



# Fort Eustis CPAC Civilian Personnel Advisory Center Bulletin

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## CHANGES FOR FEDERAL BENEFITS PROGRAMS UNDER THE AFFORDABLE CARE ACT (ACA)

On March 23, 2010, President Obama signed the Affordable Care Act, (ACA), Public Law 111-148. Several provisions of the ACA will affect eligibility and benefits under the Federal Employees Health Benefits (FEHB) Program and Federal Flexible Spending Account Program (FSAFEDS) beginning 1 January 2011. As a result of the ACA, children are covered under their parent's FEHB health plan's Self and Family enrollment until age 26. Under the FSAFEDS, there will be a change in the coverage of over-the-counter medicines or drugs and there is expanded coverage for children's eligible health care expenses. More detailed information on the changes which will take effect 1 January 2011 can be found at <http://www.opm.gov/retire/pubs/bals/2010/10-201attachment.pdf>.



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## NEW INTERPRETATION OF "SON OR DAUGHTER" UNDER THE FAMILY AND MEDICAL LEAVE ACT (FMLA)

Under the Family and Medical Leave Act of 1993 (FMLA), most Federal employees are entitled to a total of up to 12 workweeks of unpaid leave during any 12-month for the following purposes:

- The birth of a son or daughter of the employee and the care of such son or daughter;
- The placement of a son or daughter with the employee for adoption or foster care;
- The care of spouse, son, daughter, or parent of the employee who has a serious health condition; or
- A serious health condition of the employee that makes the employee unable to perform the essential functions of his or her positions.

On 31 August 2010, the Office of Personnel Management (OPM) issued guidance regarding the definition of the term "son or daughter" under FMLA, as applied to employees standing in loco parentis to a child. Specifically, the current FMLA regulation in 5 CFR 630.1202 at that time provided that in loco parentis referred to the situation of an employee who has day-to-day responsibility for the care AND financial support of a child. The new interpretation includes an employee who has day-to-day responsibility for the care OR financial support of a child. A biological or legal relationship is not necessary.



## CHANGES TO THE PORTAL

Did you know....?

That <http://acpol.army.mil/> has been modified? As of 1 November 2010, the following changes have been made:



Employee Info Module:

Employees can now view **ALL** of their SF50s from Army Employment dated from present back to the late 1990s.

Reference Library Module:

Added User Guide for My Biz Employment Verification.

## RESTORATION OF ANNUAL LEAVE

Agencies may restore annual leave that was forfeited because it was in excess of the maximum leave ceilings (i.e., 30, 45, or 90 days) if the leave was forfeited because of an administrative error, exigency of the public business, or sickness of the employee. An agency must restore the annual leave in a separate leave account.

**Administrative Error:** The employing agency determines what constitutes an administrative error.

**Exigency of the Public Business:** The employing agency determines that an exigency—i.e., an urgent need for the employee to be at work—is of major importance and that excess annual leave cannot be used. An employee's use of earned compensatory time off or credit hours does not constitute an exigency of the public business. If the use of earned compensatory time off or credit hours that are about to expire results in the forfeiture of excess annual leave, the forfeited leave cannot be restored.

**Sickness:** The employing agency determines that the annual leave was forfeited because of a period of absence due to an employee's sickness or injury that occurred late in the leave year or was of such duration that the excess annual leave could not be rescheduled for use before the end of the leave year.

An agency may consider for restoration annual leave that was forfeited due to an exigency of the public business or sickness of the employee **only** if the annual leave was scheduled in writing before the start of the **third biweekly pay period prior to the end of the leave year**. The last date to have scheduled leave for the 2010 leave year is **20 November 2010**.

### **Time Limit for Using Restored Annual Leave**

An employee must schedule and use restored annual leave not later than the end of the leave year ending 2 years after--

- the date of restoration of the annual leave forfeited because of administrative error;
- the date fixed by the head of the agency or designee as the date of termination of the exigency of the public business; **or**
- the date the employee is determined to be recovered from illness or injury and able to return to duty.





