

HIHRO-M

3 October 2005

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Charging of Less than a Full Day of Leave When Ordered to Active Duty

1. References.

- a. Paragraph 2-2, Chapter 2 (Participation), Change 1 to National Guard Regulation (NGR) 37-111, Administration of Training and Special Work Workdays, 30 September 1993 (copy enclosed).
- b. Memorandum, NGB-J1-TN, 23 March 2005, subject: Performance of Alert Duty by Military Technician (TN 04-56) (copy enclosed).

2. This memorandum is to clarify guidance of charging partial leave on the first day of active duty.

3. NGR 37-111 supports the National Guard Bureau's long standing policy that technicians will not *knowingly* be allowed to perform military and technician duty on the same day. When it is known in advance that a technician is required to perform military duty on any *scheduled* workday, the technician must be placed in an appropriate leave status (military leave, annual leave, comp time, or LWOP) for the *entire* technician workday. This is for all forms of active duty.

4. The only exceptions to the above policy are:

- a. Emergency situations that require utilization of the technician for mission accomplishment. In these situations, the technician is authorized to sign leave for the remainder of the technician workday.

- b. Technicians who perform alert duty. These technicians are covered by policy guidance in reference 1b above.

5. There have been various audit agencies that have determined it is considered dual compensation when technicians are allowed to perform both technician and military duty on the same day without being charged leave. Adhering to the guidance in the references above will ensure that dual compensation laws are no longer violated.

FOR THE ADJUTANT GENERAL:

2 Encls

1. Chap 2, NGR 37-111
2. Memo, NGB-J1-TN, 23 Mar 2005


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Chapter 2 Participation

2-1. Senior officer participation

a. Except as otherwise indicated below, the State Adjutant General (AG) will approve all training and special work workday requests based on mission essential training requirements for general officers or officers assigned to general officer positions.

b. In TDA organizations ARNG general officers and officers assigned to general officer positions will not exceed 45 training/special work workdays per fiscal year.

c. In MTOE organizations ARNG general officers and officers assigned to general officer positions in Divisions, Brigades or MTOE equivalent will not exceed 60 training/special work workdays per fiscal year. Roundout, Roundup and Contingency Force Commanders may be authorized up to 100 training/special workdays per fiscal year with approval from the Director, ARNG.

d. The above limits on training/special work workdays are in addition to the normal AT and IDT mandays or approved schools available to assigned ARNG members covered under the paragraphs above. No other mandays will be used, i.e., command supervision, advance and rear detachment, conferences and special projects, etc.

e. ARNG Special Assistant General Officers at HQDA, CONUSAs, and MACOM assignments may only use ADSW (constructive credit will be given for AT and IDT). Total ADSW will not exceed 139 ADSW workdays per fiscal year.

f. NGB directed days are the only opportunity to exceed the limits above. NGB directed days require a letter or message from the NGB requesting participation of the specific general officer(s) or individual assigned to a general officer position. Other than NGB directed days, no additional training/special work workdays will be authorized beyond the amounts listed above.

Under no circumstances will a senior officer exceed 180 training/special work workdays in a fiscal year when combining all training/special work workdays and NGB directed workdays.

g. General officer reassignment within the same fiscal year constitutes new allocation of training/special work workdays for the new position.

h. As with all training/special work workdays, the states must program these into their annual budget submittal. (See para 3-3.)

2-2. Technician participation

a. The use, at any time, of training/special work workdays by technician personnel will occur only when the State AG or his designated workday control

officer considers it essential to the accomplishment of the unit's mission or necessary for the professional development of the individual in his/her military assignment. Technicians will not be authorized the use of training/special work workday funds or workdays to perform the primary duties, functions, and missions required in their technician positions, to include training courses and/or conferences that are primarily related to the technician position responsibilities. Technicians may be placed on training/special work workdays to accomplish the functions/responsibilities of their military position when such duties are outside of their technician responsibilities, and as long as the primary duty focus is on the military position.

b. Technicians may be placed on Title 10 U.S.C. training/special work workdays to perform OCONUS training/missions when it is considered necessary for the individual to be under the jurisdiction of the Uniform Code Military Justice (UCMJ).

c. A period of technician duty and a period of training/special work workdays will not be scheduled on the same calendar day. This means that when a technician is scheduled for training on a given calendar day, he/she will not work as a technician on that day and must be in an appropriate leave status (annual leave, military leave, compensatory leave, leave without pay, etc.) for that entire calendar day.

d. When an emergency mission occurs that requires utilization of a technician for mission accomplishment, the technician will be placed on training/special work workdays. If entry on training status occurs after the technician duty day, he/she will be in an appropriate leave status from his/her technician position for the remainder of the normal technician duty day. Under these emergency situations, where advance planning is precluded, the technician will not be charged leave for technician hours actually worked. However, military leave is chargeable only in full day increments (not hours); and if a technician elects to use military leave in such situations he/she will be charged for an entire day of military leave. To avoid the loss of an entire day of military leave for only a partial day absence, technicians may elect to use other leave for that day. See TPR 600 (630.9).



