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United States
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Soil
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September 2, 1982

GENERAL MANUAL (GM)
360-PERS
Amendment 15 (Part 415)

SUBJECT: PART 415 - MILITARY LEAVE

Purpose. To inform of new amendments to section 6323 of Title 5, U.S. Code, which provided for accrual of military leave on a fiscal year basis, carry-over of unused military leave, and entitlement to military leave for part-time employees.

Effective Date. Fiscal Year 1982.

ROBERT G. HALSTEAD
Deputy Chief for
Administration

Enclosures

Filing Instructions

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415-12	Mar. 1979	415-12	Aug. 1982

DIST: GM



The Soil Conservation Service
is an agency of the
Department of Agriculture

WO-AS-1
10-79

SUBPART D - MILITARY LEAVE

415.42(c)

§415.40 Definition.

Military leave is absence with pay for active duty or training. Eligible employees can accrue 15 days of military leave (less for part-time employees) each fiscal year. Military leave which is unused at the end of the fiscal year (not to exceed 15 days) should be carried forward for use at the beginning of the new fiscal year. This could give a full-time employee the potential of 30 days military leave during a fiscal year. Thirty days is the maximum amount of military leave that can be used in any fiscal year due to carryover. Military furlough is absence for an extended time in active duty for general service with the Armed Forces.

§415.41 Eligibility.

(a) SCS employees who are in the Armed Forces Reserve or National Guard, and serving under career, career-conditional, temporary appointments pending establishment of a register, or indefinite appointment under Schedule A are granted military leave or absence with pay not to exceed 15 calendar days in any fiscal year (less for part-time employees).

(b) Part-time employees earn military leave at the same ratio their duty hours per pay period are to 80. For instance, if a part-time employee works 60 hours per pay period, his military leave entitlement is $11\frac{1}{2}$ days ($60-80 \times 15$). The fractional day is counted as 2 hours; it is not rounded off.

(c) Employees with temporary appointments of less than one year, or not to exceed one year, or with intermittent (WAE) work schedules are not entitled to military leave. However, full-time employees and part-time career employees with at least 16 hours and up to 32 hours per week with permanent, TAPER, or term appointments, or temporary appointments of one year or more, are entitled to military leave.

(d) Military leave unused in one fiscal year may be carried over into the next fiscal year, up to a maximum of 15 days.

(e) Military leave is credited in full at the beginning of each fiscal year. For example, a part-time employee working 60 hours per pay period has $11\frac{1}{2}$ days available for credit in the first pay period of the fiscal year. If he carried over 5 days from the previous fiscal year, he has $16\frac{1}{2}$ days available for immediate use.

415.42

§415.42 Granting military leave.

(a) Employees who are in the Armed Forces Reserve and are called to duty for a period of time beyond the amount of time that can be charged to military leave, can use annual leave or leave without pay for the excess period. Military leave may not be used for inactive duty training, such as weekend drills or ROTC training.

(b) Nonworkdays occurring within a period of military duty must be charged to military leave. For example, an employee absent on Friday thru Monday for military training is charged with 4 days of military leave, but an employee absent on Thursday and Friday who returned to work on Monday is charged only 2 days of military leave, even if he or she was actually engaged in military exercises during the 4-day period including Saturday and Sunday.

(c) An employee who is a member of the Reserve or National Guard can also be granted up to 22 workdays of emergency military leave in a calendar year (1) if ordered to Federal military service during the following: Insurrection in a State against its government; unlawful obstruction, combination, assemblage, or rebellion against the United States; interference with State and Federal law; or invasion or rebellion against the United States if regular forces are unable to execute the laws of the United States; or (2) if ordered to full-time military service for a State, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, or a territory of the United States. Deductions are made from the employee's SCS salary equivalent to the amount of military pay received while serving on emergency military active duty.

(d) Applications for military leave must be supported by a copy of the employee's military orders directing the employee to report for active duty for training. The administrative office is to approve military leave of absence or military furlough when it receives a completed SF-71 signed by a person authorized to approve leave.

(e) Requests for military leave and military furlough must be approved in advance.

(f) For each employee entitled to regular military leave, the number of days of unused military leave should be recorded in the remarks section on the yellow and green copies of the time and attendance report, so that the information is readily available in the preparing office and in the administrative office. The number of days recorded in the "balance to date" column opposite transaction code 65 cannot exceed 15 days (less for part-time employees plus the carry-over from the current fiscal year). Enter only military leave used in the leave status section.

