

UNITED STATES POSTAL SERVICE

Washington, DC 20260

R REF:

RAL:FW

DATE: 5/19/78

SUBJECT:

Military Leave for Probationary
Employees

TO:

Fred Shelton
Office of Compensation

This responds to your recent telephone inquiry concerning military leave for employees during their probationary period.

The fact that an employee is in his probationary period has no effect on his right to military leave. Rather, an employee who would be entitled to military leave after completion of the probationary period is also entitled to that military leave during the probationary period. See old Postal Manual Part 721.731.

The effect of an absence for military purposes on an employee's completion of the probationary period is a more complicated question. The probationary period is tolled during military service, including military leave. The applicable procedure is provided in the U. S. Department of Labor's Legal Guide and Case Digest: Veterans Reemployment Rights Under the Universal Military Training and Service Act, As Amended, and Related Acts, §3.24 at 325:

... a probationary position is protected by the reemployment statutes.

This does not mean, however, that military service can be counted toward completion of the probationary period. Where the probation involves a genuine evaluation of the employee's aptitude, skill, conduct and performance, the employee is entitled to return only to the probationary status he left; and after being reemployed, he must complete the remainder of his probationary period satisfactorily in accordance with the same standards (no higher, and no lower) as are applied to other probationers.

Upon satisfactory completion of the probation, his seniority must be established as if he had remained continuously employed instead of entering military service.

Thus, for example, an employee who left work on military leave after completing 60 days of a 90-day probationary period would, upon returning from military leave, still face a 30-day probationary period. However, upon successful completion of the remaining 30 days of his probationary period, the employee would be credited with seniority for all purposes as if the military leave was time worked.



Richard A. Levin
Attorney
Office of Labor Law

cc: Arthur Eubanks

Discrepancies and Exceptions to Postal Service Letter dated 6 Feb 87

The following is a preliminary paragraph by paragraph analysis of the Postal Service letter written by John C. Goodman, Field Division General Manager/Postmaster of the St. Louis Division, showing the discrepancies as appropriate. The letter uses references to the Employee and Labor Relations Manual (E&LR) in an obvious attempt to make the paragraphs of the letter appear official and lend them a degree of credibility. It is important to note that several other sections of the E&LR manual have been conspicuously omitted. Additionally, important information from the very sections being referenced has been left out, questionable paraphrasing has occurred, and there has been inclusion of outright erroneous material. All this has been done apparently to substantiate the discouraging and negative attitude of the letter, and circumvent the true intent of the E&LR manual as well as Title 38 itself. A copy of the COMPLETE section (Section 517) of the E&LR manual is provided as an enclosure to assist investigation in this regard.

PARA #1 - Appears to be completely in order.

PARA #2 - The example cited in this paragraph is in direct conflict with Title 38 of the U.S. Code, as well as with further instructions as issued in the Department of Labor publication, Job Rights of Reservists and Members of the National Guard which explicitly states "The employee must return to work at the start of the next regularly scheduled shift after the expiration of the last calendar day necessary to travel home from training or after he or she has had reasonable time to rest" (copy enclosed)

PARA #3 - Appears to be completely in order.

PARA #4 - A request for documentation as to the specific duty performed is clearly not required by the E&LR manual of Title 38. Additionally, this is an unreasonable administrative burden on the military in light of the fact that official documentation for periods of training is already provided. Furthermore, to require this additional documentation would in certain cases necessitate a security violation if the individual's duties were of a classified nature.

PARA #5 - Totally false and in direct conflict with Title 38. While there exists a 15 day limit on military leave with pay, there is NO LIMIT on military leave itself. This is further elaborated on in the E.S. Gram dated May 1984 from the National Committee for Employer Support of the Guard and Reserve. (copy enclosed) E L R

PARA #6 - Contains the veiled threat of possible AWOL charges (a very serious offense and a term of degradation to most military personnel) based upon the erroneous and misleading information provided in PARA #5. It is interesting to note that neither the term AWOL nor the conditions for its implementation are mentioned anywhere in Section 517 of the E&LR manual.

PARA #7 - Although this paragraph aligns itself closely to the actual verbage of Section 517.721, it is the most offensive of all and the one that

evoked the most outrage among members of the Guard. The absence of any supportive statements and the mood established by the previous paragraphs makes the true meaning clearly evident. When reading between the lines and in light of the content and tone of the rest of the letter it is apparent to all but those using the most primitive analysis that what is said is not to bid on a job that doesn't conflict with military duties but to bid on a job that doesn't conflict with postal duties - and if so I feel that is a grievous moral and legal error.

-2-

Paragraph Two: The example is not complete, but was intended to protect employees against charges of annual leave or leave without pay when the absence is beyond the legal limit of 15 calendar days, or when the day(s) of absence was not included in the Military Orders. (The reference may be found in E&LR Manual 517.122G & 517.631).

