

CHAPTER 16

REEMPLOYMENT TO DUTY FROM MILITARY SERVICE

Section I - General

1-1. **Purpose.** The purpose of this chapter is to establish policies and procedures pertaining to reemployment rights of technicians who enter on military duty.

1-2. **Scope.** The provisions of this chapter apply to technicians in non-temporary positions (permanent or indefinite appointment) who enter on military duty.

1-3. **Objectives.** The objectives of this chapter are:

- a. Establish policies and procedures to carry out the intent of Congress.
- b. Describe the rights and obligations of technicians and management.

Section II - Reemployment From Military Service

2-1. **Authority.** Title 38, United States Code (USC) provides reemployment rights following uniform service for every employee in a non-temporary position.

a. The term "service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, and a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty.

b. Technicians entering military duty in either Title 10 or Title 32 will be placed in a Leave Without Pay (LWOP) status unless separation action is requested.

2-2. **Credit for National Guard Service Under the Uniformed Service Employment and Reemployment Rights Act of 1994 (USERRA) - Public Law 103-353.**

a. The USERRA law provides credit for uniformed services performed under Title 32 and Title 10 provided it meets all of the following conditions:

(1) It must interrupt either permanent or indefinite civilian service creditable under CSRS or FERS as appropriate.

(2) It must be followed by reemployment in accordance with Chapter 43 of Title 38 that occurs on or after 1 August 1990.

(3) It must be full-time (and not inactive duty).

(4) It must be performed by a member of the Armed Forces of the United States, the Army National Guard of the United States or the Air National Guard of the United States.

(5) It must be under Section 316, 502, 503, 504 or 505 of Title 32.

(6) The individual must be entitled to pay from the U.S. (or have waived pay from the U.S.) for the service.

b. Since Title 32 service will not be military service, service credit will be available during LWOP only if the military service credit deposit is paid. The amount of deposit may not exceed the amount that would have been deducted and withheld from basic pay during civilian service if the employee had not performed the period of military service; therefore HRO will make two calculations:

(1) 3% (FERS) or 7% (CSRS) of military basic pay, and

(2) an alternative calculation of what CSRS (7% of civilian pay) or FERS (0.8% of civilian pay) employee contributions would have been for the civilian service had the employee not entered into the military.

c. The effective date of the law is 13 October 1994. Technicians separated with entitlement to an annuity will have benefits based on law in effect on date of separation or annuity commencing date, whichever is earlier.

2-3. **Requirements for Reemployment.** Technicians who are absent from employment by reason of service under either Title 10 or Title 32 are entitled to reemployment rights and benefits if all of the following requirements are met:

a. The technician has given advance notice of military service to TAG thru supervisor. Technicians entering military duty must out-process in HRO prior to entrance on military service.

b. The cumulative length of the service in the state does not exceed five years except as specifically authorized by law or a determination is made by Department of Defense that it is precluded by military necessity. The Assistant Secretary of Defense issued the following policy

pertaining to the five year limitation for individuals on military duty on the effective date of USERRA and those with prior military service:

(1) Title 10 Military Service:

(a) Military tours completed before 12 December 1994. Prior military service for which restoration rights were exercised before 12 December 1994 will be exempt and will not count toward the five year cumulative period. For example, a technician who completed a tour of duty from September 1984 to September 1988, would not have that service count toward the five year limit on reemployment rights.

(b) Current military tours that began before 12 December 1994. A military tour that began before 12 December 1994 is still ongoing after that date will count toward the five year limit.

(2) Title 32 Military Service: All military duty before 12 December 1994 is exempt, even if the current tour has not ended. If the individual is still on military duty, the clock begins on 13 December 1994.

c. The technician submits a timely application for reemployment to TAG AL.

2-4. **Time Limitation After Discharge for Return to Technician Status.** Technicians must return to technician status within the following time periods after discharge from military service.

<u>Length of Military Service</u>	<u>Time Limit</u>
More than 180 Days	Within 90 Days
More than 30, but less than 181 Days	Within 14 Days
Less than 31 Days	First Full Regular Work Day

2-5. **Position of Reemployment.**

a. The technician will be returned to a position after military duty depending on length of military service.

(1) If period of service was less than 91 days, the technician must be placed in the position for which he/she qualifies and would have attained if not for the interruption by military service.

(2) If period of service was more than 90 days, the technician will be placed in position in which would have been employed if not for military service or one of like seniority, status and pay.

(3) In the event of a service related disability, the technician may be placed in a position that is closest to the status, seniority, and pay of the position he/she would have obtained.

b. If The Adjutant General of Alabama determines it is impossible or unreasonable to re-employ a technician, the HRO will advise the technician in writing that the technician will not be re-employed and will advise of rights and/or options available to the technician. An example of a technician who would be ineligible for restoration would be a person who had lost military membership.

2-6. **Loss of Reemployment Rights.** Technicians lose rights/benefits if:

- a. Exceed 5 years of cumulative military service.
- b. Dishonorable or bad conduct discharge.
- c. Military separation under other than honorable conditions.
- d. Section 1161(a) and (b), Title 10, USC, Commissioned officers: limitations on dismissal.

2-7. **Rights of Persons After Reemployment.**

a. A technician who is re-employed under this chapter is entitled to the seniority and other rights and benefits determined by seniority that he/she had on the date of the commencement of service in the uniformed services plus the additional seniority and rights and benefits that would have been attained if the technician had remained continuously employed.

b. A technician who is re-employed under this chapter shall not be discharged from such employment, except for cause

(1) within one year after the date of such reemployment, if the period of service before the reemployment was more than 180 days; or

(2) within 180 days after the date of such reemployment, if the period of service before the reemployment was more than 30 days but less than 181 days.