

## Chapter 4

# Absence and Leave Program

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## **Section 1**

### **Introduction**

#### **4-1. Purpose**

This regulation establishes responsibilities, policies and procedures for the Absence and Leave Program for Mississippi National Guard technicians and is consistent with Technician Personnel Regulation (TPR) 630. This regulation meets Federal and Department of Defense (DoD) requirements as cited in Title 5, United States Code, Chapter 63 and Title 5 Code of Federal Regulation, Part 630. This regulation also establishes work schedules for technicians of the Mississippi National Guard.

#### **4-2. References**

This regulation is not intended to stand alone and must be used in conjunction with TPR 630 and its references.

#### **4-3. Responsibilities**

a. The Chief, National Guard Bureau (CNGB). Serves as the strategic focal point in developing, managing, and integrating employment of National Guard capabilities for the Office of the Secretary of Defense, the Joint Staff, and the Departments of the Army and Air Force in support of Combatant Commanders. Administers DoD, Joint Army and Air Force programs and acquires, distributes and manages resources.

b. Director of Manpower and Personnel, NGB-J1. Serves as the primary advisor to the CNGB on all personnel and manpower issues in the National Guard. Provides oversight and has primary responsibility to the CNGB on the human resource technician program development, staffing, and execution of policy, plans, and programs concerning the technician Absence and Leave Program.

c. Chief, Office of Technician Personnel Division, NGB-J1-TN. Establishes responsibilities, policies, and requirements for the National Guard Absence and Leave Program that meet statutory and regulatory requirements.

d. Adjutant General. Establishes an Absence and Leave Program for the State that meets the statutory and regulatory requirements cited in TPR 630 and its references.

e. Human Resource Officer. Provides oversight and has primary responsibility to TAG on the State's technician absence and leave program. Issues regulatory guidance, and administers and publicizes the State Absence and Leave Program. Ensures the Absence and Leave Program meets the regulatory requirements cited in TPR 630 and its references. Provides training and support to supervisors and managers on leave and absence requirements.

f. Human Resources Specialist (Employee Relations). Serves as program manager for the State Leave Program. Provides advice, assistance and training to commanders, managers, and supervisors on effective use and participation in the program. Provides training and orientation to all technicians and military members regarding the leave program.

## **Section 2**

### **Annual Leave**

#### **4-4. Eligibility**

All permanent, term, and indefinite employees, and temporary employees who are appointed to

positions in excess of 90 days are entitled to annual leave.

#### **4-5. Maximum Accumulation**

Federal employees may accumulate a maximum of 240 hours (30 days) of annual leave. Excess annual leave will be forfeited at the beginning of the first pay period of the new leave year but may meet criteria for restoration as per paragraph 4-11.

#### **4-6. Granting Annual Leave**

Annual leave is provided to allow every employee a period of relaxation and short periods of time off for personal and emergency purposes. Employees are charged with the responsibility to provide advance notice of leave requests and to also schedule leave throughout the year in order to minimize interruptions to mission requirements and to prevent the forfeiture of accrued leave. Supervisors are charged with the responsibility to consider mission requirements first, then the employees' desires when approving and/or disapproving leave.

#### **4-7. Advancing Annual Leave**

Supervisors may grant advance annual leave consistent with the agency's leave administrative policy. The amount of annual leave that may be advanced is limited to the amount of annual leave an employee would accrue in the remainder of the leave year. Employees do not have an entitlement to advance annual leave. In most cases, when an employee who is indebted for advance annual leave separates from Federal service, he or she is required to refund the amount of advance leave for which he or she is indebted. When an employee has a pending separation (such as employees on temporary appointments or those whose retirement is planned), advanced leave may not exceed the amount that can be repaid by accrual before the separation.

#### **4-8. Sickness During Annual Leave**

When sickness occurs during a period of annual leave, an employee may request to change their status to sick leave for the period of sickness.

#### **4-9. Disposition of Annual Leave**

Technicians are entitled to receive a lump sum payment for all accumulated and accrued annual leave upon separation from technician employment. If the technician leaves the National Guard to accept a position in another Federal agency, lump-sum payment of annual leave is not authorized. If the leave is transferable to the new position, it must be transferred.

#### **4-10. Restoration of Forfeited Annual Leave**

a. Restoration of Annual Leave. Leave lost through an administrative error, sickness, or exigencies of the public business (this includes furlough) is authorized. Before forfeited annual leave may be considered for restoration, IAW 5 CFR 630.308 the annual leave must have been requested, approved, and scheduled in writing before the start of the third bi-weekly pay period to the end of the leave year. Restoration of forfeited annual leave must be approved by the Human Resources Office (HRO). In accordance with (IAW) 5 U.S.C. 6304(d)(1)(B), annual leave restored because of an extended exigency must be scheduled and used within a time period that equals twice the number of full calendar years, or parts thereof, that the exigency existed. This time period begins at the beginning of the leave year following the leave year in which the exigency is declared to be ended.