## RESTORATION OF ANNUAL LEAVE (CONT.)

Restored annual leave that is not used within the established time limits is forfeited with no further right to restoration. Administrative error may not serve as the basis to extend the time limit within which to use restored annual leave. This is so even if the agency fails to establish a separate leave account, fix the date for the expiration of the time limit, or properly advise the employee regarding the rules for using restored annual leave, absent agency regulations requiring otherwise.

### National Emergency by Reason of Certain Terrorist Attacks

On March 4, 2002, OPM issued final regulations that permit "use or lose" annual leave to be restored to employees whose services are determined to be necessary for the current national emergency. Such employees are entitled to have their excess annual leave restored without the administrative burden of scheduling and canceling such leave. In addition, the time limitations for using restored annual leave are suspended for the entire period during which employees' services are determined to be essential for activities associated with the national emergency. At the end of the national emergency, or when the services of the employee no longer are determined to be necessary, a new time limit will be established for using all restored leave available to the employee.

**References:** 5 U.S.C. 6304(d) and (e) 5 CFR 630.305-311



## EXTENSION OF 24-HOUR LWOP FAMILY SUPPORT POLICY TO SAME-SEX DOMESTIC PARTNERS OF FEDERAL EMPLOYEES

In his June 2, 2010 memorandum, President Obama directed Federal agencies to take action immediately to extend certain benefits to same-sex domestic partners of Federal employees and, where applicable, to the children of same-sex domestic partners of Federal employees, to the maximum extent permitted by law. The 24 hours of leave without pay (LWOP) for (i) school and early childhood educational activities; (ii) routine family medical purposes; and (iii) elderly relatives' health or care needs may be used to meet the needs of an employee's same-sex domestic partner or the partner's children. The June 2, 2010 memorandum can be found at [www.whitehouse.gov/the-press-office/presidential-memorandum-extension-benefits-same-sex-domestic-partners-federal-emplo](http://www.whitehouse.gov/the-press-office/presidential-memorandum-extension-benefits-same-sex-domestic-partners-federal-emplo).





## SPECIAL APPOINTING AUTHORITIES FOR VETERANS

Federal law has established special authorities allowing the noncompetitive appointment of eligible veterans. Agencies can, at their discretion, make use of these special authorities; no one is entitled to one of these special appointments. There are 4 special appointing authorities with their own unique requirements; Veterans Recruitment Appointment (VRA), 30 Percent or More Disabled Veterans, Disabled Veterans Enrolled In VA Training Programs, and Veterans Employment Opportunities Act (VEOA). The information that follows, as well eligibility criteria and other pertinent facts, can also be found in the comprehensive *Vet-Guide* at the Office of Personnel Management's website: <http://www.opm.gov/veterans/html/vetguide.asp>



**The Veterans Recruitment Appointment (VRA)** is a special authority by which agencies can appoint an eligible veteran without competition. The VRA is an excepted appointment to a position that is otherwise in the competitive service.

After 2 years of satisfactory service, the veteran is converted to a career conditional appointment in the competitive service

**30 Percent or More Disabled Veterans** - These veterans may be given a temporary or term appointment (not limited to 60 days or less) to any position for which qualified (there is no grade limitation). After demonstrating satisfactory performance, the veteran may be converted at any time to a career-conditional appointment.

**Disabled Veterans Enrolled In VA Training Programs**- Disabled veterans eligible for training under the Department of Veterans Affairs' (VA) vocational rehabilitation program may enroll for training or work experience at an agency under the terms of an agreement between the agency and VA. The veteran is not a Federal employee for most purposes while enrolled in the program, but is a beneficiary of the VA.

**Veterans Employment Opportunities Act (VEOA)** - This authority permits an agency to appoint an eligible veteran who has applied under an agency merit promotion announcement that is open to candidates outside the agency.



## NEW CHANGES TO THE FEDERAL EMPLOYEES' GROUP LIFE INSURANCE PROGRAM (FEGLI)

Revised FEGLI regulations went into effect October 1, 2010, and affect various aspects of the FEGLI program.

**New Employee Elections.** New employees now have 60 calendar days (instead of the previous 31 days) to make an initial election of Optional insurance.