Paragraph Four: The first sentence of this paragraph states correct policy and what is expected as documentation in the Saint Louis Field Division. The second sentence is inaccurate and inappropriate. The information on duty that was performed was never demanded or expected.

Paragraph Five: Mr. Pitcher is correct in that there is no limit on military leave, only on paid military leave. The wording of the first sentence is poor, but the reference, E&LR 517.51, also limits granting military leave to 15 days without any reference to nonpay military leave.

Paragraph Six: There is no intended threat in this paragraph. It is added emphasis that an employee may experience use of annual leave or loss of pay if he/she has no annual leave or elects not to use it. Use of the term absent without official leave (AWOL) was unnecessary, however, there could be instances where an AWOL charge would be appropriate.

Paragraph Seven: The intent of this paragraph was to highlight a final alternative that employees may use to obtain maximum military leave without loss of pay.

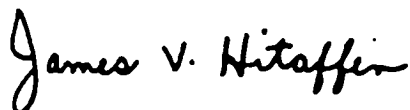
The Saint Louis Field Division and Postmaster John Goodman do not have a negative attitude toward Military Leave. All postal officials are aware of the vital role played by the National Guard in our country's defense, and participation by employees is encouraged. Although the memo in question has been in use for over a year without any complaint, it obviously contains some errors as pointed out by Mr. Pitcher. The term "military leave" has become synonymous with "paid military leave," and explanation of this this would have clarified the issue considerably.

The commanding tone of the memo was meant to reinforce the importance of understanding procedure in avoiding error. However, it seems clear from the perceptions of Mr. Pitcher, and those he talked to, that this tone had an undesirable side effect. We regret that we were not sufficiently sensitive to the implications of the tone of this memorandum.

Your constituent may be assured that improvement will be made in the handling of information on military leave in the Saint Louis Field Division.

If I may be of further assistance, please let me know.

Sincerely,

A handwritten signature in cursive script that reads "James V. Hitaffer". The signature is written in dark ink and is positioned below the word "Sincerely,".

James V. Hitaffer
Representative
Office of Government Liaison

UNITED STATES POSTAL SERVICE

SAINT LOUIS, MO. 63158 • 9998

56C

OUR REF

CED12:MDooley:314-436-3532:-9513:92-A06

DATE

February 6, 1987

SUBJECT

Military Leave

TO

Employees Requesting Military Leave

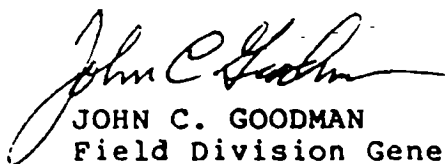
Per the policy/procedures outlined in the E&LR Manual, you have these responsibilities when requesting military leave:

1. You must be in a pay status either immediately prior to the beginning of military duty or immediately after the end of military duty in order to be entitled to military leave with pay. (E&LR 517.61)
2. You must make a request for leave for military duty on a Form 3971 and obtain your supervisor's approval before taking the leave. Leave for military duty will be granted only for the actual dates of the duty. On your next scheduled tour of duty, you are required to report to work. For example, an employee attends military duty on a Sunday but is scheduled to report to work on Sunday night at 2300 (11:00 PM). Since this is his Monday tour, he is expected to report to work at 2300 Sunday night. (E&LR 511.23)
3. You must submit a copy of official duty orders or official notices signed by the appropriate military authority for weekly, biweekly, monthly training meetings with the Form 3971 requesting leave for military duty. This will notify the Postal Service that you are scheduled for training. (E&LR 517.71)
4. You must submit a copy of military orders properly endorsed by appropriate military authority to show that the duty was actually performed upon return from military duty. This documentation must specifically state the duty that you performed. Failure to submit this documentation upon your return to work could cause your absence to be charged to AWOL. (E&LR 517.22)
5. You must not use more than fifteen (15) days of military leave per fiscal year if you are a full-time employee or more than eighty (80) hours per fiscal year if you are a part-time employee. A part-time employee's military leave allowance is further restricted in that he:

see section 517.6 subsection 1633

- a. Earns one (1) hour of military leave for each 26 hours that he was in a pay status in the previous fiscal year, and
 - b. He must have been in a pay status a minimum of 1,040 hours during the previous fiscal year. (E&LR 517.51)
6. You will be charged annual leave or leave without pay (LWOP) for absences in excess of your military leave allotment in a fiscal year. If military leave above your legal limit is erroneously granted and paid, it will be recovered and the absence charged to annual leave, leave without pay, or AWOL based upon the individual circumstances. (E&LR 517.6)
7. You should attempt to bid on a work assignment (when the opportunity presents itself) which will not conflict with your military duties. (E&LR 518.721)

If you have any questions concerning these responsibilities, contact your supervisor or timekeeper.



JOHN C. GOODMAN
Field Division General Manager/Postmaster
St. Louis Division
St. Louis, MO 63155-9998