



# *West Virginia National Guard Human Resources Office Bulletin*



**Bulletin Number:** 12-01

**Date:** 26 April 2012

**Applicability:** National Guard (NG) Technicians; AGRs; FTNGD-OS;  
FTNGD-CD

## **State Active Duty**

**Subject:** Utilization of the Full-Time Force

**References:** 5 U.S.C. 6323; 5 U.S.C. 5519; TPR 630; Customer Service Representative (CSR) Law Enforcement Leave (LEL)- State Active Duty (SAD) pay processing fact sheet (May 11); DOD 3025.15 dated Feb 18, 1997

**Effective Date:** 16 March 2012

**Use:** The use of this bulletin is to provide basic guidelines to apply to the utilization of full-time members and employees for State Active Duty (SAD).

**Immediate Response:** Notwithstanding the below information, all members regardless of status, may support an "Immediate Response" situation. This situation is defined as "any form of immediate action taken by a DoD component or military commander to save lives, prevent human suffering, or mitigate great property damage under imminently serious conditions when time does not permit approval from Higher Headquarters."

Reassessment of the immediate response activities shall occur not later than 72 hours.

Commanders will make maximum efforts to replace FTNGD-OS/FTNGD-CD members and technicians with traditional members in an appropriate duty status.

**Utilization of Military Technicians:** Military technicians may be utilized in their Technician statuses at their normal places of work to perform duties which are reasonably within their normal scope of employment, and which aid in the disaster response effort. Technicians who work State Active Duty, which is commensurate with their regular technician duties, may earn compensatory (comp) time if their workday exceeds the normal duty day.

All comp time should be approved prior to the performance of duty, and must be documented in accordance with NGB 46-14 (Comp Time Form).

If military technicians are to participate more directly in disaster response, either to perform duties outside their normal scope of employment, strictly military duties, or duties in a forward area, they must be in a military status for State Active Duty (SAD). The technician must then be in a non-duty authorized leave status relative to his/her technician position when receiving pay in an active SAD or military status.

Dual Compensation rules dictate any technician who performs SAD be required to take a full day of leave for each day of such service, even if the SAD functions are performed after the normal technician working hours. The only exception to this requirement occurs when the technician first learns of the necessity to perform SAD during a workday. In this circumstance, the technician will be required to take leave only for the hours absent from work for the remainder of that day. The technician will be required to take a full day of leave for each subsequent day of SAD. There is no charge of leave when SAD is performed on non-workdays or holidays.

Appropriate technician leave statuses include the following:

1. Technicians may use and comingle accrued annual leave (LA), restored annual leave (LR), advanced annual leave (LB), compensatory time (CT), travel compensatory time (CF), time off award (LY), and leave without pay (KA) to perform State Active Duty.

Under no circumstances will a technician use military leave, sick leave, or excused absence (administrative leave) to perform SAD.

2. If utilizing personal Leave without Pay (KA) while on SAD, a technician must be aware this will have a significant impact on his/her pay and benefits entitlements. SAD is not subject to entitlements, benefits, retirement, and protection under Uniformed Services Employment and Reemployment Rights Act (USERRA). Please see enclosure 1 for effects of Non-Pay status on technician benefits and entitlements.

3. All permanent and indefinite employees may be eligible for 22 days of law enforcement leave. To claim LEL, SAD orders **MUST** directly reference 5 U.S.C. 6323(b) "providing military aid to enforce the law or for the purpose of providing assistance to civil authorities in the protection or saving of life or property, or the prevention of injury". This is not a dual compensation leave; therefore, an employee will not be authorized to retain both full military and civilian pay.

Two basic rules apply to LEL:

1. If the military pay is greater than the technician pay, then no technician pay will be due.
2. If the military pay is less than the technician pay, the difference between the two is paid to the technician, and the remainder is offset or collected.

The technician will continue to receive his/her normal technician pay while utilizing LEL; and upon the completion of SAD duty, military pay will be compared to his/her technician pay to determine the indebtedness. Offset rules require crediting of military pay against technician pay,

thus reducing the technician pay. The LEL offset debt will continue to be collected until the debt amount is paid in full.

If an employee retires or resigns before final collection of the indebtedness, final pay will be applied to the unliquidated debt balance without additional notification.

**Utilization of Active Guard Reserve (AGR):** AGR members may **not** be placed in a State Active Duty (SAD) status. When a declared emergency effort occurs, an AGR may support SAD operations by performing his or her normal AGR function either as a member of his his/her assigned unit, or as an attached member who has required skill sets for the response effort.

If an AGR member has a critical skill set that may be needed by another unit, that AGR member may be attached or cross-leveled to the deploying unit if no other reasonable option exists.


Individual AGR Soldiers and Airmen will not be ordered to perform emergency state missions in an AGR status without the approval of the Chief, NGB.

AGR Soldiers on a Command Leadership and Assignment Staff Policy (CLASP) waiver will perform duties inherent to their respective MTOE or TDA assignment.

**Utilization of FTNGD-OS/ FTNGD-CD:** If an FTNGD-OS/ FTNGD-CD member is required to support a situation such as State Active Duty (SAD), the member's FTNGD orders will be rescinded, and thereafter the member will be placed in the same status as other members of the unit responding to the situation. Special care should be taken when considering a change in a member's status, as it will affect entitlement to certain benefits.

**Your points of contact are the Technician Employee Relations Specialist at (304) 561-6431 and the AGR Manager at 304-561-6424.**

Encl

  
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### Effects of Non-Pay Status on Technician Benefits and Entitlements

While in LWOP (KA), the following affects will apply to technician benefits:

**1. Federal Employees Group Life Insurance (FEGLI):** Employees on LWOP are eligible for continued life insurance without cost for up to 12 months.

**2. Federal Employees Health Benefits (FEHB):** Employees are required to pay for their portion of health benefits coverage when they continue their enrollment under the FEHB program while in non-pay status, or when salary is insufficient to cover the required premium(s). Employees will incur a debt during those periods, and must be double deducted for all premiums missed when they return to a technician pay and duty status.

**3. Service Computation Date Adjustments (Retirement and Leave):** All LWOP hours in excess of 180 days in a calendar year will affect retirement and leave service computation dates.

**4. Initial Appointment Probationary Period:** Any non-pay time in excess of 22 Workdays extends the probationary period by that number of days.

**5. Career Tenure:** Any non-pay time in excess of 30 calendar days for each period of absence extends the service date for career tenure by that number of days.

**6. Within Grade Increase (WGI) Adjustments:** Excess LWOP will affect the WGI waiting period. The following chart describes the amount of LWOP that can be taken prior to WGI waiting period extension:

General Scale (GS) Step In Grade	Maximum # of Hours LWOP
1, 2, 3, 4	80 Hours (2 Workweeks)
5, 6, 7	160 Hours (4 Workweeks)
8, 9, 10	240 Hours (6 Workweeks)

Federal Wage (WG) Step In Grade	Maximum # of Hours LWOP
2	40 Hours (1 Workweek)
3	120 Hours (3 Workweeks)
4, 5	160 Hours (4 Workweeks)