**FEGLI Life Events.** The new regulations allow an employee who experiences a FEGLI Qualifying Life Event (QLE) 60 days to elect Basic, plus any or all Optional insurance – Option A, Option B (up to the maximum of 5 multiples with no restrictions), and Option C (up to the maximum of 5 multiples with no restrictions). FEGLI QLEs include marriage, divorce, death of a spouse, and birth or adoption of children.

**Options B and C Elections at Retirement.** The new regulations state there will be only one election opportunity to choose how your Option B and Option C coverage may reduce at age 65. The election must be made at the time of retirement. In this election, you can choose No Reduction for some multiples and Full Reduction for other multiples; “mixed elections” will be allowed. Those who retired since the statutory provision became effective on April 24, 1999, are under age 65 and have Option B and/or Option C will be given the opportunity to make a “final” election. This information will be forthcoming from the Office of Personnel Management (OPM) Retirement Office. The SF 2818 “Continuation of Life Insurance” is currently being revised based on these changes.

**Timeframe for Converting to an Individual Policy.** Separating and retiring employees, and those losing FEGLI coverage, are issued SF 2819 “Notice of Conversion Privilege, FEGLI Program.” The request for conversion information must be submitted to the Office of Federal Employees’ Group Life Insurance (OFEGLI). OFEGLI must receive the request for conversion within 31 calendar days of the date on the SF 2819 (60 days if overseas) or within 60 calendar days after the date of the terminating event (90 days, if overseas), whichever is earlier.

**Power of Attorney.** The new regulations now allow an individual having power of attorney to convert the FEGLI coverage on behalf of the insured, if the insured is unable to convert, and to apply for a living benefit on behalf of the insured.

Additional information on the FEGLI Program can be found at <http://www.opm.gov/insure/life/fegli/FEGLIProgramChanges.pdf> and <https://www.abc.army.mil/Life/Life.htm>.





## UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT OF 1994 (USERRA)

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) which is codified in 38 U.S.C. Chapter 43, prohibits discrimination in employment, retention, promotion, or any benefit of employment based on uniformed service. It also provides for prompt restoration to duty and benefits following uniformed service. This includes past military service or current or future military obligations and protects reemployment rights for non-career and career Veterans, Reservists, and National Guard members. USERRA provides that a person alleging a violation may file a complaint with the Department of Labor Veterans' Employment and Training Service against a federal agency or file directly to the Merit Systems Protection Board.



The following FAQ was compiled by speakers at the USERRA forum held at the Office of Personnel Management (OPM) on June 21, 2010.

Q1: Has there been any guidance on extending the 24 month health or life insurance coverage for employees on Military-LWOP?

A1: We are not aware of any initiative extending beyond the 24-month coverage.

Q2: If someone is on military orders, and it indicates they're on MPA (Military Personnel Authorization) orders, it's not training, but they are on active duty. Is MPA orders excluded from the 5 year rule (which doesn't exist)?

A2: If an individual is absent from civilian employment for purposes of serving on active duty, s/he would have reemployment rights provided the following 5 criteria are met. They are: 1) Must be absent for a period of covered military service; 2) Must provide advance notice to the employer (oral or written); 3) Cumulative period of active service not to exceed 5 years subject to a number of exceptions; 4) Application for reemployment must be timely; and 5) Cannot have a disqualifying discharge.

Exceptions to the 5-year cumulative service limit are set forth by 38 U.S.C. § 4312(c). It is ultimately up to the service branch to determine what periods of active service fall within and without exceptions to the 5-year cumulative limit. Further, the employee's discharge certificate, not initial orders to active duty would be dispositive as to whether any or all of his/her military duty is exempt from the 5-year limit. An employee is not required to provide orders to active duty to an employer prior to leaving for active duty. All that is required is that the employee advise the employer orally or in writing that s/he will be on active duty.



## UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT OF 1994 (USERRA) (CONT.)

Q3: How is it fair or reasonable to management and the organization if a military member is considered for a position, and they are selected, but they won't be returning to civilian service any time soon? The work and mission will not be fulfilled, and management will have to hire someone temporarily until the military member returns to the civilian job. This is fiscally irresponsible. Isn't it?

