

Number 33, November 2001: Paid Military Leave for Federal Employees

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Q: I am a civilian employee (GS-14) of the Department of Defense (DoD), and I am also a first lieutenant in the Army Reserve. I have been told to expect imminent activation. My O-2 pay is substantially less than my GS-14 pay. For how long can I keep my civilian pay going after my entry on active duty?

A: As a federal civilian employee, you receive 15 days per fiscal year of paid military leave, in accordance with Title 5, United States Code, Section 6323 (5 U.S.C. 6323). That law was amended in 1999 and again in 2000, making it more generous each time. Under the recent amendments, you can use paid military leave for inactive duty training (drills or unit training assemblies), as well as active duty or active duty for training. Also, in computing your use of paid military leave, only work days now must be considered. (Previously, paid military leave was used day-for-day, even on weekends and federal holidays.)

Under 5 U.S.C. 6323, you received 15 days of paid military leave on 1 October, the start of the new federal fiscal year. Also, you can carry over as many as 15 days of paid military leave from one fiscal year to the next. Thus, you have at least 15 days of paid military leave to use, and you could have as much as 30 days, depending on how much of that leave you have used in recent years. You can and should use up that military leave immediately after your entry on active duty.

Also, under 38 U.S.C. 4316(d), you have the right (but not the obligation) to use annual leave or vacation that you have accrued prior to the start of the period of service in the uniformed services. This is your option, not the employer's. If you really need the money, you may want to "burn up" your accrued annual leave after you have used all your paid military leave.

Q: Do I continue accruing paid military leave and annual leave while I am on active duty?

A: Yes as to paid military leave, but no as to annual leave. If you are still on active duty in October 2002, you can use and be paid for your 15 days of paid military leave in that month. Federal personnel offices are typically ignorant of this provision. It may be that, as a practical matter, you will not receive this money until after you complete your active-duty period and return to your federal civilian job.

When you have exhausted your paid military leave and your annual leave (if you choose to use it), you will be considered to be on an "unpaid military leave of absence." While in that status, you will not accrue additional annual

leave or vacation. [See *Foster v. Dravo Corp.*, 420 U.S. 92 (1975).]

*Military title used for purposes of identification only. The views expressed herein should not be attributed to the Department of the Navy or the U.S. government generally.

Captain Wright was employed as an attorney for DoL for ten years. He was largely responsible for drafting USERRA, along with one other DoL attorney. He also helped to write the successful appellate briefs for the veterans in both the Imel and the Akers cases. Most recently, he was on active duty for 71 days (May–July 2001), including 40 days in Bahrain. Please see his July 2001 “Law Review” article.

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