

HUMAN CAPITAL OFFICE

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//signed//James P. Falcone
James P. Falcone
IRS Human Capital Officer

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Date



INTERNAL REVENUE SERVICE

WORKFORCE PROGRESSION AND MANAGEMENT DIVISION

NOTICE: This information is posted on the IRWeb at
<http://hco.web.irs.gov/policies/intrmguide/1perpolicy.html>

SUBJECT:

Administrative Claims Process to Restore Leave/Compensation for Improperly Charged Military Leave (per *Butterbaugh v. Department of Justice*)

PURPOSE:

To establish IRS policy to process claims for restored annual leave or compensation for current or former employees harmed by improperly charged military leave.

SCOPE:

Current and former employees who were simultaneously employed by the IRS and served in the military reserves between October 10, 1980, and December 21, 2000, (the date military leave began to be charged only on workdays), and who meet the policy criteria defined below.

EFFECTIVE DATE:

This policy is effective on the date signed.

DELEGATION OF AUTHORITY:

Treasury mandated via HCIS Transmittal 09-001 that Bureaus establish administrative procedures to handle claims regarding erroneously charged military leave.

BACKGROUND:

The *Butterbaugh v. Department of Justice* case was brought under the Uniformed Services Employment and Restoration Rights Act of 1994 (USERRA), as amended. The United States Court of Appeals for the Federal Circuit reversed the Office of Personnel Management's (OPM) interpretation of 5 U.S.C. 6323, and held that at least since 5 U.S.C. 6323(a) was amended on October 10, 1980, agencies should have been granting reservists with 15 workdays of military leave for reserve training each year, rather than 15 calendar days.

After several subsequent Butterbaugh-related decisions by the Merit System Protection Board (MSPB), the MSPB held that there is no statute of limitations on claims brought under USERRA procedures. Accordingly, the IRS will process administrative claims covering military leave granted dating back to October 10, 1980.

Employees may use the steps outlined in this policy to file claims for restoration of annual leave (or for pay) for improperly charged military leave with the IRS, or in the event that an employee's claim is denied under this policy, the employee may choose to pursue relief under the negotiated grievance procedures or file a claim with the MSPB.

POLICY:

Claimants must file a claim using Attachment A, "Claim for Credit of Annual Leave or Reimbursement." They may not claim or receive restored annual leave or payment for any period of service that was previously claimed under the original Butterbaugh procedure (which limited claims to a six year period), regardless of whether or not that claim was settled to the satisfaction of the employee.

The burden of proof lies with the employee to show harm by having to use annual leave, leave without pay (LWOP), or other leave to cover periods of absence for military purposes, as a result of being improperly charged military leave for intervening weekends or non-workdays. Employees must have supporting documentation to prove they were actually charged military leave on intervening weekends or non-workdays, **and** that they had to use some other form of leave to cover the absence during that period of military duty.

Employees who file appropriately documented claims with the IRS will be eligible for compensation as follows:

- Current employees who were improperly charged military leave by the IRS and subsequently took **annual or sick leave** will receive annual leave equal to the number of hours of such leave taken as a result of the improperly charged military leave.
- Current employees who were improperly charged military leave by the IRS and subsequently took **LWOP** will be paid for the number of hours of LWOP taken as a result of improperly charged military leave. The rate of pay used will be that which was in effect during the period of the improperly charged military leave.
- Former employees who were improperly charged military leave by the IRS will be paid for the number of hours charged, using the rate of pay in effect during the period of the improperly charged military leave.

Time and Attendance (T&A) records are retained by the agency for a period of six years. Since the timeframe for claims under this procedure includes from October 10, 1980 to December 21, 2000, employees will not be able to request such information from the IRS.

CLAIM PROCEDURES:

A. Employee Responsibilities:

- (1) Complete, sign, and forward the claim (Attachment A) to the Agency-Wide Shared Services (AWSS) location indicated on the claim form. The claim must include supporting documentation showing that annual leave, other leave, or LWOP was used while performing official military duties as a direct result of the agency charging military leave for intervening weekends or non-workdays. Acceptable documentation includes copies of the following:
 - Military orders for a period of continuous active duty that includes an intervening weekend or non-workday;
 - Certificate of attendance as proof of attendance for each period of active duty listed above;
 - Applicable work schedule (if not on a standard Monday through Friday work schedule) for the period(s) of active duty, showing non-workdays;
 - T&A record(s) or other leave record(s) showing the charges to annual leave, LWOP, or other leave;
 - Any other relevant documentation such as leave slips, payroll records, and/or leave requests, in the absence of the above, that indicates charges to military leave which may include a weekend or another non-workday; and/or,
 - Military records and affidavits submitted by the employee and/or supervisor.
- (2) Use restored leave in accordance with policy outlined below.

B. AWSS, Employee Support Services, Payroll and Personnel Systems Division, Responsibilities:

- Review the claim submitted by the employee or former employee, verifying simultaneous employment and reserve service;
- Determine appropriate number of hours to be restored or number of hours and rate of pay to be compensated;
- Process leave restoration or compensation payment; and,
- Notify employee and his/her manager of amount of leave restored and time limit for use, or when compensation can be expected. (If claim denied, communicate the reason(s) for the disapproval.)

C. HCO, Workforce Progression and Management, Compensation Branch, Responsibilities:

- Ensure the IRS performs its obligation to process claims consistent with governing law, and agency policy; and,
- Provide advisory services to AWSS in addressing policy and procedural issues.

USING RESTORED ANNUAL LEAVE:

Consistent with 5 CFR 550.805(g), restored annual leave will be placed in a restored leave account, and must be used no later than the end of the leave year two years after it has been restored, e.g., leave restored in 2010 must be used by the end of the 2012 leave year. If a full-time employee is credited with annual leave of more than 416 hours, that time will be extended by one leave year for each additional 208 hours credited.

T&A POSTING CODE:

Organization, Function and Program (OFP) Code 990-59507 must be used when posting restored annual leave to the employee's T&A record. This type of leave may be used in 15-minute increments. An employee's failure to use the restored leave within the aforementioned timeframe will not meet the requirements for restoration.

REFERENCES:

1. 5 U.S.C. § 6323, "Military Leave; Reserves and National Guardsmen"
2. 5 CFR 550.805(g), "Back Pay Computations – Restored Annual Leave"
3. *Butterbaugh v. Department of Justice*, 336 F.3d 1332 (Fed. Cir. 2003)
4. Department of the Treasury HCIS Transmittal 09-001, dated October 22, 2008, "Claims for Correction of Improperly Charged Military Leave," <http://intranet.treas.gov/hr/support-docs/TN-09-0001.pdf>

Attachment: "Claim for Credit of Annual Leave or Reimbursement"