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NGB-J1-TN

23 March 2005

MEMORANDUM FOR THE HUMAN RESOURCE OFFICERS OF ALL STATES,
PUERTO RICO, THE U.S. VIRGIN ISLANDS, AND THE DISTRICT OF COLUMBIA

SUBJECT: Performance of Alert Duty by Military Technicians (TN-04-56)

1. This memorandum provides guidance and procedures that specifically govern National Guard Technicians while in an alert status. Military technicians may be scheduled for alert in a technician status. ANGI 36-2001, *Management of Training and Operational Support Within the Air National Guard*, provides guidance and procedures for training and operational support while in a military status. ANGI 10-203, *ANG Alert Resource Management*, prescribes procedures for the administration and management of resources required for ANG units tasked with peacetime alert missions.

a. Employment Status: Technician Aircrew members performing alert duty will have contingency orders prepared for conversion to 10 USC 12301(d) status in the event of an immediate deployment in response to a threat. Except as enumerated in paragraph 1f (4), a technician who converts to Title 10 status may not revert to technician status until the expiration of the military orders.

b. Hours of Work: Scheduling of technicians for alert or other extensive duty should, whenever practicable, be accomplished in 24-hour increments. Local commanders should avoid situations where the extra duty is scheduled in such a way (e.g., limited to 23 hours) as to maximize the compensatory time earned with no commensurate benefit to the organization. All scheduling should comply first with the needs of the service, and second with the principals of fiscal responsibility and most effective utilization of technician resources.

c. Duty Hours: Technicians performing Alert may receive credit for a minimum of 16 hours of pay and compensatory time in one twenty-four period when the work shift is 24 hours or more.

d. Meals and Sleep Time: While in an alert duty status, no more than 8 hours time may be deducted in any 24-hour period from pay and compensatory time due to sleep and meals. Any sleep or meal periods, up to a maximum of 8 hours, performed by a technician participating in 24 hours of alert, must be deducted from pay and earned compensatory time. [5 CFR 551.432(a)(1-3) and (c)]

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e. Overtime and Compensatory Time: Under 32 USC 709(h), technicians may receive an amount of compensatory time off equal to the amount of any time spent in overtime work. Overtime pay, however, is not authorized. Technicians performing alert for a period of 24 hours or more must be given an uninterrupted period of sleep time of 5 hours. Technicians **do not** earn compensatory time during this period except in the event the sleep period is interrupted due to deployment in response to a threat or performance of other mission requirement. [5 CFR 551.432(d)].

f. The following guidance must be applied for technicians performing alert duties in a military status or using a combination of military and technician status:

(1) The technician must take leave from any regularly scheduled technician duty during the military duty period of the Alert. The technician may use leave without pay, or accumulated annual leave, military leave, or compensatory time.

(2) No more than one order for military status should be issued for technicians for successive days of military duty. This is especially true when the purpose of the order is to permit the service member to alternate between military duty and paid technician duty status. Therefore, placing a member in a technician status on days the individual performs and is paid for military duty, aside from the exceptions noted in paragraph 1f(4), would violate dual compensation laws and precedents set forth in Comptroller General Decision B-133972. This decision established criteria that allow, under certain conditions, individuals to receive compensation for technician service prior to the beginning or after release from military duty.

(3) Any technician employment accomplished on the same day as military duty is permissible only if it is before the official start of military duty, or after a suitable break (e.g.: a minimum five-hour sleep period) following the release from military duty, provided the technician will not be scheduled for military duty on the next calendar day. The commonly cited example from Comptroller General Decision B-133972 is summarized as follows:

“A National Guard Technician employed under 32 USC 709 completes his civilian workday at 1700 hours, 1 July, in Sacramento, California. By Special Orders dated 28 June, he has been ordered to two weeks full time training (FTTD), as a National Guardsman, to be performed as a course of instruction at Ft Eustis, VA, under authority 32 USC 505. Reporting time at Fort Eustis is specified as 0800 Hours, 2 Jul. He departs his home in military travel status at 1930 hours 1 July, performs his period of FTTD and returns to his home in

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military travel status, arriving at 0130 hours, 16 July and reports to work at his civilian job at 0800 hours the same day.

The National Guard Technician involved in this case would be entitled to civilian pay without charge to leave (Military or Annual) for July 1 since he performed his civilian duties before he became subject to Military control and performs duties incident to his Military status. Having completed all the military training duties required in his orders he was no longer subject to military control at the time he reported to civilian duty on July 16. The fact that he may have been entitled to military pay for that day for the reason that his return travel from training was not completed until 1:30am is not considered incompatible with the performance of his civilian duties or the payment of civilian compensation for actual work performed after termination of his active military training duty."

(4) If the technician is required to spend a substantial amount of time in military status on the last day of alert, the technician will remain in military status for the entire day. Except as enumerated above, sound fiscal management and DoD policy prohibit performance of both paid military and technician duty, in that order.

(5) ANGI 36-2001, paragraph 1.19.1, states:

"When mission requirements necessitate utilization of a technician in an active service status for mission accomplishment, the technician shall be placed on active service orders. Commanders must use discretion and sound judgment in employing this option."

(6) Additionally, ANGI 36-2001 requires the following statement be placed in the remarks section of the member's active duty orders if the member will perform technician duties and military duty on the same day:

"It has been determined that mission accomplishment necessitates this member will perform technician duties and active military service on the same calendar day. Technician and active service performance periods do not overlap. Member has been placed in an appropriate technician leave status on the first day that the active service begins and for the entire technician duty day during those days between the first and to include the last day of an active duty period."

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2. If a technician is converted to 10 USC 12301(d) status after the technician workday begins, then the technician is entitled to pay for both the Special Training day and for the hours of technician time that were worked prior to being deployed in response to the threat or mission that converted the technician to 10 USC 12301(d) status.

3. Employment Authorizations for technicians performing Air Sovereignty Alert (ASA). If a unit was allocated employment authorizations for technicians performing ASA, the unit commander is required to assign that member to the ASA mission on a full time basis.

a. Military Technician personnel employed specifically to support ASA will be in a temporary or indefinite technician status.

b. After a technician completes the weekly technician work hours supporting an alert mission, the technician may then volunteer to further support the mission on days off and be placed on Special Training days.

4. Should you have questions or need additional information regarding military technicians performing alert, please contact Mr. Jim Hatchell, DSN 327-1475 or Mr. Paul Nomecos, DSN 327-1456.



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