

**STATE OF WEST VIRGINIA
ADJUTANT GENERAL'S DEPARTMENT
1703 COONSKIN DRIVE
CHARLESTON, WEST VIRGINIA 25311-1085**

WV HUMAN RESOURCE OFFICE REGULATION
630-1

23 February 2003

Absence and Leave

EXCUSED ABSENCE AND LEAVE

This regulation establishes the policies and procedures for all types of excused absence and leave for technicians of the West Virginia National Guard.

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1. **PURPOSE** Establishes the policies and procedures for all types of excused absence and leave for excepted and competitive technicians of the West Virginia National Guard. It is to provide a ready reference to supervisors and individuals on the policies and procedures of The Adjutant General concerning the various types of absence and leave.

2. **ACTIVITY HEAD** For the purpose of this Regulation, the following positions are designated as activity heads:

- Executive Support Staff Officer
- Air Commander (Pilot) Charleston
- Air Commander (Pilot) Martinsburg
- Command Administrative Officer
- Surface Maintenance Manager
- Supervisory Aircraft Pilot
- United States Property and Fiscal Officer
- Human Resource Officer

3. **ANNUAL LEAVE**

A. Annual Leave is authorized for all permanent, indefinite, and temporary technicians employed for 90 days or more. A temporary technician employed for 89 days or less is not eligible for annual leave. However, if the period of employment is subsequently extended to 90 days or more, the technician is eligible for leave accrual from the first full pay period of employment.

B. All annual leave to be earned during the year for permanent and indefinite technicians will be credited at the beginning of the leave year or date of employment, and will be available for use. Under Defense Civilian Pay System (DCPS), only Annual Leave already earned will be reflected on Leave and Earnings Statement.

C. Temporary technicians who earn annual leave will normally only be permitted to use annual leave as earned. However, activity heads may approve the utilization of all annual leave to be earned during the period of employment in unusual circumstances.

D. Annual leave is earned at the following rate based on years of creditable service:

<u>Years of Service</u>	<u>Hours per Pay Period</u>
Under 3	4 (104 hours per year)
3 thru 14	6 (10 hours last pay period of leave year) (160 hours per year)
15 and over	8 (208 hours per year)

E. Annual leave is accrued only for full bi-weekly pay period.

F. A maximum of 240 hours of annual leave may be carried over to the next leave year.

4. **RESTORED ANNUAL LEAVE**

A. Annual leave that was in excess of the maximum permissible carryover is automatically forfeited at the end of the leave year. Such leave may be restored to the individual for use no later than the end of the leave year ending two years from the date of forfeiture. The three conditions of which restoration may be approved are:

- (1) Administrative error
- (2) Exigencies of the public business (i.e. workload precludes use of leave)

(3) Sickness

B. Requests for restoration based on administrative error will be submitted in writing to The Adjutant General through the HRO with all supporting documentation.

C. Requests for restoration in the case of exigencies of the public business will be submitted in writing to The Adjutant General, and must contain statements that:

(1) The annual leave was scheduled in advance.

(2) The operational demands of the activity prevented the utilization of the scheduled leave, to include a brief description of the nature of the demand.

D. Restoration of annual leave in the case of sickness will be requested in writing to The Adjutant General through the HRO with documentation that states that:

(1) The annual leave was scheduled in advance.

(2) The period of absence, due to sickness, was so late in the leave year, or was of such duration, to deny the use of annual leave prior to the end of the year.

E. Restoration of annual leave may be approved only by The Adjutant General.

5. **VOLUNTARY LEAVE TRANSFER**

A. This program establishes procedures which allow West Virginia National Guard technicians to receive and donate annual leave for use by other West Virginia National Guard (WVNG) technicians. It is intended to help employees who have exhausted their annual and sick leave in time of medical or family medical emergency situations.

B. **DEFINITIONS**

(1) "Technician." Any permanent or indefinite Federal employee of the WVNG who occupies a management, supervisory, or non-supervisory position.

(2) "Family member." The following relatives of the technician:

(a) Spouse, and parents thereof;

(b) Children, including adopted children, and spouses thereof;

(c) Parents;

(d) Grandparents;

(e) Brothers and sisters, and spouses thereof;

(f) Grandchildren; and

(g) Any individual related by blood or affinity whose close association with the technician is the equivalent of a family relationship.

(3) "Leave recipient." An individual who has had an application for annual leave approved.

(4) "Leave donor." An individual who has had annual leave approved for transfer.

(5) "Medical emergency." A medical condition of a technician or a family member that is likely to require a technician's absence from duty for a prolonged period of time and to result in a substantial loss of income because of the unavailability of paid leave.

(6) "Approving and/or Deciding Official." The Human Resource Office (HRO).

C. GENERAL PROCEDURES

(1) Leave Recipient:

- (a) May apply to become a leave recipient if technician expects to be absent from duty, in an unpaid leave status, for at least 24 hours due to a medical emergency.
- (b) May apply for donated leave for self or family medical reasons. The technician must currently have a zero balance of annual leave and sick leave for self medical reasons. If for family member(s), the technician must have zero balance of annual leave.
- (c) The maximum amount of leave a recipient may accrue while using transferred annual leave is 40 hours each of annual and sick leave, for use after the medical emergency.
- (d) Must provide documentation to immediate supervisor to verify the need for donated leave, and may be asked to provide subsequent verification throughout the medical emergency.
- (e) May not:
 - (1) Donate transferred annual leave to another leave recipient.
 - (2) Use transferred annual leave for a lump-sum payment upon separation from government service.
 - (3) Misuse the intent of the program in any form.

