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## **Implementation and Higher-Level Policy:**

### **Why are some technician positions converting from Title 32 to Title 5?**

Section 1053 of the 2016 National Defense Authorization Act (NDAA) directed the National Guard to convert 20% of its Title 32 (dual status) personnel to Title 5 personnel. Title 5 personnel will benefit from the full employment protection provided to other civilian employees. The Hawaii National Guard is working towards compliance with the guidance issued in the NDAA and is committed to providing an orderly conversion with minimal confusion for affected employees.

### **Why was the 20% conversion not completed by October 2017?**

Due to the unprecedented nature of this conversion, and its potential to affect mission and personnel, reaching the correct solution was more important than reaching a quick solution. The joint service and dual-mission nature of the National Guard required states to simultaneously working different Air and Army processes as well as consider the implications to State Active Duty missions. Along the way, potential legislative changes and the need to plan for multiple contingencies added additional layers of complexity to an already novel challenge.

### **How were positions selected for conversion from Title 32 to Title 5?**

Mission Readiness was an essential consideration in selecting positions for conversion. Positions that require current military skills and knowledge, or require unique working conditions not conducive to civilian employment were exempted. Positions with an affiliated wartime requirement where the technician would perform their civilian work, their training duty, and be mobilized to active duty in the same unit were exempted from conversion.

DoD 1100.22 can offer further clarity on positions that require current military skills or working conditions not conducive to civilian employment.

### **What is the policy for the deployment of Title 5 personnel?**

State HROs are currently awaiting updated policies from the National Guard Bureau on the deployment of Title 5 personnel. The Human Resources Office of the Hawaii National Guard remains committed to providing personnel with clear and correct guidance on any issues that affect their employment and military membership. The J1 will push forward with updating local policies and issuing interim guidance for policies that are within the authority of the Adjutant General. The unprecedented nature of this conversion, however, will require that some answers to higher-level policy originate at NGB.

## **Can temporary and indefinite personnel be converted to Title 5?**

The initial guidance from Nation Guard Bureau was that temporary and indefinite personnel could not be converted. That guidance has since been amended to permit the conversion of these personnel. The HRO is committed to minimalizing confusion and conducting an orderly conversion process and will work to ensure employees have the most current guidance available.

## **Will personnel converted to Title 5 start a new Performance Appraisal at conversion date?**

The goal of the Hawaii National Guard Human resource Office is an orderly conversion with minimal confusion. Onboard personnel converting to Title 5 will not be required to start a new Performance Appraisal.

## **Selection and Classification:**

### **When does veterans' preference apply?**

Veterans' preference will be calculated for Title 5 competitive positions advertised outside of the agency. The Hawaii National Guard will remain committed to hiring and retaining the best qualified personnel. Veterans' preference applies to permanent and temporary Title 5 positions.

### **When does veterans' preference not apply?**

Veterans' preference does not apply to promotion, reassignment, transfer, reinstatement, or change to a lower grade. Positions advertised within our agency to current employees will not consider veterans' preference. The Hawaii National Guard Remains committed to hiring the best qualified applicant. Preference does not have as its goal the placement of a veteran in every vacant federal job; this would be incompatible with the merit principle of public employment.

### **How does veteran's preference apply to reduction in force procedures?**

The Hawaii National Guard Remains committed to retaining the best qualified personnel. In the event of a RIF, veterans' preference provides additional points towards retention standing in the employee's competitive area. Employees are ranked on retention registers for each competitive level (groups of similar jobs) based on four factors: tenure, veterans' preference, length of service, and performance rating. Within each preference subgroup employees are ranked in descending order by the length of

their creditable federal civilian and military service, augmented by additional service credit according to the level of their performance ratings. In the event of a RIF employees should ensure that any applicable veterans' preference documentation is on file with the HRO.

### **How do I ensure my veterans' preference is documented and on record?**

Standard Form 15, application for veteran preference, lists supporting documents required for each category of veterans' preference. When applying for positions advertised outside of our agency it is advised to include all supporting documentation with your completed USA Jobs application.

### **Will Grade Inversion matter for personnel in Title 5 positions?**

Grade inversion is not an issue for Title 5 positions. Military membership is not a requirement for converting dual status or future Title 5 personnel. The Hawaii National Guard will staff Title 5 positions with the best qualified applicant, regardless of military status or grade. Converting DS and future Title 5 hires will work in civilian attire, be considered National Guard civilian employees, and be referred to by an appropriate civilian title.

### **Will Title 5 positions be excepted or competitive?**

The Hawaii National Guard remains committed to hiring the best qualified applicants. Current onboard, NDS technicians, are still considered competitive, but will convert upon accepting an excepted Title 5 position. All vacant and future Title 5 positions will be considered excepted.

