

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE  
INTERNAL REVENUE SERVICE,  
HUMAN CAPITOL OFFICE  
AND THE  
NATIONAL TREASURY EMPLOYEES UNION  
REGARDING THE  
UNIFORMED SERVICES EMPLOYMENT AND RESTORATION RIGHTS ACT  
(USERRA)**

This Memorandum of Understanding ("MOU") is between the Internal Revenue Service ("IRS, Agency, Management, or Service"), Human Capital Office ("HCO") and the National Treasury Employees Union ("NTEU or Union").

The IRS briefed NTEU regarding the implementation of a new policy for processing administrative claims for restoring improperly charged military leave in compliance with the Uniformed Services Employment and Restoration Rights Act (USERRA) and the decision of the U.S. Court of Appeals for the Federal Circuit in Butterbaugh v. Department of Justice, 336 F.3d 1332 (Fed. Cir. 2003).

The new USERRA policy was created in order to allow current employees to submit a claim for incorrect application of military leave. Employees may now file administrative claims with the Agency to recover improperly charged leave related to their military reserve service between the dates of October 10, 1980 and December 21, 2000. This administrative process has been created so that current employees do not have to file a claim with the Merit Systems Protection Board (MSPB), and is cost effective for both the employee and IRS. Former employees may contact the MSPB if they wish to file a claim.

Acceptable supporting documentation shall include, but is not limited to, 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; time and attendance (T&A) record(s) or other leave record(s) showing the charges to annual leave, leave without pay (LWOP), or other leave; any other relevant documentation such as leave slips, payroll records, and/or leave requests, that indicates charges to military leave which may include a weekend or another non-workday; and/or, military records and affidavits the employee and/or supervisor.


Employees may use the steps outlined in the new policy to file claims for the restoration of annual leave (and/or pay) for instances of improperly charged military leave. In the event that an employee's claim is denied under the policy, the employee may choose to pursue relief under the negotiated grievance procedures of the parties' 2009 National Agreement (NAII) or via a claim with the MSPB.

In order to implement the above described initiative, the IRS and NTEU agree to the following provisions:

- 1) **Formal Meetings.** In lieu of formal meetings, all communication to bargaining unit employees regarding this initiative shall be provided in accordance with paragraph 2, below, and the terms of the Parties' Side Letter Agreement, attached as Appendix 1.
- 2) **Communications.** Upon the execution of this MOU, the Agency shall transmit an email to all bargaining unit employees. The email shall include a link to the policy, which also provided a link to the claim form along with requirements and procedures for filing claims. Management will establish a dedicated web page to explain the initiative, display frequently asked questions and answers, and post this MOU. For additional information, employees may contact the Employee Resource Center (ERC) through OS GetServices on the intranet or call directly at 866-743-5748 (TTY: 866-924-3578) with any questions or concerns.
- 3) **Claims Process.** Current bargaining unit employees may elect to file a USERRA claim with the IRS. Claims are to be filed with Agency-Wide Shared Services (AWSS), Employee Support Services, Payroll and Personnel Systems Division. All claims must be accompanied by supporting documentation demonstrating that the claimant utilized annual leave, leave without pay (LWOP), or another type of leave category to cover periods of absence for official military service and duty, as a result of being improperly charged military leave by the Agency for intervening weekends or non-workdays. Subject to workload considerations, the Agency shall make every reasonable effort to review claims, verify simultaneous employment and reserve service, process leave restoration or compensation and notify claimants of the final disposition of their claims as soon as possible, but generally within ninety (90) calendar days from the date of submission, providing the employee has submitted all the paperwork he or she plans to provide. The Parties recognize that instances may occur in which a claim may require additional time to process depending on the completeness of or amount of paperwork and/or supporting documentation. In the event that a USERRA claim is denied in full or in part, upon request, the Agency will communicate the denial in writing to the claimant, which shall set forth the reason(s) for the disapproval.
- 4) **Information Gathering.** The Agency shall provide NTEU National with information related to this initiative once a year for the duration of this MOU on all claims filed after January 14, 2010. The information shall include: 1) the total number of USERRA administrative claims submitted to the Agency; and 2) the total number of USERRA administrative claims decisions issued and/or denied by the Agency.

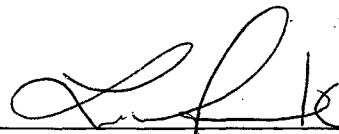
- 5) **Adverse Impact.** It is the intention of the Parties to cover all reasonably foreseeable adverse impact in this MOU. However, if either Party identifies adverse impact, at some point in the future, which is not covered by this MOU, it will follow Article 47, by providing notice and bargaining.
- 6) **Significant Problems.** If either Party becomes aware of significant unanticipated problems that arise following the implementation of this initiative, the Employer or NTEU shall inform the other, and the Parties will meet to discuss and resolve the problems as soon as practicable.
- 7) **Effective Date.** This Agreement will become effective upon the completion of Agency Head Review or on the thirty-first (31<sup>st</sup>) day after execution, whichever is first
- 8) **Expiration Date.** This Agreement will expire upon the expiration of NA II.

For the Agency:

  
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Annie D. Brown  
Director, Workforce Progression and  
Management Division

5/4/12  
Date

For the Union:

  
\_\_\_\_\_  
Luke Chesek  
Negotiations Legal Specialist  
National Treasury Employees Union

5/8/2012  
Date