b. Exigencies Determination. Before forfeited annual leave is restored, there must be a determination that an exigency is of major importance and an employee may not use scheduled annual leave. Failure to use annual leave due to extended active duty is not considered an “exigency of the public business” for purposes of restoring forfeited leave to a special account. Technicians facing activation with a leave balance in excess of 240 hours should be advised to use such leave to avoid forfeiture.

c. An extended exigency means an exigency of such significance as to:

- (1) Threaten the national security, safety, or welfare;
- (2) Last more than three calendar years;
- (3) Affect a segment of an agency or occupational class; and
- (4) Preclude subsequent use of both restored and accrued annual leave within the

time limit specified in §630.306 (Time limit for use of restored annual leave).

d. Time Limit for Use of Restored Annual Leave. Once annual leave is restored, it must be scheduled and used not later than the end of the leave year ending two years after the date of restoration of the annual leave. The employee must submit an OPM Form 71 clearly indicating the amount of leave to be charged to the restored leave account.

### **Section 3**

#### **Leave Without Pay (LWOP)**

##### **4-11. Eligibility**

All technicians may be eligible for, or entitled to, leave without pay (LWOP).

##### **4-12. Granting Leave Without Pay**

The authorization of leave without pay is a matter of employer administrative discretion. Even though LWOP is a non-pay status, it is still approved leave and must be requested by the employee and approved by the supervisor. Employees cannot demand they be granted LWOP as a matter of right except as follows:

- a. To cover a disabled veteran’s absence for medical treatment.
- b. To cover a Reserve or technician’s absence to perform military duties (not covered by some form of paid leave).
- c. To cover an absence under the provisions of the Family Medical Leave Act.

##### **4-13. Approval Conditions of Leave Without Pay**

As a basic condition to the approval of LWOP, there should be reasonable expectation the technician will return at the end of the approved period. Each request for LWOP should be examined closely to ensure that the value to the government or the serious needs of the employee are sufficient to offset such costs and administrative inconveniences. It should be apparent that at least one of the following benefits will result:

- a. Increased job ability.
- b. Protection or improvement of employee’s health.
- c. Retention of a desirable employee.
- d. Furtherance of a program of interest to the government.

#### **4-14. Leave Without Pay is Not a Penalty**

Generally you may not place a technician on LWOP without their consent. LWOP may not be imposed as a penalty.

#### **4-15. Effects of Leave Without Pay**

LWOP for personal reasons that exceeds specific time limitations can delay the due date of the next step increase; it can eliminate leave accrual for the pay period; and can affect creditable service for the calendar year. LWOP for military duty does not impact a due date of a Within Grade Increase, however, it does affect leave accrual by changing to pro-rated accrual, and affects creditable Federal service for the period only if a deposit is not made.

### **Section 4 Sick Leave**

#### **4-16. Eligibility**

All employees (permanent or temporary) regardless of work schedule (full or part time) are eligible to earn and are entitled to use sick leave. Sick leave will not be advanced for temporary or probationary technicians. Unused sick leave accumulates without limit and can be credited to retirement annuity computation.

#### **4-17. Granting Sick Leave**

Sick leave is appropriate when any of the following circumstances cause absence. Employees must request sick leave within such time limits as management may require and when necessary, supported by evidence administratively acceptable by management.

- a. Medical, dental, or optical examination or treatment.
- b. Personal incapacitation by physical or mental illness, injury, pregnancy, or childbirth.
- c. Health Risk - The presence of the employee would jeopardize the health of others by presence on the job because of exposure to a communicable disease, or as determined by the health authorities having jurisdiction or by a health care provider.
- d. Any activities relating to adoption of a child, including appointments with social worker, adoption agencies, travel, courts proceeding etc.; sick leave may not be used by adoptive parents who *voluntarily* choose to be absent to bond with adopted child.
- e. Family care and bereavement purposes; limited (see paragraph 4-20).
- f. Care for family member with a serious health condition; limited (see paragraph 4-21).

#### **4-18. Advancement of Sick Leave**

A maximum of 240 hours of sick leave may be advanced to a permanent technician with a medical emergency, for purposes related to the adoption of a child, for family care or bereavement purposes, or to care for a family member with a serious health condition. Sick leave may be advanced subject to the following conditions:

- a. Request for advancement of sick leave will be supported by a medical certificate.
- b. Available accumulated sick leave will be exhausted before advancement.
- c. Annual leave that would otherwise be forfeited will be used.
- d. There is reasonable assurance the technician will return to duty to earn and repay advance credits.



#### **4-19. Sick Leave for Family Care and Bereavement Purposes**

Employees may use a total of 13 days (104 hours) of sick leave each leave year to care for family members and for bereavement purposes. Sick leave may be used for:

- a. Family member incapacitation.
- b. Family member medical, dental or optical examination or treatment.
- c. Make arrangements necessitated by death of a family member and/or attend funeral of family member.