### **Do you have to clear a Priory Placement Plan (PPP) for on-board only advertisement of a Title 5 National Guard vacancy?**

Yes. In accordance with the guidance in Chapter 4, Section B., of the DoD PPP Handbook, all positions are subject to the PPP unless specifically exempt. In order for a state to fill a vacancy with an internal candidate, without the requirement to clear the PPP, one of the PPP exceptions cited in Chapter 4, Section C., of the PPP Handbook must be used. PPP exceptions outside of those listed in the PPP Handbook are granted on a case-by-case basis by the servicing Civilian Transition Programs Administrator.

Link for the DoD PPP Handbook:

<https://www.cpms.osd.mil/Content/Documents/PPPHandbook20Oct2015.pdf>

### **When can the states advertise vacant Dual Status and Non-Dual Status positions that converted to Title 5 and when can the state hire a T5 employee?**

For Title 5 after 1 October 2017 – recruit “Career status employees” IAW the State Merit Placement Plan when it is published. Until there is no State Merit Placement Plan we cannot hire Title 5 employees.

### **What is the guidance on reemployed annuitants hiring retired AGRs?**

Section 1111 of the FY17 NDAA, restricts a retired military member from being appointed as a DoD Federal employee within 180-days of their military retirement. Current stature allows for a retired AGR to apply and compete for a Title 5 National Guard position vacancy during the 180-day period immediately following retirement. However, the actual effective date of appointment cannot occur until after 180-days have passed since the individual’s effective date of military retirement.

### **Benefits and Compensation:**

#### **How will conversion affect retirement eligibility and benefits?**

Title 5 and Title 32 differ in their retirement options. Title 5 service as a National Guard Civilian Employee does not count towards a Military Reserve Technician Retirement. Title 5 Personnel are also ineligible for a Special Disability Retirement. The HING HRO is available to assist employees in understanding their retirement benefits.

#### **Will conversion affect pay?**

The HING HRO is committed to ensuring no employees are harmed by conversion. Conversion will not affect pay plan, series or grade. Title 5 personnel will be eligible for overtime pay.

#### **How will I know if I am an “exempt” or “non-exempt” Title 5 employee under the Fair Labor Standards Act (FLSA)?**

Your Title 5 Position Description (PD) will indicate whether you are “exempt” or “Non-exempt.” The HING HRO is available to answer your classification questions. If you have questions about your PD contact Mr. Jacob Tokunaga at 808-672-1230.

#### **What does it mean to be “exempt” or “non-exempt”?**

Under the FLSA employees who are considered “non-exempt” must be paid one-and-a-half times their regular pay when they work more than 40 hours in a week. Being considered “exempt” means that an employee is exempted from the requirements of the

FLSA and must request either overtime pay or compensatory time. The Hawaii National Guard is committed to being fully compliant with the FLSA.

### **When may an “exempt” employee request overtime pay?**

Due to budgetary constraints the HING Program Manager for National Guard Civilians is not currently authorizing overtime pay for FLSA exempt employees. FLSA exempt employees will continue to request Compensatory Time until it is determined that sufficient funds exist to permit overtime pay to exempt employees.

### **How will overtime pay be calculated?**

Under the FLSA, overtime pay is determined by multiplying the employee’s “straight time rate of pay” by all overtime hours worked PLUS one-half of the employee’s “hourly regular rate of pay” times all overtime hours worked. For employees with rates of basic pay equal to or less than the rate of basic pay for GS-10, step 1, the overtime hourly rate is the employee's hourly rate of basic pay multiplied by 1.5.

Under the amended 5 United States Code 5542(a)(2), for employees with rates of basic pay greater than the basic pay for GS-10, step 1, the overtime hourly rate is the greater of the hourly rate of basic pay for GS-10, step 1, multiplied by 1.5, or the employee's hourly rate of basic pay.

### **Does NGB have an overtime memo?**

No. The compensatory time/overtime guidance is in draft CNGBN 1408. The anticipated publication date is 30 April 2018. Two OPM overtime fact sheets have been posted on the HRO Conversion link on GKO to assist HROs.

### **Will conversion affect leave already accrued or future leave?**

Leave benefits will remain the same. The goal of the HING Human Resources Office is to ensure that no employees are harmed by conversion. Converting employees with unused compensatory time and time off awards should send a copy of their LES to the HRO in order to ensure correct transfer.

### **Will conversion affect my Holiday Leave as a Civilian Employee on a 4 X 10-hour work schedule?**

Title 32 and Title 5 personnel are authorized the same federal holidays. A 4X10 schedule is considered a “Compressed Work Schedule.” Employees under compressed work schedules are generally excused from all of the non-overtime hours they would otherwise work on that day and which apply to their "basic work requirement." For

example, if a holiday falls on a 9- or 10-hour basic workday, the employee's holiday is 9 or 10 hours, respectively.

