



# *West Virginia National Guard Human Resources Office Bulletin*



**Bulletin Number:** 11-03

**Date:** 1 October 2011

**Applicability:** National Guard (NG) Technicians; Technician Supervisors

## **Restoration of Annual Leave**

**Subject:** Restoring Annual Leave for Technicians under 'Use or Lose'

**References:** 5 USC 6304(d) and (e); 5 CFR 630.305-311; TPR 630 dated August 27, 2011; WV Labor Relations Management Agreement

**Effective Date:** Immediately

**Use:** All West Virginia National Guard Federal Technicians and Technician Supervisors need to review the following provisions in which a federal technician can request restoration of forfeited annual leave.

Ultimately, supervisors are responsible for the overall planning, coordination, and approving of their employees' annual leave throughout the leave year so that the agency's mission and employees' needs are met, and so that employees do not approach the end of the leave year with a significant amount of annual leave that must be used or forfeited. While the final date to schedule leave applies only to situations involving the possible forfeiture and restoration of annual leave, employees should be sure to schedule and use annual leave throughout the leave year and not wait until the end of the leave year to schedule annual leave.

Restoration of Annual Leave may be approved if leave lost through an administrative error, sickness, or exigencies of the public business (this includes furlough). Before forfeited annual leave may be considered for restoration, IAW 5 CFR 630.308, the annual leave must have been *requested, approved, and scheduled in writing* before the start of the third bi-weekly pay period to the end of the leave year (see Enclosure). All restoration of annual leave requests are approved or disapproved by The Adjutant General.

Before forfeited annual leave is restored, it must be determined if one of the three categories for restoration exist. The category, "An Exigency of the Public Business" is hardest to show if not handled correctly. An exigency is one of major importance where there is an urgent need for the employee to be at work and where an employee may not use scheduled annual leave. Failure to use annual leave due to extended active duty is not considered an "exigency of the public

business” for purposes of restoring forfeited leave to a special account. Technicians facing activation with a leave balance in excess of 240 hours are advised to use such leave to avoid forfeiture. An employee’s use of compensatory time off does not constitute an exigency of the public business. If the use of earned compensatory time off that are about to expire results in the forfeiture of excess annual leave, the forfeited leave cannot be restored.

If the employee forfeits annual leave because the supervisor did not schedule the leave or the supervisor did not request a determination that a public exigency existed in their workplace that prevented the employee from using the leave, such supervisory negligence constitutes administrative error and the employee's leave must be restored. In these instances, the supervisor must provide written documentation describing why they did not schedule the leave appropriately through the calendar year or why they did not request the determination of an exigency through their chain of command.

There are also time limits for the use of restored annual leave. Once annual leave is restored, it must be scheduled and used not later than the end of the leave year ending two years after the date of restoration of the annual leave. In the case of small amounts (e.g., five days or less), employees may be required to use the restored leave before using current leave accruals. In case of large amounts of restored leave, it may be wise to prorate the use over the entire two-year limit as warranted. Where requested annual leave is to be charged to the restored leave account, the employee must submit an OPM Form 71 clearly indicating the amount of leave to be charged to the restored leave account.

More information can be found at <http://www.opm.gov/oca/leave/html/restore.asp>.

**Your point of contact is the Employee Relations Specialist at (304) 561-6431.**

Encl

  
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### Leave Year Beginning and Ending Dates

A leave year begins on the first day of the first full biweekly pay period in a calendar year. A leave year ends on the day immediately before the first day of the first full biweekly pay period in the following calendar year.

Employees may carry over to the next leave year a maximum amount of accrued annual leave (240 hours for most employees). "Use or lose" annual leave is the amount of accrued annual leave that is in excess of the employee's maximum annual leave limitation for carry over into the next leave year. Employees must "use" their excess annual leave by the end of a leave year or they will "lose" (forfeit) it.

An agency may consider restoring annual leave that was forfeited due to an exigency of the public business or sickness of the employee **only** if the annual leave was scheduled in writing before the start of the **third biweekly pay period prior to the end of the leave year.**

| <b>Leave Year</b> | <b>Leave Year Beginning Date</b> | <b>Leave Year Ending Date</b> | <b>Date for Scheduling "Use or Lose" Annual Leave</b> |
|-------------------|----------------------------------|-------------------------------|---|
| <b>2011</b>       | January 02, 2011                 | December 31, 2011             | November 19, 2011                                     |
| <b>2012</b>       | January 01, 2012                 | January 12, 2013              | December 01, 2012                                     |
| <b>2013</b>       | January 13, 2013                 | January 11, 2014              | November 30, 2013                                     |
| <b>2014</b>       | January 12, 2014                 | January 10, 2015              | November 29, 2014                                     |
| <b>2015</b>       | January 11, 2015                 | January 09, 2016              | November 28, 2015                                     |
| <b>2016</b>       | January 10, 2016                 | January 07, 2017              | November 26, 2016                                     |
| <b>2017</b>       | January 08, 2017                 | January 06, 2018              | November 25, 2017                                     |
| <b>2018</b>       | January 07, 2018                 | January 05, 2019              | November 24, 2018                                     |
| <b>2019</b>       | January 06, 2019                 | January 04, 2020              | November 23, 2019                                     |
| <b>2020</b>       | January 05, 2020                 | January 02, 2021              | November 21, 2020                                     |