Family member is defined as:

- a. Spouse and parents thereof
- b. Children and spouses thereof
- c. Parents and spouses thereof
- d. Brothers and sisters and spouses thereof
- e. Grandparents and grandchildren, and spouses thereof
- f. Domestic partner and parents thereof
- g. Others with close association as if in a family relationship

#### **4-20. Sick Leave for Family with Serious Health Condition**

An employee may use a total of up to 12 administrative workweeks of sick leave each leave year to care for a family member with a serious health condition. If an employee previously used any portion of the 104 hours of sick leave for general family care or bereavement purposes in a leave year, that amount must be subtracted from the 12 month entitlement. An employee is entitled to a total of 12 weeks of sick leave each leave year for *all* family care purposes. A serious health condition includes conditions such as cancer, heart attacks, strokes, severe injuries, etc. and is not intended to cover short-term conditions for which treatment and recovery are very brief i.e. flu, common cold. Medical certification of a serious health condition is required for approving sick leave under these provisions. A family member is defined in paragraph 4-19.

### **Section 5**

#### **Family and Medical Leave**

##### **4-21. Eligibility**

All employees are eligible to use unpaid leave under the provisions of the Family and Medical Leave Act (FMLA) except intermittent employees and employees serving under a temporary appointment with a time limitation of one year or less. The employee must have completed at least 12 months of civilian service with the Federal Government (not required to be 12 recent or consecutive months). Employees must invoke entitlement to FMLA leave.

##### **4-22. Granting Leave Under Family and Medical Leave Act (FMLA)**

Employees shall be entitled to a total of 12 administrative workweeks of *unpaid* leave (LWOP) during any 12-month period for one or more of the following reasons:

- a. Birth of son or daughter and care of the newborn (within 1 year of birth).
- b. Placement of son or daughter with the employee for adoption or foster care (within one year after placement).
- c. Care for spouse, child, or parent with a serious health condition.

d. A serious health condition that renders the employee unable to perform the essential functions of their position. In addition, a serious health condition must require continuing treatment by, or under the supervision of a health care provider.

e. For any qualifying exigency arising out of the fact that the spouse, son, daughter, or parent of the employee is on covered active duty (or has been notified of an impending call of order to covered active duty) in the Armed Forces.

FMLA leave is in addition to other paid leave available to an employee. Advance notice, usually 30 days prior, and medical certification is required. Family member under FMLA is limited to spouse, child or parent. Serious health condition is defined the same under FMLA as for sick leave purposes (paragraph 4-20).

#### **4-23. Substitution of Paid Leave**

An employee may substitute paid leave, consistent with applicable laws and regulations for using such leave, for any or all of the period of leave under FMLA.

a. Any of the following types of paid leave may be substituted: accrued or accumulated annual or sick leave, leave donated to the employee under the voluntary leave transfer program, or compensatory time.

b. The agency may not deny an employee's right to substitute paid leave for any or all of the periods of FMLA leave.

c. The agency may not require an employee to substitute paid leave for any or all of the period of FMLA.

#### **4-24. Continued Employment After Extended Family and Medical Leave**

The agency will ensure the continued employment of an employee for whom extended leave had been approved unless termination is otherwise required by expiration of appointment, by reduction-in-force, for cause, or for other reasons unrelated to the absence. The employee must be allowed to return to the position formerly occupied.

#### **4-25. Military Family Leave**

Employees who are family members of a servicemember with a serious injury or illness that he or she incurred in the line of duty while on active duty in the Armed Forces, and who are providing care for that servicemember, are entitled to up to 26 weeks of FMLA (military family leave) during a single 12-month period to care for the servicemember. During the 12-month period, the employee is entitled to a combined total of 26 weeks of regular FMLA leave and military family leave.

### **Section 6**

#### **Military Leave**

#### **4-26. General**

Military leave is absence from duty in the employee's civilian position without loss of pay to perform military duty.

a. Conditions for Granting Military Leave. An eligible technician is granted any military leave that is available whenever ordered to active duty, active duty for training, or inactive duty. Annual leave, LWOP, or compensatory time off may be granted for such military duty as long as

the technician has such leave available.

b. **Military Leave for Inactive Duty.** Military leave may be used for performance of inactive duty. A technician can use military leave to perform AFTPs, RUTAs, SUTAs, etc.

c. **Military Leave in Hourly Increments.** Military leave is chargeable in increments of one hour. Hourly increments are only chargeable to scheduled technician work hours. Because inactive duty is for specific period of time i.e. 4 hour UTA period, military leave is only chargeable for the hours away from technician position. However, because active duty with a military order covers the full 24 hour day, military leave (or other leave category) must be charged for the full technician workday.

d. Technicians on LWOP-US will continue to accrue military leave for subsequent fiscal and calendar years.

#### **4-27. Military leave under 5 USC 6323(a) - 15 Days (120 hours)**

a. **Leave accrual.** Permanent and indefinite technicians accrue 120 hours (15 days) of military leave as of the first day of their hire. Thereafter, another 120 hours accrue on 1 October of each year. This type of military leave may be used for any type of military duty.

b. **Carry over.** Technicians may carry over up to 15 days (120 hours) of military leave into the next fiscal year.

c. **Maximum use.** No more than 30 days (240 hours) of military leave may be used in any one fiscal year.