Federal Personnel Manual System

FPM Letter 630-30

Terrell, A.
 Underwood, J.
 Vohase, P.
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Published in advance
 of incorporation in FPM
 Supplement 990-2
 RETAIN UNTIL SUPERSEDED

SUBJECT: Military Leave; Reserves and National Guardsmen

Washington, D. C. 20415
 April 23, 1982

Heads of Departments and Independent Establishments:

1. Public Law 96-431, effective October 1, 1980, amended section 6323 of title 5, United States Code, to provide accrual of military leave on a fiscal year basis, carry-over of unused military leave, and entitlement to military leave for part-time employees. Section 6323(a) now reads as follows:

(1) Subject to paragraph (2) of this subsection, an employee as defined by section 2105 of this title or an individual employed by the government of the District of Columbia, permanent or temporary indefinite, is entitled to leave without loss of pay, time, or performance or efficiency rating for active duty or engaging in field or coast defense training under sections 502-505 of title 32 as a Reserve of the armed forces or member of the National Guard. Leave under this subsection accrues for an employee or individual at the rate of 15 days per fiscal year and, to the extent that it is not used in a fiscal year, accumulates for use in the succeeding fiscal year until it totals 15 days at the beginning of a fiscal year.

(2) In the case of an employee or individual employed on a part-time career employment basis (as defined in section 3401(2) of this title), the rate at which leave accrues under this subsection shall be a percentage of the rate prescribed under (1) which is determined by dividing 40 into the number of hours in the regularly scheduled workweek of that employee or individual during that fiscal year.

2. OPM has received numerous inquiries regarding application of the provisions of Public Law 96-431. The attachment to this letter lists some of the questions received and our responses thereto. This FPM letter is prepared solely as guidance for agencies since OPM has no regulatory responsibility in the area of military leave. Agencies are reminded of their obligation to consult or negotiate, as appropriate, with recognized labor organizations in the implementation of Public Law 96-431. It should be noted that the basic eligibility requirements for military leave under the provisions of 5 U.S.C. 6323(a) remain unchanged, e.g., the employee must be a member of a Reserve component of the Armed Forces or the National Guard; must be serving in a permanent, temporary indefinite, temporary pending establishment of a register, or term appointment; and must be engaging in active duty or active duty for training. Military leave is not authorized for periods of inactive duty training (usually weekend drills) (Comptroller General decision B-188145, November 15, 1977).

Donald J. Devine
 Director

Attachment

Inquiries: Advisory Services Section, Compensation Division, (202) 632-5582 or extension 25582

Code: 630, Absence and Leave

Distribution: FPM Supplement 990-2

MILITARY LEAVE and leave without pay.

1. Q. Will OPM issue regulations to implement the changes in the law?
A. No. OPM does not have authority to regulate use of military leave and, therefore, will not issue regulations. We will, however, continue to provide guidance as we have in the past.

2. Q. The law provides for the accrual of military leave on a fiscal year basis, instead of a calendar year basis. What is meant by "to the extent that it is not used in a fiscal year, accumulates for use in the succeeding fiscal year until it totals 15 days at the beginning of a fiscal year?"

A. Under prior provisions of the law, military leave did not "accrue" or "accumulate." When a full-time employee who was a reservist or National Guardsman served on active duty or active duty training, he or she was entitled to leave without loss of pay not to exceed 15 days in a calendar year. If the reservist or National Guardsman did not serve for the full 15 days during the year, he or she had no entitlement to the unused military leave. However, under the current law an eligible employee accrues 15 days military leave (less for part-time employees) each fiscal year, and the military leave (not to exceed 15 days) which is unused at the beginning of the succeeding fiscal year is carried forward for use in addition to the days which are credited at the beginning of that fiscal year. This gives a full-time employee the potential of 30 days military leave during a fiscal year.

3. Q. We were not aware of the changes in the law. What should we do concerning the leave records of those employees who had military duty since October 1, 1980 and were incorrectly charged annual leave or leave without pay since they had previously used the 15 days military leave authorized for calendar year 1980, or who were part-time employees?

