWOP Contingency End Date = Autopopulates with a date that is 24 months minus 1 day from the LWOP Contingency start date
5	Close **<Extra Information>** window to return to the RPA

6	Click on the **<Save>** icon to route the RPA or to Update HR.
7	After updating the RPA, you must now input the Contingency Code into the employee record as stated in letter HRI-03-30. Please follow the instructions below: Select People Enter & Maintain from the Navigator list Enter Employees SSAN and click Find When the employee record appears, click on the Extra Information button Select the Personal Contingency DDF and complete the following: CCPO Suspense Code 1 = Enter appropriate code as provided by TNI-R letter HRI-04-14 CCPO Suspense Date 1 = insert the NTE date for mobilization Contingency Code 1 = insert the M (Mobilization) Contingency Date 1 = insert the Date Start of the mobilization period In the member's position update the following: In the Remarks Area = "Mobilized eff DD MMM YY" Extra Position Information , Authorized Psn = "0"