#### **4-28. Military leave under 5 USC 6323(b) - 22 Days (176 hours)**

a. **Leave accrual.** Permanent and indefinite technicians are entitled to 22 days of leave per calendar year. There is no carry over provision for this type of military leave. This type of military leave is restricted for emergency duty as ordered by the President, the Secretary of Defense or a State Governor. This leave is also provided for employees who perform full-time military service as a result of a call or order to active duty in support of a contingency operation as defined in Section 101(a)(13) of Title 10, United States Code. This active duty may be performed CONUS or OCONUS.

b. **Charge to Leave.** Technicians may elect to use annual, compensatory time or LWOP prior to using leave under 5 USC 6323 (b).

c. **Crediting Amounts of Pay Received.** Military pay and allowances received (other than travel, transportation, or per diem allowance) shall be credited against the technician's civilian pay and, if less than the civilian pay, the technician shall be paid the difference. If military pay exceeds civilian pay, no civilian pay will be made. For this reason, military leave under this entitlement must be processed retroactively and through local payroll customer service representative.

#### **4-29. Military leave under 5 USC 6323(d) - 44 Days (352 hours)**

In addition to the military leave described above, military technicians are entitled to 44 additional workdays of military leave in a calendar year when on active duty without pay for participation in operations outside the United States, its Territories, and Possessions. The active duty order must cite 10 USC 12315, 12301(b), or 12301(d) to be eligible for this entitlement. Technicians must be in a Title 10 status and non-pay military status; however, the member will receive one military retirement point for each duty day served. While in this status, the technician continues to receive his or her technician pay and benefits. The 44 workdays are

converted into hours and are charged on the same basis as annual leave.

## **Section 7**

### **Funeral Honors Duty Status (32 USC 115)**

#### **4-30. Use of Military Technicians**

Military technicians may be used in a technician status to administer, plan, train, and prepare military funeral honor details for the performance of funeral honors. Technicians may volunteer to perform military funeral honors but must be placed in an inactive duty training status, State active duty status or administrative leave status. If placed on inactive duty or State active duty, technicians must also be placed in an appropriate leave status from their technician position.

#### **4-31. Funeral Honors Duty Status while on Inactive Duty Training**

When military technicians perform military funeral honors as part of a detail, they may be placed in an inactive duty training status for retirement credit and must be in an appropriate leave status. To receive a retirement point credit, the technician may use additional UTA training days to perform funeral honors. In order to receive the retirement point credit, the technician must be in a "funeral honors duty" status for a period of at least two hours. Performance of funeral honors duty may not be performed by technicians who are on military active duty under the provision of Title 32 USC, 502f or on a regularly scheduled inactive duty training period. Technicians may perform military funeral honors duty and collect the Federal \$50.00 stipend while in either an annual leave, compensatory leave, military leave or LWOP status. To receive the \$50.00 stipend the technician must be in a funeral honors duty status for a period of at least two hours.

#### **4-32. Funeral Honors Duty Status while on Administrative Leave**

Technicians may perform military funeral honors duty while in an administrative leave (excused absence) status.

a. Administrative leave for the purpose of military funeral honors may be granted to cover each period of travel to and from the burial site, and the performance of funeral honors. The number of instances of administrative leave granted for funeral honors duty will be determined by the TAG, utilizing the standards in 5 CFR, 610, Subpart C.

b. Technicians on administrative leave and in a funeral honors duty status may be reimbursed for travel and transportation incurred, if such duty is performed at a location 50 miles or more from the members residence.

#### **4-33. Funeral Honors Duty Status while on State Active Duty**

Technicians may be granted annual leave, compensatory leave, or LWOP to perform military funeral honors duty while in a State active duty status. Military leave may not be used while on State Active Duty (SAD) for funeral honors duty.

a. The number of instances of leave granted for funeral honors duty will be determined by the TAG. Retirement credit is not available to technicians performing military funeral honors in State active duty status.

b. Leave for this purpose may only be granted to cover each period of travel to and from the burial site and the performance of the funeral honors.

c. The Federal \$50.00 stipend, travel and transportation reimbursement, and retirement point credit is not available to technicians performing military funeral honors in State active duty

status.

## **Section 8**

### **Full Time National Guard Duty for Special Work (FTNGDSW) – Military Personnel Authorization (MPA) Mandays**

#### **4-34. Authorized Use**

Technicians may utilize FTNGDSW and MPA mandays, as authorized, in an appropriate leave status. Appropriate types of leave include annual leave, compensatory leave, LWOP, and military leave.

#### **4-35. Administrative Leave**

Technicians in a FTNGDSW or MPA status may not be granted administrative leave since the appropriate leave, while in either status, is military leave under 5 USC Section 6323.