A. The provisions of Public Law 96-431 are retroactive to October 1, 1980; the beginning of the 1981 fiscal year. If an agency was not aware of the changes in the law or improperly interpreted the changes, a retroactive adjustment in the employee's leave record is appropriate if the employee requests that military leave to which he was entitled be substituted retroactively for the annual leave or leave without pay used during military duty on or after October 1, 1980. Agencies should notify the employees of their option to retroactively substitute military leave for annual leave or leave without pay which was incorrectly charged under these circumstances.

4. Q. If an employee did not use all of the 15 days authorized for calendar year 1980 under the prior provisions of the law, may the unused military leave be credited to the employee for use during fiscal year 1981?

A. No. Public Law 96-431 did not provide for the crediting of military leave which was unused in calendar year 1980 for use in fiscal year 1981. As explained in paragraph 2 above, the prior law provided entitlement to military leave only while the employee was on active military duty. If the employee did not use the 15 days of military leave authorized under the prior provisions of the law, he or she had no entitlement to that unused leave on or after October 1, 1980.

5. Q. If an employee was on military leave for a period which began prior to October 1, 1980 and ended after that date, how should the leave be charged?

A. Only the portion of the leave which occurred prior to October 1, 1980 may be charged to the military leave which was available for use during calendar year 1980. The balance of the period which occurred on or after October 1 may be charged to the 15 days authorized for fiscal year 1981 at the employee's option.

6. Q. How will the military leave accumulate, e.g., on a pay-period basis?

A. The law provides for accrual of the 15 days military leave (less for part-time employees) on a fiscal year basis and not in increments during a lesser time period. On October 1 of each fiscal year, or upon first appointment in the fiscal year, the account of each eligible employee shall be credited with the unused military leave remaining in the employee's account from the prior fiscal year (but not to exceed 15 days) plus 15 days (less for part-time employees) to which he or she is entitled for the current fiscal year.

7. Q. Suppose we know, or have reason to believe, that the employee will not continue employment with the Federal government for the full fiscal year, should we prorate the amount of military leave to be authorized to the employee on October 1 based on the portion of the year he or she is expected to continue as a Federal employee?

A. No. The law does not provide for proration under these circumstances. An eligible employee must be credited with the full 15 days (less for part-time employee) at the beginning of, or upon the first appointment in, the fiscal year, regardless of how long the individual is expected to be employed or whether he or she is expected to go on active duty before separation. The intent of Congress in providing military leave for Federal employees is that a member of the Reserves or National Guard shall not sacrifice pay or benefits while serving in the Armed Forces for limited periods of active duty, regardless of when he or she is called to duty during the fiscal year.

8. Q. What happens to the unused military leave when the reservist or National Guardsman is employed in another Federal agency during the same or a different fiscal year?

A. When the employee separates from an agency the unused military leave may be recorded in the remarks section of the Standard Form 1150, Record of Leave Data. If the employee transfers or is reemployed during the same fiscal year, the receiving agency may recredit the balance of unused military leave for use during that fiscal year and for carry-over into the succeeding fiscal year, as appropriate. If the employee is not reemployed during the fiscal year in which he or she separates, the unused leave may be recredited if he or she is reemployed in the Federal service during the fiscal year which immediately follows the fiscal year in which he or she separates from the Federal service. If the employee does not return to duty during the same fiscal year in which separated or during the succeeding fiscal year, there is no authority to recredit the leave if, at a later date, the employee returns to Federal employment.

9. Q. If the individual serves on active duty during a period when he or she is separated from Federal civilian service, should that time which would otherwise have been charged to military leave if the individual were a Federal employee be subtracted from the military leave to be recredited upon reemployment?

A. No. There is no authority to reduce the amount of authorized military leave by the days of military service performed during a period when the individual is not a civilian Federal employee.

10. Q. The law provides that an individual employed on a part-time career basis (as defined in 5 U.S.C. 3401(2)) may accrue military leave at a rate computed on the number of hours in the employee's regularly scheduled tour of duty. Section 3401(2) limits part-time career employment to a scheduled tour of 16 to 32 hours a week and excepts employment on a temporary or intermittent basis. Is a part-time employee who is scheduled to work less than 16 hours a week, or more than 32 hours a week, entitled to military leave?

