

NATIONAL ASSOCIATION OF LETTER CARRIERS

CONTRACT ADMINISTRATION UNIT

Ronald G. Brown
Vice President

Jane E. Broendel
Asst. Secretary-Treasurer

Gary H. Mullins
Director of City Delivery

December 2001

Alan C. Ferranto
Director, Safety and Health

Thomas H. Young
Director, Health Insurance

USERRA RIGHTS

I. INTRODUCTION

In response to the terrorist acts of September 11, over 25,000 military reservists and National Guard members were called to active duty as of November, 2001. Since many of those called up were letter carriers, the Contract Administration Unit has prepared this publication to review employees' rights during and after military service.

Veterans and reservists employed by the Postal Service have always had strong legal rights and protections. However, in response to experience during and after the Gulf War in 1991, Congress revised and strengthened these protections in the *Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)* signed on October 13, 1994. The statute became effective on December 12, 1994. However, certain aspects of the statute relating to benefits were made retroactive to August 1990.

This Contract Administration Unit publication is intended to provide a brief explanation of letter carriers' rights under USERRA. It does not address the military leave provisions found in ELM Section 517.

Questions most frequently arise concerning military reservists and National Guard members called to active duty. However, as explained below, the USERRA regulations also address the rights of letter carriers who enlist in the military.

This publication is not exhaustive. It may be necessary to consult the actual Postal Service regulations if additional information or clarification is required. However, there is no dispute with the

Postal Service concerning any of the information contained herein.

II. REFERENCE MATERIALS

Currently the primary source for Postal Service regulations implementing USERRA rights is the *Handbook EL-312, Employment and Placement*, Section 77, dated September 2001. Employees who are unable to obtain copies of this handbook because they are on active military duty can also find it at the CAU section of the NALC web site at www.nalc.org.

III. ELIGIBILITY

USERRA extends reemployment rights to employees who were absent from work because of active duty in the uniformed services for up to five years.

- *Uniformed Services*. Consist of the following military branches: Army, Navy, Marine Corps, Air Force, Coast Guard, their respective reserve components and the Army and Air National Guard; Commissioned Corps of the Public Health Service; and any other category of persons who are designated by the President as uniformed service in time of war or emergency.
- *Types of uniformed service (voluntary or involuntary)*. Consists of the following: active duty, active duty for training, including initial training, inactive duty training, full-time National Guard duty, or time needed for an examination to determine fitness for any of the above types of duty.
- See *Handbook EL-312, Employment and Placement*, Section 77.1 for additional information, including exceptions to the five year limitation and

coverage for casual, temporary and transitional employees.

IV. STATUS WHILE ON MILITARY DUTY

Employees in the reserves or National Guard who are called for active duty are placed in a leave without pay (LWOP) status until their return from active duty.

Employees enlisting in the military must be given the following options.

- They may be placed in an LWOP status for up to five years; or,
- They may exercise a written option to resign with the intention of not returning to the Postal Service. In such cases they must be advised that their restoration rights are not affected by the resignation.

V. RIGHTS WHILE ON MILITARY DUTY

A. Employees On LWOP For Military Service

- While on LWOP for military service, employees continue to accrue uninterrupted seniority.
- Full-time letter carriers on LWOP for military service are covered by the provisions of Article 41.1.B.1 which provides in pertinent part that:

When an absent employee has so requested in writing, stating a mailing address, a copy of any notice inviting bids from craft employees shall be mailed to the employee by the installation head.

- Full-time letter carriers on LWOP for military service may bid under the provisions of Article 41, Section 1 for positions that become vacant during the employees absence. The applicable Postal Service regulations state that “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 employee’s interest to bid on specific positions” (EL-312, Section 772.1.a.1).
- Employees on LWOP for military are an exception to the memorandum on telephone and computer bidding. They may submit written bids even if telephone or computer bidding is otherwise required in an installation. **Remember**, however, that the contractual time limits for the submission of bids still apply and could become a problem.