#### **4-36. Use of IDT, AT, ADT**

Inactive duty for training (IDT) i.e. regularly scheduled drills, annual training (AT), and active duty for training (ADT) status will not be used for support of military funeral honors for veterans. These are specifically prohibited by statute.

## **Section 9**

### **State Active Duty (SAD)**

#### **4-37. General**

Military technicians who are required to perform State Active Duty (SAD) may elect any of the following types of leave to cover their absence: annual leave, LWOP, compensatory time, or the 22 days leave provided under 5 USC 6323 (b). Military leave (120 hours) under 5 U.S.C 6323(a) may not be used while on SAD.

a. Leave under 5 U.S.C 6323(b) may be used provided the technician is a permanent or indefinite employee. Leave under 5 U.S.C 6323(b) is limited to 22 workdays in a calendar year. This leave may only be used when the technician is actually performing emergency duties, providing other assistance to civil authorities (i.e., participating in rescue work, fire fighting, or performing duties in support of a contingency operation). SAD orders should state as such.

b. Under no circumstances will a technician use military leave under 5 U.S.C. 6323(a), sick leave or excused absence (administrative leave) to perform SAD.

c. Dual compensation rules dictate that any technician who performs SAD be required to take a full day of leave for each day of such service, even if the SAD functions are performed after the normal technician working hours. The only exception to this requirement occurs when the technician first learns of the necessity to perform SAD during a workday. In this circumstance, the technician will be required to take leave only for the hours absent from work for the remainder of that day. The technician will be required to take a full day of leave for each subsequent day of SAD.

d. There is no charge of leave when SAD is performed on non-workdays or holidays.

e. State active duty is not Federal service and is not covered under Title 32. The Governor of each State or in the District of Columbia, the President, calls up National Guard members for hurricanes, floods, blizzards, forest fires, riots, etc. under a proclamation that varies

from State to State.

f. State active duty is not subject to the entitlements, benefits, retirement, and protection under Uniformed Services Employment and Reemployment Rights Act (USERRA).

## **Section 10**

### **Voluntary Leave Transfer Program**

#### **4-38. Eligibility**

All technicians are eligible for Voluntary Leave Transfer (VLT) as recipients and donors except that an employee may not donate to their immediate supervisor.

#### **4-39. Provisions**

The VLT program permits Federal employees to donate annual leave for the use of other Federal employees in medical or family medical emergency situations:

- a. Annual leave only may be donated.
- b. In any one-leave year, a leave donor is limited to the amount of hours they may donate as outlined in 5 CFR 630.908.
- c. Any transferred annual leave remaining to the credit of the leave recipient when the medical emergency terminates, shall be restored to the leave donor(s) on a pro-rated basis to the extent administratively feasible IAW 5 CFR 630.911.

#### **4-40. Leave Transfer for Combat-Related Disability**

An employee who sustains a combat-related disability while serving as a member of the Armed Forces and is undergoing medical treatment for that disability may receive donated annual leave without having to exhaust his or her available paid leave. A qualified leave recipient is eligible to receive donated annual leave under this provision for up to 5 years from the start of the employee's treatment, as long as the employee continues to undergo such medical treatment.

#### **4-41. Donations from Other Agencies**

The employing agency of the leave recipient must accept the transfer of annual leave from a donor employed in another agency if:

- a. The leave donor is a family member of the leave recipient.
- b. The leave recipient's employing agency determines the amount of annual leave donated within the agency may not be sufficient to meet the needs of the leave recipient.
- c. In the judgment of the leave recipient's employing agency, acceptance of leave transferred from another agency would further the purpose of the voluntary leave transfer program.

## **Section 11**

### **Compensatory Time**

#### **4-42. Earning Compensatory Time**

Compensatory time off is time off from regularly scheduled work in lieu of overtime pay. The amount of time off given is equal to the time spent outside the normal duty hours or irregularly scheduled work.

- a. Compensatory time is accrued only in support of the activity/base/unit missions and

should be requested in advance and must be approved by two levels of supervision, i.e. 1<sup>st</sup> and 2<sup>nd</sup> level supervisors. Requests and approvals should be documented on NGB Form 46-14 and maintained as part of time and attendance records. Compensatory time must be taken within 26 pay periods from the pay period in which it was earned. There are no provisions for the restoration of forfeited compensatory time; therefore, the supervisor must ensure that an employee has an opportunity to use, rather than forfeit, compensatory time.

b. Compensatory time should be taken before annual leave, except in those instances where forfeiture of annual leave will occur.

c. An employee whose personal religious beliefs require the abstention from work during certain periods of time may elect to engage in overtime or work schedule adjustment for time lost for meeting religious requirements.