A3: USERRA is a Federal statute imposing certain requirements on all employers in order to ensure that Service Members' employment and reemployment rights are preserved. The Veterans' Employment and Training Service (VETS), the U.S. Department of Justice, and the Office of Special Counsel do not have discretion as to which provisions of that law they will administer or enforce. You may, however, wish to direct your comments to the Senate and House Veterans' Affairs Committees, and it is reasonably certain that the Chairs of both committees will be highly interested in hearing your views.

Q4: If a civilian employee is coming off of military service, do they ALL automatically get the 5 days of uncharged leave or does it depend on how they were called up (i.e. the authority they were called up under). We have lots of employees who are called up —IN SUPPORT OF OIF or OEFII under Title 10, but they are not deploying to the theater, they are performing their military service in CONUS. Does the 5 days apply to them?

A4: Not necessarily – it depends on the orders and how he or she was called to serve. A civilian employee is entitled to 5 days of excused absence after he or she returns from active military service in connection with the continuing Global War on Terrorism (GWOT)—as well as any other current or future military operations deemed to be part of the GWOT. An employee must be on active duty in support of the GWOT for at least 42 consecutive days to qualify for 5 days of excused absence. An employee does not qualify for excused absence for active duty of less than 42 days or for an accumulation of 42 or more days of active duty if at least one of the activations does not meet the 42 consecutive days standard. However, agencies may exercise their normal policies to grant excused absence in circumstances not covered by this policy.

Q5: Can a disabled veteran who is being terminated from a career conditional appointment during a probationary period use USERRA to appeal the termination if he/she believes that the termination is related to his/her military service? This is a newly hired employee, not someone who has returned from military service.

A5: An employee may always allege and file a complaint to the effect that s/he believes that an employer has taken an adverse action due to his/her status as a veteran. But the simple fact that the employee is a disabled veteran does not offer protection against discharge during a probationary period or for cause. Rather, the law provides that the employer may not take any adverse action against the employee due in any part to his/her status as a veteran. As long as his/her military status is not a factor in the decision to terminate, then USERRA would not be violated.





## UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT OF 1994 (USERRA) (CONT.)

Q6: I was told by one of our employees that documentation is not required for less than 30 days. Is that true, even if they are requesting paid military leave differential? What about if the employee leaves for 22 days and claims that the service is for a contingency operation? Don't we need documentation to verify that it was contingency service?

A6: The employer may ask for, but may not require documentation for USERRA reinstatement/reemployment purposes for periods of service less than 30 days. The employer may, however, require such documentation if the employee wishes to claim military leave or differential pay. OPM can best address issues involving military leave and differential pay.



Q7: We had an employee who turned in an unsigned letter on blank bond paper to request military leave. When the supervisors requested a signed letter or a document that was on the military letterhead, the employee was indignant. How do you suggest we handle this?

A7: USERRA only requires that an employee provide advance notice orally or in writing to the employer prior to leaving for a period of covered military service. If the employer questions whether or not the duty is actually performed, s/he may contact the employee's unit of assignment to verify the employee's current military status.

Q8: In respect to career promotions, are employees entitled to all successive promotions that would have occurred had it not been for active duty?

A8: Short answer, yes. If the promotion is part of a normal ladder promotion, only contingent upon successful completion, then the employee should be brought back at the GS level s/he otherwise would have attained.

Source: OPM, Employee Services Directorate—Partnership & Labor Relations Division, <http://www.opm.gov>

## FEEDBACK



This bulletin is designed to inform employees and supervisors of new civilian human resources issues and refresh their knowledge of existing policies and procedures. We welcome your feedback; contact your servicing Human Resources Specialist. The bulletin is available on our web page, <http://www.eustis.army.mil/cpac> Request you print and post on Bulletin Boards throughout your organization for those employees who do not have access to our web page. The CPAC uses the Interactive Customer Evaluation (ICE) and we would appreciate you taking the time to rate us and provide feedback on the service you receive from our office. Just click on the following website: [http://ice.disa.mil/index.cfm?fa=site&site\\_id=439](http://ice.disa.mil/index.cfm?fa=site&site_id=439)