

Hawaii National Guard Federal Employee Benefits Bulletin

Applicability: National Guard (NG) Technicians (T5 and T32)	Subject: USERRA Rights for State Active Duty (SAD) orders

Background: On January 5, 2021, Section 4303 of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) was amended to extend employment and reemployment rights to members of the National Guard performing certain types of duty under state authority. State Active Duty means National Guard training or other duty, other than inactive duty, performed under the authority of the Governor of a State. It does not include duty performed under federal authority (such as Title 10 or Title 32), nor duty for which the National Guard member is entitled to pay from the Federal Government.

USERRA Protection: National Guard duty performed as State Active Duty historically has not been covered under USERRA. However, pursuant to a recent statutory change which became effective on **January 5, 2021**, members of the National Guard serving on State Active Duty: **a)** for 14 days or more, **b)** in support of a national emergency declared by the President under the National Emergencies Act, or **c)** in support of a major disaster declared by the President under Section 401 of the Stafford Act, are now covered under USERRA.

Impact: If an employee enters into SAD status for over 14 days then the employee now has job protection under USERRA and would be eligible for placement in an Absent-US status in the personnel and pay systems. Significant changes under USERRA now include SAD service for discrimination, reemployment, employment, and benefits provisions.

Military Leave: Military Leave (15 day) is for military duty specifically listed in 5 USC 6323. State Active Duty is not listed and therefore, even though SAD orders are protected under USERRA, you are still not authorized to use the Military Leave.

Military Deposits: Military deposits are covered by 5 USC Chapters 83 and 84. The definition of military service did not change to include SAD. 38 USC 4318 states that only Employee Pension Benefit plans covered by Employee Retirement Income Security Act (ERISA) are subject to the requirements of USERRA. FERS and TSP are not covered by ERISA. Therefore, no change was made for retirement purposes.

For any other questions or concerns regarding any of the information listed above or on any Technician Benefits, please refer to the USERRA FAQ sheet attached from the Department of Labor, or contact the Benefits email distro at: ng.hi.hiarng.mbx.nghi-hro-benefits@army.mil



U.S. Department of Labor
Veterans Employment and Training Service



New Coverage for Certain State Active Duty under the Uniformed Services Employment and Reemployment Rights

On January 5, 2021, Section 4303 of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) was amended to extend employment and reemployment rights to members of the National Guard performing certain types of duty under state authority. Members of the National Guard continue to answer the call to duty to protect the health and well-being of all Americans. We owe a duty to them to ensure full compliance with the employment and reemployment rights under USERRA. The Veterans' Employment and Training Service (VETS) interprets and provides guidance on USERRA and investigates complaints filed under this law. VETS offers the following frequently asked questions and answers:

Does this factsheet create new USERRA rights and obligations in light of the recent change to USERRA?

- No. The statute and regulations still govern USERRA rights and obligations. This factsheet addresses some scenarios that might arise from the application of the recent change to USERRA in the context of current events.

What is State Active Duty for the purposes of USERRA?

- State Active Duty means National Guard training or other duty, other than inactive duty, performed under the authority of the Governor of a State. It does not include duty performed under federal authority (such as Title 10 or Title 32), nor duty for which the National Guard member is entitled to pay from the Federal Government.

Does a member of the National Guard who is called to State Active Duty have employment and reemployment protections under USERRA?

- Historically, no. National Guard duty performed as State Active Duty has not been covered under USERRA. However, pursuant to a recent statutory change which became effective on January 5, 2021, members of the National Guard serving on State Active Duty: a) for 14 days or more, b) in support of a national emergency declared by the President under the National Emergencies Act, or c) in support of a major disaster declared by the President under Section 401 of the Stafford Act, are now covered under USERRA.
- Members of the National Guard otherwise serving on State Active Duty may have similar employment protections under state law and should contact the appropriate state office for assistance.

- Note that the authority under which orders are issued can change, even in the course of a service member's performance of service.

Does a member of the National Guard or Reserves who is called to active duty in response to a national emergency have employment and reemployment protections under USERRA?