#### **4-43. Compensatory Time for Travel**

Compensation time off for travel is earned by an employee for time spent in a travel status away from the employee's official duty station when such time is not otherwise compensable. Travel must be officially authorized and for work purposes and must be approved by an authorized agency official.

a. For the purpose of compensatory time off for travel, time in a travel status includes: time spent traveling between the official duty station and a temporary duty station; time spent traveling between two temporary duty station; and the usual waiting time (1-2 hours) that precedes or interrupts such travel (e.g., waiting at an airport or train station prior to departure). An extended waiting period, i.e., an unusually long wait during which the employee is free to rest, sleep, or otherwise use the time for his or her own purposes is not considered time in travel status.

b. For the purpose of crediting commuting time: travel outside of regular working hours between an employee's home and a temporary duty station or transportation terminal outside the limits of his or her official duty station is considered creditable travel time. However, the agency must deduct the employee's normal home-to-work/work-to-home commuting time from the creditable travel time. Travel outside of the regular working hours between a worksite and a transportation terminal is creditable travel time, and no commuting time offset applies. Travel outside of regular working hours to or from a transportation terminal within the limits of the employee's official duty station is considered equivalent to commuting time and is not creditable travel time.

c. GS and FWS employees may earn compensatory time while traveling outside of the normal duty hours.

d. Travel performed within the regularly scheduled duty hours on a holiday or a day designated as the "in lieu of holiday" is not earned compensatory time. Required travel within regularly scheduled duty hours on a holiday will be compensated by premium pay.

#### **4-44. Disposition of Compensatory Time**

Technicians are not entitled to receive a lump sum payment for accumulated compensatory time upon separation from Federal employment. Compensatory time is forfeited upon separation.

## **Section 12 Excused Absence**

### **4-45. Excused Absence**

The authority to grant excused absence to technicians is within the administrative discretion of the State Adjutant General or delegated official that has made a determination that to support an activity that would benefit the National Guard. This authority may not be used in situations of extensive duration, or for periods of interrupted, or suspended operations such as ordinarily would be covered by the scheduling of leave, furlough, or the assignment of other work. In adverse weather conditions or other emergency situations which will prevent employees from performing normal duties or jeopardizes their safety, the Adjutant General may close the organization and require employees to either leave or not report to work. Such closing will be publicly announced. (Also see Administrative Closings)

### **4-46. Excused Absence with Adjutant General Approval**

a. Community Activities. Technicians may be excused for short periods to participate in civil activities the Federal government is interested in encouraging. Before granting excused absences, it should be determined that such participation is in the best interest of the Federal government (including the National Guard). These periods will be limited to no more than a combined total of three workdays during a calendar year. Official community activities may include but are not limited to inaugurations, dedication of public buildings and projects, ceremonies for officially invited governmental visitors and the convening of legislative bodies.

b. Conferences and Conventions. A technician may be excused to attend a conference or convention when it is determined that attendance will serve the best interest of the Federal service.

c. Representing Labor Organizations. Refer to the appropriate Labor-Management Contract Agreement.

d. Absences for Permanent Change of Station (PCS) Purposes. An employee may be excused for reasonable time to make personal arrangements and transfer personal business directly related to a PCS, which is in the interest of the US Government, provided such business or arrangements cannot be transacted outside the employee's regular working hours.

e. In cases where an employee is pending an adverse action and it has been determined the employee's presence may result in potential harm or danger to the organization, excused absence may be granted. Such excused absence may not extend beyond the original decision stage of any adverse action proceeding.

### **4-47. Excused Absence with Supervisor Approval**

a. Blood Donation. Technicians are encouraged to serve as blood donors and will be excused from work without charge to leave only for time necessary to donate blood, recuperation following blood donation, and for necessary travel time to and from the donation site. The maximum excused time will not exceed four hours on the date of the blood donation.

b. Registration and Voting. Technicians may be excused for a reasonable time to vote or register in Federal, State, county, or municipal elections. Generally, employees are excused from duty to permit them to report for work 3 hours after the polls open or to leave work 3 hours before the polls close, whichever results in the lesser amount of time off.

c. Tardiness and Brief Absences. Tardiness and brief absences of less than one hour



may be excused when reasons are justified.

d. Physical Examinations. Examinations are required as a condition of technician employment in the National Guard. Technicians will be excused, without charge to leave or loss of pay, for periodic, baseline, or annual physical examinations as required by the military commander, HRO or safety. Administrative leave is also authorized for physical examinations required for military membership taken during regularly scheduled tour of duty hours. This will also apply for Dental examinations required for military duty.

e. Continuation of Pay, Federal Employees' Compensation Act. When an employee sustains a traumatic job-related injury and files a Workers' Compensation claim, the employing agency is required to continue the employee's pay for the period of disability, not to exceed 45 calendar days. Continuation of pay is chargeable as excused absence.

f. Bone Marrow or Organ Donor. In accordance with 5 USC 6327, a technician is entitled to an excused absence for the time necessary to serve as a bone marrow or organ donor. An excused absence for bone marrow donation may not exceed seven days each calendar year. An excused absence for organ donation may not exceed 30 days each calendar year.

g. Employee Interviews. A technician may be excused for a job interview when competition is for a position within the National Guard or the individual is under notice of separation or change to lower grade for any reason except for personal cause. All other employment interviews will be charged to annual leave, compensatory leave, or leave without pay. Authorization to develop or deliver a job application to any human resources office other than the local HRO is not an excused absence.

h. Employee Assistance Program (EAP). A technician is entitled to an excused absence for the time required for participating in initial counseling and assessment for EAP. If the technician is referred for treatment or assistance, the technician must be in an appropriate leave status.