A. No. Although OPM has granted agencies authority to schedule part-time employees from 1 to 15 hours a week (5 CFR 340.202(b)), these employees are not included in the definition found in 5 U.S.C. 3401(2) and, therefore, are not entitled to military leave. Neither are part-time employees with schedules of more than 32 hours a week or intermittent employees entitled to military leave. See question 16 regarding temporary appointees.

11. Q. In applying the formula for computing the military leave authorized for a part-time employee who is regularly scheduled to work 20 hours a week, the employee is entitled to accrue 7 1/2 days military leave per fiscal year ($15 \times (20 \div 40) = 7 \frac{1}{2}$). Can the employee be granted the half day of military leave or should it be rounded off?

A. There is no provision for charging military leave in increments of less than one day (52 Comp. Gen. 471) or for rounding off a half day to a whole day. A partial day may be credited to the employee and carried forward into the succeeding fiscal year, except that it shall not cause the amount carried forward to exceed 15 days.

12. Q. How should the authorized military leave be computed when there is a change in the tour of duty for a part-time employee within a fiscal year, e.g., an employee who has been on a scheduled tour of 30 hours a week is changed to a scheduled tour of 20 hours a week?

A. The tour of duty which is appropriate at the time of the military duty and the days of military leave previously used during that fiscal year are considered in determining the military leave available for use when a change in the tour of duty is involved. If the employee has been authorized and granted military leave under another tour of duty within the fiscal year, the days of leave used are subtracted from the days authorized under the current tour of duty to determine the number of days remaining for use.

Example: A reservist has a scheduled tour of 30 hours a week at the beginning of the first pay period in October. He accrues $11\frac{1}{4}$ days of military leave $(15 \times (30 + 40) = 11\frac{1}{4})$ for that fiscal year. He has no unused military leave from the prior fiscal year. In November he serves on active military duty for 5 days, leaving a balance of $6\frac{1}{2}$ days of unused military leave. However, in January his tour of duty is changed to 20 hours a week. His authorized military leave for the fiscal year then becomes $7\frac{1}{2}$ days $(15 \times (20 + 40) = 7\frac{1}{2})$. The employee has used 5 days military leave during the fiscal year; therefore, he has a balance of $2\frac{1}{2}$ days $(7\frac{1}{2} - 5 = 2\frac{1}{2})$ available for use during the remainder of the fiscal year or for carry-over into the succeeding fiscal year.

13. Q. How should the military leave be computed when the part-time employee has a regularly scheduled tour of duty in successive weeks of 30, 20, 35, and 25 hours a week, then repeats the cycle? Or the employee has a regularly scheduled tour of duty of 30 hours a week for 2 weeks, 20 hours a week for 2 weeks, and 25 hours a week for 2 weeks, then repeats the cycle?

A. When the scheduled tour of duty for a part-time employee varies as provided in the examples, the scheduled hours of duty for the cycle may be averaged for use in the computation of military leave accrual.

Example 1: The average number of scheduled hours a week during the cycle is $27\frac{1}{2}$ hours $((30 + 20 + 35 + 25) \div 4 = 27\frac{1}{2})$. Therefore, the employee accrues $10\frac{1}{3}$ days military leave $(15 \times (27\frac{1}{2} + 40) = 10.3125)$.

Example 2: The average number of scheduled hours a week during the cycle is 25 hours $((30 + 30 + 20 + 20 + 25 + 25) \div 6 = 25)$. Therefore, the employee accrues $9\frac{1}{3}$ days military leave $(15 \times (25 + 40) = 9.375)$.

NOTE: In the above examples some of the computations have been rounded off to provide for a partial day which may conveniently be expressed as a fraction. A fraction of a day shall not be rounded off to a whole day.

14. Q. Can the hours a part-time employee works which are in excess of the hours he or she is scheduled to work be considered in the computation of military leave accrual as is the case in computing annual leave accrual for part-time employees?

A. No. The law provides that the rate at which military leave accrues for a part-time employee is based upon the number of hours in the regularly scheduled workweek of that employee and not upon the number of hours he or she works.

15. Q. Are part-time career employees charged military leave only for those days on which they have a scheduled tour of duty?

A. No. The military leave authorized by 5 U.S.C. 6323(a) for part-time career employees is charged on a calendar-day basis, just as it is for full-time employees. Military leave is charged for intervening nonworkdays and holidays but not for nonworkdays occurring at the start and close of the military leave period (Comp. Gen. decision B-133674, December 30, 1957).