### **What effect will conversion have on Defense Travel System (DTS) profiles?**

Minimal changes are required to the Defense Travel System accounts of converting employees. DTS accounts should be updated to ensure they reflect the correct civilian grade and notifications are sent to the appropriate “.civ” email.

### **Will conversion affect T5 employees with NGAUS Long Term Disability Insurance and Term Life Insurance?**

The HING HRO is aware that some converting employees are utilizing NGAUS Technician Insurance Programs. At this time there will be no interruption of service for these programs. We will continue to engage NGB and NGAUS on this topic, and will work to ensure that affected employees receive the most up to date response available.

What tenure will converting dual status technicians be under (Tenure 1 or Tenure 2)?

Converting permanent employees who have completed their probationary period will remain in Tenure 1. Permanent employees who have not completed a probationary period will remain in Tenure 2.

### **Will Title 5 employees be eligible for military recruitment and reenlistment incentives for their National Guard or Reserve military service?**

As a civilian employee of the National Guard you are authorized to keep any enlistment or reenlistment bonus you receive. As a Title 5 employee of the National Guard you are not required to maintain military membership as a condition of your employment.

### **Can Title 5 employees keep their military bonuses?**

If you have a Title 5 National Guard employee who has military affiliation and is eligible for a bonus, they will follow service specific rules for bonuses. Military rules will determine eligibility.

### **Will conversion affect how employees utilizes military leave when performing duties as a military member?**

Title 5 National Guard Civilian employees are eligible for 120 hours of military leave per fiscal year. Consult your supervisor for questions about what documentation

you should submit to utilize military leave during periods in which you are performing military duties.

### **Is conversion to Title 5 a qualifying life event to change my federal benefit elections?**

Conversion to Title 5 is not considered a qualifying life event for the purposes of changing one's Federal Employee Health Benefit elections.

### **What are the USERRA rights for employees to positions that convert?**

As a general rule, the employee is entitled to reemployment in the job position that he or she would have attained with reasonable certainty if not for the absence due to uniformed service. This position is known as the escalator position. The principle behind the escalator position is that, if not for the period of uniformed service, the employee could have been promoted (or, alternatively, demoted, transferred, or laid off) due to intervening events. The escalator principle requires that the employee be reemployed in a position that reflects with reasonable certainty the pay, benefits, seniority, and other job perquisites, that he or she would have attained if not for the period of service. Depending upon the specific circumstances, the employer may have the option, or be required, to reemploy the employee in a position other than the escalator position.

The starting point for determining the proper reemployment position is the escalator position, which is the job position that the employee would have attained if his or her continuous employment had not been interrupted due to uniformed service. Once this position is determined, the employer may have to consider several factors before determining the appropriate reemployment position in any particular case. Such factors may include the employee's length of service, qualifications, and disability, if any. The reemployment position may be either the escalator position; the pre-service position; a position comparable to the escalator or pre-service position; or, the nearest approximation to one of these positions.

References: 38 USC 4312, 20 CFR Part 1002, 5 CFR 315

### **Are there any circumstances in which the pre-service employer is excused from its obligation to reemploy the employee following a period of uniformed service? What statutory defenses are available to the employer in an action or proceeding for reemployment benefits?**

Even if the employee is otherwise eligible for reemployment benefits, the employer is not required to reemploy him or her if the employer establishes that its circumstances have so change as to make reemployment impossible or unreasonable.

For example, an employer may be excused from reemploying the employee where there has been an intervening reduction in force that would have included that employee. The employer may not, however, refuse to reemploy the employee on the basis that another employee has hired to fill the reemployment position during the employee's absence, even if reemployment might require the termination of that replacement employee.

References: 38 USC 4312, 5 CFR 353, and 20 CFR Part 1002

### **General Workplace Policies:**

#### **What is the appropriate title and salutation for a Title 5 technician?**

A professional workplace remains the standard for all HING employees, regardless of Title. Title 5 employees do not fall into the statutory category "military technicians" and should be referred to by the most appropriate civilian professional title. "Mister" and "Miss" should be the assumed default salutations.

#### **What is the appropriate signature block format for a Title 5 employee?**

Title 5 employees are considered National Guard Civilians and should not reference their military rank within their civilian signature block. If the correspondence or document being signed does not relate to duties performed as a military member of the Guard or Reserve; use of a military rank may be construed as misrepresenting the Title under which the duty was performed, or attempting to leverage military "rank-in-person" when it exceeds one's civilian "rank-in-position." An exact signature block format for National Guard Civilian employees may be included in future updates to local policies.