#### **4-48. Presidential Leave - Excused Absence Upon Return to Duty**

Technicians activated for military service in connection with Global War on Terrorism (GWOT) such as Operation Noble Eagle, Operation Enduring Freedom, Operation Iraqi Freedom, or any other military operations subsequently established under Executive Order 13223, are entitled to five work days of excused absence without charge to leave. The technician must spend at least 42 consecutive days in support of GWOT. Furthermore, the technician is entitled to the five days only once in a 12-month period. Upon receiving notification from the employee of his or her intent to return to civilian duty, an agency must grant the employee five days of excused absence immediately prior to the employee's actual resumption of duties. Authority: President George Bush's and Office of Personnel Management November 14, 2004 memorandums, and OPM December 16, 2008 memorandum amendment (Minimum Service Requirement to Receive five Days of Excused absence for Employees Returning from Active Military Duty).

### **Section 13**

#### **Unexcused Absence**

#### **4-49. Absence Without Leave (AWOL)**

Absence without leave (AWOL) is defined as an absence from duty (i.e., tardiness or leaving work area), which has not been authorized or approved by the proper official in accordance with this regulation. Accordingly, pay is denied for the entire period of absence. After determining

the absence is excusable, the AWOL may be changed to a proper leave status. The supervisor must determine whether or not the circumstances warrant a change to approved leave. Incidents of unauthorized absence may require disciplinary action in accordance with TPR 752. The minimum charge of AWOL is one half hour.

## **Section 14 Court Leave**

### **4-50. Jury Duty**

Court leave for jury duty is granted to both permanent and temporary employees, both full time and part time except those employed on an intermittent basis.

a. Duration of Court Service. Court leave is an authorized absence, without charge to leave or loss of pay, of an employee for work status for jury duty, or for attending judicial proceedings in a non-official capacity as a witness on behalf of any party in any matter to which the United States, State, or local government is a party.

b. An employee who is under proper summons from a court should be granted leave of absence with pay for the entire period of court service, regardless of the number of hours per day or days per week served during the period.

c. Supervisors may require an employee entitled to court leave to return to duty or be charged with annual leave, compensatory leave, or LWOP if he or she is excused from court service for one day or even a substantial part of the day. The employee may not, however, be required to return to duty if it would create a hardship.

d. When in a court leave status, technicians must forward fees collected to their payroll office. The technician is permitted to keep travel and per diem allowance for each day's attendance in court. Failure to forward fees collected will result in a charge to leave for the days covered by the fee payment. The technician may keep any fees earned on non-work days.

e. Evidence of Court Service. A copy of orders, subpoenas, summons, or official request to appear in court will be presented to the supervisor as far in advance of the court date as possible. Upon return to duty, the technician will submit evidence from the court reflecting dates of attendance in court.

### **4-51. Witness Status**

Witness in Official Capacity. When a technician is assigned by the agency or summoned to testify in an official capacity or to produce official records the technician is in an official duty status and entitled to regular compensation without regard to any entitlement to court leave.

a. If the United States, State, or local government is a party in the judicial proceedings, court leave is appropriate regardless if the employee testifies on behalf of the government or a private party.

b. When the United States, State, or local government is not a party in the judicial proceedings, annual leave, compensatory leave, or LWOP is appropriate.

## **Section 15 Administrative Closings**

### **4-52. Administrative Dismissal**

Administrative dismissal differs from excused absence in that excused absence normally

addresses individual employees. Administrative dismissal is an absence when employees are released from duty because all or part of an activity is closed. Employees affected by these actions are generally excused without charge to leave and without loss of pay. All technicians are eligible for excused absence during closing, except individuals who have been identified as essential personnel. The Adjutant General, Air Commander, Chief of Staff, or Division, Regiment, Group Commander, or Brigade Administrative Officers, will identify essential personnel, based on specific mission requirements. DOD 1400.25-M, Civilian Personnel Manual addresses situations in which commanders may use their authority to close all or part of an activity and excuse non-emergency civilians. (Also see Excused Absence)

#### **4-53. Facility Closures**

It is within the administrative discretion of the Adjutant General to close facilities when circumstances warrant such action. The most common use of this authority is in response to severe weather; however, other circumstances may arise which justify closures. (Also see Excused Absence)

#### **4-54. Severe Weather**

Severe weather may cause closings or adjustments of arrival or dismissal times. In such circumstances, the Federal workforce will follow the State's designated work schedule for severe weather, as communicated by local area media. These situations are considered excused absences and there is no charge to leave. This policy excludes essential personnel unless properly excused by competent authority.

a. Severe weather does not necessitate administrative closing. Employees may use any form of appropriate leave when they are prevented from arriving to work on time, need to leave early to avoid hazardous conditions, or could not return home if they report to work.

b. At the employees' request, supervisors will work with them to allow make up for missed time, if practicable. The supervisor may reschedule the amount of time missed and will grant compensatory time for the time made up. This should be accomplished in the same pay period if possible.