- Yes, if called to duty under federal authority. National Guard or Reserve duty under federal authority (such as Title 10 or Title 32) is covered by USERRA.
- Yes, if a National Guard member serving on State Active Duty on or after January 5, 2021, for 14 days or more, or in support of a national emergency declared by the President under the National Emergencies Act, pursuant to the recent statutory change.

Does a member of the National Guard or Reserves who is called to active duty in response to an emergency, rather than a major disaster, declared under Stafford Act have employment and reemployment protections under USERRA?

- Yes, if called to duty under federal authority. National Guard or Reserve duty under federal authority (such as Title 10 or Title 32) is covered by USERRA.
- Yes, if a National Guard member serving on State Active Duty on or after January 5, 2021, for 14 days or more.
- No, if a National Guard member serving on State Active Duty for 13 days or less. The recent statutory change which became effective on January 5, 2021, only authorizes USERRA protections for members of the National Guard serving on State Active Duty: a) for 14 days or more, b) in support of a national emergency declared by the President under the National Emergencies Act, or c) in support of a major disaster declared by the President under Section 401 of the Stafford Act. On January 11, 2021, the President declared an emergency under Section 501 of the Stafford Act for the District of Columbia (DC) 59th Presidential Inauguration between January 11, 2021, and January 24, 2021. A National Guard member serving on State Active Duty for 13 days or less, or in support of an emergency declared by the President under Section 501 of the Stafford Act, such as the DC 59th Presidential Inauguration, is still not covered under USERRA.
- Keep in mind that members of the National Guard otherwise serving on State Active Duty may have similar employment protections under state law and should contact the appropriate state office for assistance.

Where to Obtain Additional Information:

Important USERRA-related resources and compliance assistance materials for employees and employers are available through the Veterans' Employment and Training Service website at www.dol.gov/agencies/vets/programs/userra, which contains a USERRA elaws Advisor, FAQs, fact sheets, and links to the statute and implementing regulations. Our toll-free information and helpline, available 8:00 a.m. – 8:00 p.m. Eastern Time, is 1-866-4-USA-DOL (1-866-487- 2365). The Department of Defense's Employer Support of the Guard and Reserve also provides resources available at www.esgr.mil.

U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

1-866-4-USA-DOL
TTY: 1-877-TTY-5627

ABSENT-US Checklist for Federal Employees Entering STATE ACTIVE DUTY (SAD) 14 Days or More

1. INSTRUCTIONS

This checklist provides important information regarding your benefits. You must initial all applicable blocks to indicate your elections and confirm that you read and understand your options/conditions. Please do the following:

- Fill in the blanks or initial as appropriate for each item listed below
- Sign, date, and provide all pages of this document, with SAD orders, to your supervisor
- It is your responsibility to ensure your supervisor completed their portion and submits your checklist + orders to HRO within 31 days of the date you start SAD
- Retain a copy of your SAD orders and this checklist, to include any attachments, for your own records and future reference
- Submit all order modifications to HRO to determine if your benefits will be affected
- **Submit a Return to Duty Checklist prior to returning to federal employment**

You are encouraged to contact your ANG HRO Liaison/HRO if you have any questions regarding Uniformed Services Employment and Reemployment Rights Act (USERRA), leave, pay, reporting back to work, or how Absent Uniformed Service (Absent-US) or Separation Uniformed Service (Separation-US) will impact your Federal Employees Health Benefits (FEHB) and other benefits.

USERRA information for supervisors and employees is available at <https://dod.hawaii.gov/hro/tech-tools/>

2. INDIVIDUAL INFORMATION

Name:	LAST 4 OF SSN:	Phone Number:
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3. USERRA ELECTION TYPE

My order start date is: _____

Initials:	<p>Select ONE of the following options:</p> <p>_____ I will use PAID LEAVE for the ENTIRE duration of my orders. I understand that I am still considered "Absent" from my federal employment and this service (unless exempt) will count toward my 5 years cumulative limit. If my orders are modified, I am required to provide HRO with a copy. I am required to submit another Absent-US checklist if my leave status changes from PAID LEAVE to NON-PAID Leave. (Skip to section 14 if choosing this option)</p> <p>_____ My State Active Duty is for 14 days or more, therefore I AM covered under USERRA. I elect Absent-US. I will remain a federal employee for up to 5 years cumulative (unless orders are exempt from 5-year limit). I will continue to receive regular step increases, but will be in a nonpay status. I intend to return to federal employment and will submit a return to duty checklist prior to returning. (Continue to fill out this form)</p>
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4. LEAVE ELECTIONS