- Any bids submitted should be processed and awarded under the provisions of Article 41, just as if the employee were actively employed. If a bid is awarded, a personnel action must be initiated to place the employee in the newly gained position and pay scale and to assure that seniority is credited as in accordance with Article 41 until the employee resumes active employment upon return from the military service.

- Bid positions held by or awarded to employees on LWOP for military service are not posted for bids under the provisions of Article 41.1.A.1. Rather, they are considered to be temporary vacancies and may be filled under the opting provisions of Article 41.2.B.3-5 or the provisions of Article 25, as applicable.

- While on LWOP for military service, employees remain members of the bargaining unit. They may file grievances or have grievances filed and processed on their behalf.

B. Employees Who Resign for Military Service

- Employees who elect to resign from the Postal Service, in contrast to those who elect to be placed in an LWOP status, are no longer members of the bargaining unit. They relinquish their bid assignments which become vacant and should be posted for bids under the provisions of Article 41.1.A.1. They do not have bidding rights while on active military duty.

- Employees who resign to enlist in the military have strong reemployment rights as discussed below.

- The seniority of letter carriers who are reemployed following military service is governed by Article 41.2.D.2 which provides that “letter carriers who enter the military shall not have their seniority broken or interrupted because of military service.” Unlike members of the other postal bargaining units, reinstated letter carriers have uninterrupted seniority restored even if they return to a different installation than the one they left (see JCAM, Article 41.2.D.2). Note also that the seniority rule stated in *ELM Issue 16*, Exhibit 365.23 page 5 is incorrect since it provides for interrupted seniority.

VI. REEMPLOYMENT RIGHTS

A. Advance Notice

To ensure entitlement to reemployment and benefits, employees must give their immediate supervisor reasonable notice of the impending absence from

work because of service in the uniformed services. The advance notice can be given by the employee orally, in writing, or:

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

B. Return to Work

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

- *Service of 1 to 30 days.* The employee must report by the beginning of the first regular scheduled day of work following 8 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.
- *Service of 31 to 180 days.* A written request for return to duty must be submitted no later than 14 days after the employee's completion of the military service. If submission of written request for return to duty is impossible or unreasonable through no fault of the employee, it must be submitted as quickly as possible.
- *Service of 181 or more days.* A written request for return to duty must be made within 90 days from the date of discharge.
- Individuals who fail to request return to duty in writing within the above specified time frames do not forfeit their rights automatically. However, they may be subject to discipline because of unexcused absences. See *Handbook EL-312, Employment and Placement*, Section 773 for additional information.
- Full-time letter carriers returning to duty from LWOP for military service are returned to the bid assignments, if any, that they held prior to military service.
- All Employees reemployed after separation for military service must be returned to the seniority, grade and position they would have held if they had remained continuously employed. This is known as the escalator position. This means that they progress in accordance with the provisions of the National Agreement as if they had been active with the Postal

Service during the period of military service.

VII. 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 any non-seniority right and benefit which became effective during their service time. See ELM Issue 16, Exhibit 365.23. These rights include, but are not limited to, the following:

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

Employees on active military service are permitted to request earned leave, such as annual or sick, during the period of military service. Sick leave requests while on military duty are administered in accordance with ELM Section 513. 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.

VIII. ENFORCEMENT OF USERRA RIGHTS

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

Employees and applicants seeking enforcement of their USERRA rights 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. If VETS cannot successfully resolve the complaint, VETS may ask the office of special counsel to represent the employee or applicant in an appeal before the Merit Systems Protection Board (MSPB). Further, the employee or applicant may bypass VETS and appeal to the MSPB.

Furthermore, employees who were placed in an LWOP status rather than separated for military service are still members of the bargaining unit and may be represented by the Union concerning certain issues such as the failure of the Postal Service to honor bids. They should seek advice from their branch officers or national business agent if they believe Union assistance is required.

VIII. Conclusion

There are no disagreements between NALC and Postal Service Headquarters concerning letter carrier rights under USERRA. However, the application of USERRA regulations can be complex and problems can arise. Letter carriers enlisting or called to active duty in the military should study their rights and discuss any questions with their personnel office. NALC is prepared to provide assistance when it is required.