### **Section 16 Holidays**

#### **4-55. Federal Holidays**

The following holidays are observed:

- a. New Year's Day – First day of January
- b. Martin Luther King Day – Third Monday in January
- c. President's Day – Third Monday in February
- d. Memorial Day – Last Monday in May
- e. Independence Day – Fourth Day of July
- f. Labor Day – First Monday of September
- g. Columbus Day – Second Monday of October
- h. Veterans Day – Eleventh Day of November
- i. Thanksgiving Day – Fourth Thursday of November
- j. Christmas Day – Twenty-fifth Day of December
- k. Any other day designated as a holiday by Federal Statute or Executive Order

#### **4-56. In Lieu of Holiday**

When a holiday falls on a non-workday (i.e. Saturday), the preceding workday is designated as the “in lieu of” holiday.

a. Technicians receive their regular straight-time pay for holidays they are not required to work. When the activity is closed on a Friday because of a holiday falling on a Saturday or Sunday, such closed days are not considered holidays in determining holiday’s benefits for part-time technicians, but these technicians may be excused without charge to leave for such days.

b. If a technician works on a holiday that falls on a regular workday, or a holiday that falls on a day designated as “in lieu of holiday”, they are paid at twice the regular rate for not more than the number of hours in their regularly scheduled tour of duty. If the technician is required to work more than the number of hours in their regularly scheduled tour of duty, that employee is authorized compensatory time for all additional hours worked above the regularly scheduled tour of duty.

#### **4-57. Basic Pay for Holidays**

All technicians are entitled to receive basic pay for holidays. All technicians who are required to work on holidays are entitled to holiday premium pay (non-overtime work only).

Technicians are not eligible for holiday pay under the following conditions:

a. The technician fails to report for duty after being directly notified that his or her services would be required on the holiday and an acceptable reason is not provided for the absence.

b. The holiday falls within a period of non-pay status. A holiday that falls on the first or last day of an authorized period of LWOP is within the non-pay period, therefore, payment is not authorized. If the date of the holiday is not included in the period of non-pay status, payment for the holiday is authorized.

c. Technician was AWOL on the regularly scheduled workday immediately preceding or following the holiday.

d. Travel performed within the regularly scheduled duty hours on a holiday or a day designated “in lieu of” holiday is not earned compensatory time. Required travel within regularly scheduled duty hours on a holiday will be compensated by premium pay.

### **Section 17**

#### **Enforced Leave**

#### **4-58. Application**

All employees are subject to the provisions of enforced leave. (Also see Human Resources Regulation, Chapter 7A, Enforced Leave)

#### **4-59. Imposing Enforced Leave**

Management has the right to require a technician to leave the worksite by placing in a LWOP status when:

a. The technician is not ready, willing, and able to perform assigned duties.

b. The technician’s continued presence is highly undesirable because the employee presents an immediate threat to himself, others, or government property.

The technician must never be instructed to leave the worksite if his/her ability to drive is questionable. In such cases, the supervisor must arrange for a family member or a co-worker to provide transportation for the technician to leave the worksite.

#### **4-60. Termination of Enforced Leave**

Enforced leave must be terminated as soon as management determines the technician is ready, willing and able to perform assigned duties, or the immediate emergency is resolved. Upon the technician's return to duty and based on explanation given, supervisor may allow technician to change period of non-duty time from LWOP to an appropriate leave status e.g. annual, compensatory, sick.

### **Section 18**

#### **Work Schedule**

##### **4-61. Work Schedule**

Full-time technicians of the Mississippi National Guard work 80 hours per bi-weekly pay period. Each bi-weekly pay period begins on a Sunday and ends on a Saturday. The Mississippi National Guard works a compressed work schedule working 44 hours the first week and 36 hours the second week for a total of 80 hours per bi-weekly pay period. Duty days are Monday-Friday during the first week of the pay period and Tuesday-Friday during the second week of the pay period. Therefore the second Monday of each pay period is a non duty day. Hours of duty are 0700-1530 (8 hours) on first Monday of pay period and 0700-1630 (9 hours) on Tuesday-Fridays. The lunch break is 1130-1200 hours daily.

##### **4-62. Work Schedule Change Requests**

The Adjutant General, or his designee, is the approval authority for any work schedules other than the normal compressed work schedule described above. Requests for work schedule changes must be submitted through appropriate supervisory channels to the HRO for approval. Requests must be in memorandum format clearly outlining the proposed work schedule for the bi-weekly pay period. The request must also include justification for the request with appropriate supervisory endorsements. For technicians with young children, the HRO may approve requests to adjust work schedule start/end times by 30 minutes to accommodate childcare and school opening/closing times.