#### **Are Title 5 personnel expected to observe military courtesies such as the use of "sir" and "ma'am?"**

Uniformed personnel have "rank-in-person" while Title-5 personnel have "rank-in-position." A professional workplace remains the standard regardless of employment category. Title 5 personnel should consider their professional relationship to the addressed individual and use the most appropriate salutation.

#### **Will conversion affect work schedules?**

The Hawaii National Guard is still one team. Accordingly, the state policy for work schedules will remain in effect. The nature of our mission has not changed; we've just added a new personnel category.

### **Is there a dress code policy for Title 5 personnel wearing civilian attire?**

Title 5 personnel will wear civilian attire that is both professional in appearance and appropriate to their assigned duties and duty locations. It is understood that not all duty locations and positions will have the same dress requirements. Supervisors of employees with unique garment requirements are encouraged to offer constructive suggestions to the HRO.

Regardless of the job assignment, any attire that is of extreme design, revealing in nature or that conveys a message of a derogatory or offensive nature, either through language, logos or symbols, is strictly prohibited.

Under no exceptions will shorts of any kind, jeans torn, cut, or made to look as such, t-shirts, halter-style tops, sleeveless shirts, or flip-flop style footwear be authorized for wear.

### **When a Title 32 dual status technician converts to Title 5 employee, are they authorized to continue to wear their military uniform?**

No. Title 32 Section 709 requires Title 32 Dual Status employees to wear their military uniform. There is no such provision for Title 5 employees.

### **Can converted employees begin wearing civilian attire once notified of their conversion?**

The goal of the Human Resource Office is to ensure an orderly conversion with minimum confusion to employees and supervisors. Converted employees must wait until their conversion is completed within the Human Resource Information System before wearing civilian attire.

### **Which Technician Personnel Regulation will apply to Title 5 positions?**

Currently the National Guard Bureau is updating existing regulations as well as reviewing Interim Post Conversion Title 5 Guidance. The Hawaii National Guard HRO will continue to work towards an orderly conversion and facilitate awareness of new or updated TPRs as they become available. If you have a question, or evolving issue that needs a more immediate answer you should contact the HRO.

### **Will Title 5 employees be permitted to participate in a physical fitness program during duty hours?**

No specific guidance from NGB has yet been issued in regards to Title 5 employee participation in the technician physical training program. The need for an updated local policy has been identified. Until an updated local policy, or NGB policy, is issued Title 5 employees may conduct physical training in accordance with Hawaii National Guard Physical Fitness Policy.

**What is the tele-work policy for Title 5 personnel?**

The tele-work policy is among the local policies identified for update. In the interim the existing local policy and arrangements will remain in affect while we work towards an orderly conversion.

**What is the Office of the Secretary of Defense (OSD) guidance on conversion appeal rights?**

The Office of the Assistant Secretary of Defense (OASD) memorandum, dated 20 April 2017, "Guidance to Convert Dual Status and Non-Dual Status Military Technician Positions", did not provide guidance for conversion appeal rights. Conversion is required by statute and does not confer any appeal rights.

**Can an employee appeal the agency's decision to convert the employee's position and their subsequent reassignment to the Merit System Protection Board?**

Technically, an employee can appeal to the Merit Systems Protection Board (MSPB) on any issue. However, the MSPB is limited to those matters over which it has been given jurisdiction by law, rule or regulation. The MSPB does not have jurisdiction over conversions. Appeals submitted to the MSPB based on the agency's conversion action will most likely be dismissed on jurisdictional grounds.

**Does the employee have a right to decline to be converted?**

An employee has the right to decline. If the employee declines they may be terminated.

**Information Technology and Dual Persona CAC:**

**Will Title 5 personnel be required to have a civilian CAC in addition to their military ID?**

The HING will be compliant with all DoD cyber security policies throughout this conversion and beyond. Individuals within the DoD who have multiple personnel category codes shall be issued a separate ID card in each personnel category for which they are eligible. Ensuring appropriate access to DoD systems remains a critical component of cyber security and threat detection.

Reference--- DODI 1000.13, January 23, 2014, E3 2.f

**What are the rules concerning when I should use my “.mil” email account vs my “.civ”?**

The HING will comply with all DoD system usage policies. A multiple-role user will have a unique enterprise email address for each role (persona). Email users with two accounts, such as contractor/government or contractor/retiree, will use the appropriate account when sending e-mails. Users with two accounts will authenticate using the personal identity verification authentication certificate on their CAC(s).

Reference--- DA PAM 25-1-1, 3-2 h. (2)

**Will converted personnel be able to continue using Blackberries if previously issued one?**

Individuals requiring a Blackberry will be able to continue using their Blackberry. However, if the employee was issued a Blackberry for their technician position, and have been converted to Title-5, the device will need to be reconfigured for the .civ email. The Hawaii National Guard will comply with all DoD system usage policies.