Initials:	<p style="background-color: yellow;">I understand that compensatory time must be used immediately upon the start of my orders – CT cannot be used intermittently while on Absent-US. I can use travel compensatory time (CF), annual leave (LA), time-off awards (LY), sick leave (LL) at any time during my Absent-US. (Sick leave must follow established policies – illness/attending appointments, etc. Dr note/approval required after 3 or more consecutive days). Military Leave is NOT authorized for use while on SAD orders.</p> <p>HRO may adjust the effective date of my Absent-US based on my declared leave usage.</p> <p>Select ONE of the following options:</p> <p>_____ I will use compensatory time immediately upon the start of my orders. My first day of UNPAID leave (KG) will be _____.</p> <p>_____ I will use another form of paid leave immediately upon the start of my orders. My first day of UNPAID leave (KG) will be _____.</p> <p>_____ I will <u>not</u> use paid leave immediately upon the start of my orders. My first day of UNPAID leave (KG) will be _____.</p>
Initials:	<p>If my Absent-US period is equal to or longer than the amount of my current leave balance, I may elect to receive a lump-sum payment for unused annual leave. If I return to duty sooner than the period of leave that was paid to me, I understand I must refund the difference between my return to duty date and the expiration of the lump-sum period. (Example: employee gets paid out a lump sum of 30-days of accrued leave, but employee returns after being Absent-US for only 25 workdays, employee will incur a debt and must refund 5 days of leave).</p> <p>Select ONE of the following options:</p> <p style="padding-left: 20px;">I want my annual leave to remain in my credit and I will use it IAW established policies.</p> <p style="padding-left: 20px;">I want to be paid a lump sum for my annual leave balance.</p>

5. RETIREMENT BENEFITS	
Initials:	<p>I understand that if I am Absent-US for SAD and covered under FERS, my death and disability benefits continue.</p> <p>I understand that I will not be able to pay a Military Service Deposit for my period of Absent-US for SAD.</p> <p>My entitlement to civilian service credit during this period of Absent-US while performing SAD is subject to the "six-month" rule, with no deposit required.</p> <p>"Six-Month Rule": An aggregate nonpay status of 6 months in any calendar year is creditable service. Coverage continues at no cost to the employee while in a nonpay status. When employees are in a nonpay status for only a portion of a pay period, their retirement deductions are adjusted in proportion to their basic pay (5 U.S.C. 8332 and 8411).</p> <p>Reference: Public Law 103-353 the "Uniformed Services Employment and Reemployment Rights Act of 1994," and further explained in Office of Personnel Management Benefits Administration Letter 95-101.</p>

6. THRIFT SAVINGS PLAN (TSP)	
Initials:	<p>Select ONE of the following options:</p> <p>_____ I reviewed my LES and I do not contribute to TSP.</p> <p>_____ I currently contribute to TSP and understand the following information:</p> <p>I may make retroactive TSP contributions and elections upon my return to duty, if eligible. This includes missed catch-up contributions. I must provide the ANG HRO Liaison/HRO with a copy of ALL of my military and civilian LESs within 60 days of return to duty in order to receive missed contributions.</p>

7. TSP LOAN	
Select ONE of the following options and initial:	
Initials:	<p>_____ I reviewed my LES and I DO NOT have a TSP loan.</p> <p>_____ I DO have a TSP loan (loan number(s): _____). I understand the following information:</p> <p>HRO will notify TSP of my nonpay status under USERRA and my loan payments will be suspended. I cannot make a loan payments to my civilian account as a deduction from my State Active Duty pay, and interest will accrue while my loan payments are suspended. I understand I must notify HRO immediately upon return to civilian duty so they may notify TSP of same, to avoid a taxable distribution.</p>

