



DEPARTMENT OF DEFENSE
GEORGIA NATIONAL GUARD
HUMAN RESOURCE OFFICE
1000 Halsey Ave, BLDG 447
Marietta, GA, 30061

NGGA-HRO

17 January 2012

MEMORANDUM FOR ALL Georgia Army & Air National Guard Technicians

SUBJECT: Use of Time-Off Awards and Excused Absence during Uniformed Service

1. References:

- a. Title 5, Code of Federal Regulation (CFR) 353.208, Use of paid time off during uniformed service, 1 January 2011.
- b. Memorandum, NGB-HRL, 30 March 1999, subject: Time Off awards (enclosure).

2. Effective immediately, reference 1.b., is rescinded. All technicians will follow guidance provided in reference 1a. Title 5, CFR 353.208 does not authorize the use of Time-off Awards and/or Excused Absences during Uniformed Service.

3. The Point of contact is 1LT Donald Hammond II, Supervisory Human Resources Specialist at DSN 338-5735, 678-569-5735, or donald.hammondii@us.army.mil.

Encl

A handwritten signature in black ink, appearing to read "Eric D. Jones", written over a horizontal line.

ERIC D. JONES, Col, Ga NG
Human Resource Officer

BACKGROUND PAPER
ON
USE OF TIME OFF AWARDS DURING UNIFORMED SERVICES

DISCUSSION: In November 2011, a State National Guard Human Resources Officer (HRO) brought to the attention of the Office of Technician Personnel Employee Benefits Branch their state was the subject of an audit/investigation from the Air Force Office of Special Investigation (AF OSI). The HRO requested clarification on three issues:

1. The currency of NGB-HRL¹ memorandum dtd 30 Mar 99, Time Off Awards.
2. Are Title 32 Technicians authorized to use Time Off Awards (TOAs) and/or compensatory time while in uniformed services?
3. Can TOAs be substituted for compensatory time?

GUIDANCE PROVIDED TO THE STATE HRO:

- IAW 5 CFR 353.208: An employee is entitled to use annual leave, military leave, earned compensatory time off for travel, or sick leave intermittently with leave without pay while on active duty or active/inactive duty training.
- TOAs cannot be substituted for compensatory time; to substitute the time off award for compensatory time would violate the incentive awards concept of recognizing exceptional performance, as opposed to compensating for extended work schedules. Reference: www.opm.gov/faq/perform/Can-a-manager-substitute-time-off-awards-for-compensatory-time.ashx

ISSUE: Based on supporting guidance from the Office of Personnel Management indicates from the very genesis² of Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), the use of the Time-Off Awards has been excluded as an authorized leave category while performing service with the uniformed services. On 2 Dec 11, NGB-J1-TN issued TN-11-43, *Use of Time Off Awards and Excused Absences during Uniform Service*, to the Human Resources Officers stating (a) NGB-HRL memorandum dtd 30 Mar 99 is rescinded. (b) 5 CFR 353.208 is the prescribing directive for the use of paid leave during uniformed service. However, the release of this memorandum has generated national discussion on the correctness of TN's interpretation, and application of 5 CFR 353.

RECOMMENDATION: In that TNB has reviewed OPM's policy concerning the use of paid leave while performing service with the uniformed services, and has received NGB-JA's affirmed interpretation of 5 CFR 353.208, TN-11-43 memorandum is correct as published.

¹ NOTE: The stated NGB-HRL memorandum *was not* in compliance with 5 CFR 353.208 as published 1 Jan 99.

² Reviewed archived copies of 5 CFR 353.208 from 1998 – 2011, and related Federal Registers to 5 CFR 353.208



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NGB-HRL

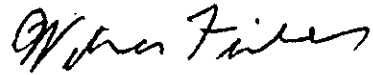
30 March 1999

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

SUBJECT: Time Off Awards

1. Policy for Time-Off Awards is described in paragraph 6(e) of TPR 451 dated 15 Dec 98. There is no prohibition on technicians using a time off award during a period of military duty. Previous guidance is rescinded. However, awards should not be granted specifically for the purpose of excusing technicians so that they may perform military duty.
2. If you have any question, please contact Derek Day at DSN 327-5981/COMM (703) 607-5981.

Encls
as


WILSON FISHER
Chief, Labor and Employee
Relations Division
Human Resource Directorate

CF:
NGB-HR-EC
NGB-HR-WC