16. Q. Section 6323(a)(1) of title 5, United States Code, authorizes military leave for "permanent or temporary indefinite" employees. Section 6323(a)(2) authorizes military leave for part-time career employees as defined in section 3401(2) which excludes "temporary or intermittent" employees. In the past "temporary indefinite" for the purpose of military leave has been defined to include employees with temporary appointments of one year or more. In other cases it has been defined to include employees with appointments of more than one year. Please clarify these requirements.

A. Both full-time employees and part-time career employees (16-32 hour tour per week) with permanent, TAPER, or term appointments, or temporary appointments of one year or more, are entitled to military leave, if otherwise eligible. Employees with temporary appointments of less than one year, with temporary appointments not to exceed one year, or with intermittent work schedules are not entitled to military leave. (Note: This also clarifies FPM Letter 630-29, para. 7b.)

17. Q. How does Public Law 96-431 affect entitlement to military leave for law enforcement purposes (5 U.S.C. 6323(b)) or other provisions of law relating to military leave?

A. Public Law 96-431 does not change the provisions of 5 U.S.C. 6323(b), which authorizes military leave (not to exceed 22 workdays in a calendar year) for reservists or National Guardsmen who perform active duty for law enforcement purposes, nor does it change 5 U.S.C. 6323(c) concerning the entitlement of the National Guard of the District of Columbia to unlimited military leave for the purpose of parade or encampment. Neither does Public Law 96-431 change 5 U.S.C. 5519 which provides that civilian pay for the period of military leave under 5 U.S.C. 6323(b) or (c) shall be offset to the extent of the military pay received.

7. Regular Military Leave - Transaction Code 65

- a. Record those hours of paid absence charged to regular military leave opposite Transaction Code 65. Copies of military orders for temporary training and duty periods or other acceptable evidence of military leave should be attached to the copy of the T&A Report sent to the administrative office to support the military leave entry. The NFC will accept the signature in the "Certified Correct" section as certification that proper evidence to support the entry is on file.
- b. Regular military leave is defined as leave for training purposes. Paid military leave of 15 calendar days (18 for D.C.) is available on a fiscal year basis. Unused military leave can be carried over from one fiscal year to the next. The maximum carryover is 15 days. Therefore, it is possible that an employee could have a maximum of 30 days military leave available during a fiscal year (i.e., a 15-day carryover from the previous fiscal year plus the 15 days available for the current fiscal year). Nonworkdays (weekends, holidays, etc.) falling completely within a period of absence on regular military leave must be charged against the available maximum. Nonworkdays falling at the beginning or end of a period are not charged against the maximum. ◀

Public Law 96-431
96th Congress

An Act

Oct. 10, 1980
[H.R. 6065]

To amend title 5, United States Code, to provide that military leave be made available for Federal employees on a fiscal year rather than a calendar year basis, to allow certain unused leave to accumulate for subsequent use, and for other purposes.

Military leave
for Federal
employees.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 6323(a) of title 5, United States Code, is amended—

(1) by striking out "An employee" and inserting in lieu thereof "(1) Subject to paragraph (2) of this subsection, an employee";

(2) by striking out "for each day, not in excess of 15 days in a calendar year, in which he is on active duty or is engaged in field or coast defense training" and inserting in lieu thereof the following: "for active duty or engaging in field or coast defense training";

(3) by adding at the end thereof the following new sentence: "Leave under this subsection accrues for an employee or individual at the rate of 15 days per fiscal year and, to the extent that it is not used in a fiscal year, accumulates for use in the succeeding fiscal year until it totals 15 days at the beginning of a fiscal year."; and

(4) by adding at the end thereof the following new paragraph: "(2) In the case of an employee or individual employed on a part-time career employment basis (as defined in section 3401(2) of this title), the rate at which leave accrues under this subsection shall be a percentage of the rate prescribed under paragraph (1) which is determined by dividing 40 into the number of hours in the regularly scheduled workweek of that employee or individual during that fiscal year."

Effective date.
5 USC 6323 note.

SEC. 2. The amendments made by the first section of this Act shall take effect October 1, 1980.

Approved October 10, 1980.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 96-1128 (Comm. on Post Office and Civil Service).

CONGRESSIONAL RECORD, Vol. 126 (1980):

June 30, considered and passed House.

Oct. 1, considered and passed Senate.