8. FEDERAL EMPLOYEES DENTAL AND VISION INSURANCE PROGRAM (FEDVIP)	
Initials:	<p>Select ONE of the following options and initial:</p> <p>_____ I reviewed my LES and I am not enrolled in FEDVIP coverage.</p> <p>_____ I am enrolled in FEDVIP. To avoid cancellation of my FEDVIP coverage, I must keep my premium payments current; I may not incur a debt. It is my responsibility to contact a BENEFEDS Representative at 1-877-888-3337 to arrange accelerated deductions and to discuss and/or change my payment option. I must contact BENEFEDS upon return to duty if I want payment by payroll deduction reinstated.</p>

9. FLEXIBLE SPENDING ACCOUNTS (FSA)	
Initials:	<p>Select ONE of the following options and initial:</p> <p>_____ I reviewed my LES and I am not enrolled in FSAFEDS.</p> <p>_____ I am enrolled in FSAFEDS and I must notify FSAFEDS of my Absent-US status by calling 1-877-372-3337. I can contact FSAFEDS to accelerate my pre-tax deductions prior to entering non-pay status. No contributions will be deposited into my account during my absence. If I decide to separate from civilian service, my FSA will terminate as of the date of my separation. There are no extensions. Any health care expenses incurred prior to the date of separation will be reimbursable but those incurred after the date of separation are not reimbursable.</p>

10. FEDERAL LONG TERM CARE INSURANCE PROGRAM (FLTCIP)	
Select ONE of the following options and initial:	
Initials:	<p>_____ I reviewed my LES and I am not enrolled in FLTCIP.</p> <p>_____ I am enrolled in FLTCIP and I understand that in order to continue Long Term Care (LTC) insurance I must keep my premium payments current to avoid cancellation of my coverage; I may not incur a debt. I understand that it is my responsibility to contact a LTC Representative at 1-800-582-3337 to discuss and/or change my payment option. I also understand that if I change my payment options from payroll deduction, I must contact a LTC Representative on return to civilian duty if I want payment by payroll deduction reinstated.</p>

11. FEDERAL EMPLOYEE'S HEALTH BENEFITS (FEHB)

Initials:	<p>Select ONE of the following options and initial:</p> <p>_____ I reviewed my LES and I am not currently enrolled in FEHB.</p> <p>_____ I am enrolled in FEHB. I reviewed and understand the following information:</p> <p>Employees are automatically enrolled in Premium Conversion (PC), which allows premiums to be paid with pre-tax money. Employees must wait for annual FEHB Open Season or a Qualifying Life Event to make changes to FEHB.</p> <p>A Premium Conversion Waiver allows employees to reduce or cancel FEHB at any time (without a Qualifying Life Event and/or outside of FEHB Open Season). When PC is waived, an employee's premiums will be paid with after-tax money. Employees have 60 days from the start of Absent-US to waive PC. If I want to waive my premium conversion, I will fill out and submit the Waiver at the bottom of this packet.</p> <p>I understand my FEHB coverage choices and elect ONE of the following options:</p> <p>_____ My SAD orders is for 30 days or less so my coverage must continue. If SAD orders is extended beyond 30 days, I will notify my supervisor and HRO immediately and make changes (if any) to my FEHB election.</p> <p>_____ My SAD orders is for over 30-days and I want to <u>terminate</u> my FEHB coverage. This will be effective the day before entering on Absent - Uniformed Service.</p> <p>_____ My SAD orders is for over 30-days and I elect to <u>continue</u> my current FEHB coverage. Choose only ONE option below:</p> <p>_____ I elect to continue my FEHB by incurring a debt that will be paid upon my return to civilian duty (if participating in Premium Conversion deductions will be pre-tax) for the first 12 months. After the first 12 months, I will pay both the employee and the agency share of the premium plus a 2% administrative fee and it must be paid on a current basis.</p> <p>_____ I elect to continue FEHB by making current payments directly to DFAS on a continuing basis during my absence (with after-tax money). After the first 12 months, I will pay both the employee and agency share of the premium plus a 2% administrative fee on a current basis.</p>
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12. NGAUS DISABILITY INSURANCE

Select ONE of the following options and initial:	
Initials:	<p>_____ I reviewed my LES and I am not enrolled in NGAUS Technician Disability Insurance Program.</p> <p>_____ I am enrolled in the NGAUS Technician Disability Insurance Program and I understand that it does not cover me while I am on military duty. If I have further questions regarding this program, I will contact NGAUS directly at 202-789-0031.</p> <p>It is my responsibility to ensure that my NGAUS coverage and premiums are correct on my federal LES and report any discrepancies within 2 pay periods of returning to duty.</p>

13. FEDERAL EMPLOYEE'S GROUP LIFE INSURANCE (FEGLI)

Select ONE of the following options and initial:	
Initials:	<p>_____ I reviewed my LES and I am not enrolled in FEGLI.</p> <p>_____ I am enrolled in FEGLI. I reviewed and understand the following information</p> <p>My FEGLI coverage will continue for 12 months in non-pay status at no cost.</p> <p>If I have a Qualifying Life Event (QLE) while on Absent-US, such as marriage, divorce, acquiring an eligible child, I can elect or increase Option B and/or C coverage as appropriate, no later than 60 days after the event. Option B is effective the first day the employee returns to pay and duty status. Option C is effective the date of the event, if elected during the time-frame and before the coverage terminates after 12 months.</p> <p>I understand that it is my responsibility to ensure that my FEGLI coverage and premiums are correct on my federal LES and report any discrepancies within 2 pay periods of returning to duty.</p>

14. EMPLOYEE SIGNATURE	
<p>I understand the elections I made on this checklist.</p> <p>It is my responsibility to provide new orders and modifications to my orders to my supervisor and ANG HRO Liaison/HRO within 10 business days of the change.</p> <p>I understand it is my responsibility to coordinate my return to duty with my supervisor, prior to the end of my orders. HRO recommends I submit a Return to Duty packet 2 weeks prior to returning to work, to avoid delays in my pay.</p> <p>Service of 1 to 30 days – Must report the first regularly scheduled workday following completion of uniformed service. Service of 31 to 180 days – Must submit application of reemployment no later than 14 calendar days after completion of uniformed service. Service of 180 or more days – Must submit application of reemployment no later than 90 days after completion of uniformed service.</p> <p>If I do not report to work on the first regularly scheduled workday following completion of uniformed service, I will be placed on Personal Leave Without Pay (LWOP).</p> <p>It is my responsibility to review my federal LES and report any discrepancies I find within 2 pay periods of returning to duty. I will contact payroll in order to keep current on any allotments/garnishments if applicable.</p>	
<p>I included the following forms with this checklist:</p> <p>_____ SAD orders (Required) – Orders include my name, SSN, reporting date</p> <p>_____ FEHB Premium Conversion Waiver/Election (if applicable)</p>	
Signature:	Date:

Supervisor Responsibilities		
<p>I understand that it is my responsibility to ensure the employee updates ATAAPS and submits a Return to Duty Checklist prior to returning to federal employment. I must submit this completed form and the employee's military orders, and any orders modifications to ng.hi.hiarng.mbx.nghi-hro-benefits@army.mil</p>		
Supervisor's Signature:	Date:	Supervisor's Phone Number:
Supervisor's Printed Name	Supervisor's Email Address:	

**Federal Employees Health Benefits Program (FEHB)
Premium Conversion Waiver/Election Form**

Purpose of This Form

This form is used to elect or waive pre-tax treatment of employee premium contributions to the FEHB Program. Pre-tax treatment is automatic. You do not need to complete this form unless you elect not to have your FEHB premium contributions deducted on a pre-tax basis, or you previously waived this benefit and now elect to participate.

I. PARTICIPANT INFORMATION

Last Name	First Name	MI	SSN
Mailing Address	City and State		Daytime Phone Number

II. ELECTION TO WAIVE PARTICIPATION IN PREMIUM CONVERSION

I elect to waive participation in premium conversion and the pre-tax treatment of my FEHB premiums. I would like to have my FEHB premium contributions deducted from my pay on an after-tax basis.

Signature	Date
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- This is my initial opportunity to waive participation in premium conversion.
- I am making this election to waive participation during FEHB Open Season.
- I wish to waive participation in premium conversion on account of and in accordance with a Qualifying Life Event (QLE).
My QLE is _____ and it is effective _____.

III. ELECTION TO RESTORE PARTICIPATION IN PREMIUM CONVERSION

I elect to have my FEHB premiums deducted from my pay on a pre-tax basis. I understand that I may only change my FEHB premium deductions to an after-tax basis during a subsequent Open Season or upon a Qualifying Life Event. See instructions for acceptable events.

Signature	Date
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- I am making this election to participate during the FEHB Open Season
- I wish to participate in premium conversion on account of and in accordance with a Qualifying Life Event

IV. TO BE COMPLETED BY PAYROLL/PERSONNEL STAFF

Approved _____ Disapproved _____ Effective Date: _____ Payroll Office No. _____

Authorized agency official: _____
Signature _____ Date _____ Phone _____

Name and address of employing office: Departments of the Army and Air Force
National Guard of Hawaii
Office of the Adjutant General (HRO-M)
3949 Diamond Head Road
Honolulu, HI 96816-4495

(Revised Nov 2007)

Privacy Act Statement: This information is collected under 5 C.F.R. § 892 and will be used to process your decision to waive or restore the pre-tax treatment of your FEHB premiums. This information may also be used pursuant to routine uses promulgated by OPM under 5 U.S.C. § 552a(b)(3). Completion of this form is voluntary. However, if this information is not provided, we will be unable to process your waiver or restoration of premium conversion.

Instructions for Completing the FEHB Premium Conversion Election/Waiver Form

Use this form to

- ✓ Waive premium conversion and the pre-tax treatment of FEHB premiums
- ✓ Restore premium conversion if previously waived

Do not use this form to

- ✓ Elect premium conversion UNLESS you have previously waived it
- ✓ Waive premium conversion if you have already waived it
- ✓ Enroll in the FEHB Program. A separate form is used for that purpose

Who May Use This Form Employees who are eligible for pre-tax treatment of their FEHB premiums

General Information Further information on premium conversion may be obtained on the OPM website: www.opm.gov

Effective Dates

For Waivers

If you wish to waive pre-tax treatment when premium conversion becomes effective on October 1, 2000, this form must be completed by you and received by your employing office the earlier of: the date set by your employing agency; or the day before the first pay period that begins on or after October 1, 2000.

Your decision to waive pre-tax treatment must be made during FEHB Open Season or within the specified time period after a Qualifying Life Event (QLE). If you change your participation during Open Season, it will become effective on the first full pay period in the following calendar year. If you change your participation as a result of a Qualifying Life Event, the change will be effective the first full pay period after this form is received by your employing office.

Newly hired employees who want to waive pre-tax treatment need to submit this form at the same time as SF-2809, Employee Health Benefits Election Form. Pre-tax waivers made by newly hired employees take effect at the same time that FEHB coverage is effective.

Your decision will continue indefinitely unless you later submit a new election/waiver form to change the tax treatment of your contributions to FEHB.

For Restorations

IRS Guidelines—Restrictions on Changing Health Benefits Coverage (Pre-tax Treatment)

To make a change outside of the FEHB Open Season, (switch plans or options, cancel your enrollment, or change from family to self-only) or to change your participation in premium conversion you must have experienced a QLE and the change in coverage must be on account of and in accordance with that QLE. This differs for employees covered by after-tax treatment, who may reduce their level of coverage at any time. The difference is because pre-tax treatment is subject to Internal Revenue Service (IRS) guidelines. Keep this information in mind when making your decision.

If your change is allowed, it will be effective the first full pay period after this form is received by your employing office.

Qualifying Life Events (QLEs)

QLEs are events that may allow you to make a change in your premium conversion election outside of open season. Ask your employing agency for more information on whether your event meets the criteria of a qualifying life event.

With two exceptions (noted above), the rules for changing FEHB enrollment outside of Open Season do not change. The opportunities for you to enroll or change enrollment described in 5 CFR Part 890, and in the FEHB Employee Health Benefits Election Form (SF 2809) will continue to be allowed under premium conversion.

The IRS has additional events that will allow you to change your participation (election) in premium conversion. Please see OPM's website for more information.