(2) Leave Donor:

- (a) May not donate annual leave to his/her immediate supervisor.
- (b) In a use or lose annual leave situation, may only donate the lessor of:
 - (1) One half of the amount of annual leave that will be accrued during the leave year; or
 - (2) The number of hours remaining in the leave year (as of the date of the transfer) for which he/she is scheduled to work and receive pay.

(EXAMPLE: Leave donor has 100 hours of use or lose annual leave remaining on the books, with 80 work hours scheduled for the remainder of the leave year. The maximum amount of annual leave that can be transferred is 80. Twenty hours are forfeited.)

(c) A leave donor employed in another federal agency may transfer annual leave to a leave recipient if:

- (1) The leave donor is a “family member” of the leave recipient;
- (2) The approving official determines that the amount of annual leave donated within the agency may not be sufficient to meet the needs of the leave recipient; or
- (3) In the judgment of the approving official, acceptance of leave transferred from another agency would further the purpose of the voluntary leave transfer program.

D. APPLICATION SEQUENCE

(1) THE REQUEST

(a) A technician who has been affected by a medical emergency may make written application, utilizing Optional Form 630. Documents to better support the application should be attached to specifically describe the medical hardship.

(b) If the technician is incapable of making application, a personal representative may make application on his/her behalf.

(c) The completed application is forwarded to the immediate supervisor who will verify and validate the employment information contained in the application. Once the application receives supervisory endorsement, it is forwarded through channels to the HRO.

(2) APPROVAL/DISAPPROVAL OF APPLICATION

(a) Upon receipt of the completed application form, the HRO will review the leave transfer request and either approve or disapprove it based on the nature of the request and support documentation.

(b) If the request is disapproved, the requestor will be notified within 10 workdays from receipt of the application. The applicant will be provided direct written notice of disapproval, with copies furnished to the immediate supervisor.

(c) If the request is approved, the requestor will be notified of the approval within 10 workdays from receipt of the application. Copies of the approved application will be provided to the applicant and the first line supervisor.

(3) GATHERING OF DONATED LEAVE

(a) An individual requesting to donate must submit an Optional Form 630-A to his/her immediate supervisor to transfer a specific number of annual leave hours to the annual leave account of the approved leave recipient.

(b) Upon receipt of Option Form 630-A, the immediate supervisor will review for completeness, add additional data as required, verify current leave balance, and then forward the request to the HRO.

(c) Upon receipt of each completed Optional Form 630-A and no later than 30 calendar days after receipt of application, the HRO will notify the requestor of the amount of leave available for use and the names of the leave donors.

(4) ADMINISTRATION OF DONATED LEAVE

(a) The HRO will advise the Civilian Pay Section of the leave recipient to credit the recipient's annual leave account with a specific number of hours.

(b) The HRO will advise the Civilian Pay Section of the leave donor to debit the donor's annual leave account with a specific number of hours.

(c) Coordination between leave accounts will be accomplished by the appropriate Civilian Pay Section(s) of the recipient and donor.

E. TERMINATION OF MEDICAL EMERGENCY

(1) The medical emergency affecting a leave recipient shall terminate:

(a) When the leave recipient's employment is terminated.

(b) When the leave recipient or family member is no longer affected by a medical emergency.

(c) The last workday prior to the effective date of disability retirement.

(2) When determined that the medical emergency affecting the leave recipient terminates, the immediate supervisor will promptly notify the HRO. The HRO will then notify the appropriate Civilian Payroll Office.

F. RESTORATION OF UNUSED TRANSFERRED ANNUAL LEAVE.

(1) Any unused transferred annual leave as determined by the leave recipient's Civilian Pay Section shall be restored to the annual leave accounts of the leave donors. The leave recipient's Civilian Pay Section will coordinate with the leave donor(s) Civilian Pay Section when required.

(2) The amount of unused transferred annual leave to be restored to each leave donor will be determined as follows:

(a) Divide the amount of unused transferred annual leave by the total number of hours of annual leave originally transferred. This will be the percentage of unused annual leave that needs to be restored to the donor(s).

(b) Multiply this factor by the amount originally transferred by each individual leave donor.

(c) Round off the results to the nearest whole number.

(3) If the total number of eligible leave donors exceeds the amount of annual leave to be restored, no unused transferred annual leave will be restored.

(4) In no case shall the amount of restored transferred annual leave to the leave donor exceed the initial amount transferred to the leave recipient.

G. PROHIBITION OF COERCION.

(1) An individual may not directly or indirectly intimidate, threaten or coerce any other individual for the purpose of interfering with any right an individual may have to donate, not to donate, receive or use annual leave under this regulation.

(2) Adequate publicity will be provided by management officials when an application to receive transferred annual leave is approved. Therefore, the leave recipient is discouraged from expressing any personal solicitations to procure transferred annual leave.

6. SICK LEAVE.

A. Sick leave is available on an earned basis for all technicians to include temporaries.

B. Sick leave may be advanced to technicians not to exceed 240 hours at any one time, subject to the following conditions;

(1) The technician will submit a written request to his/her immediate supervisor, normally prior to expiration of existing sick leave, with a statement that all accumulated sick leave will be exhausted, and the date and time it will expire. A medical certificate indicating expected duration of absence from work must be attached.

(2) The immediate supervisor will endorse the request through channels to the HRO with a statement as to the reasonable expectation that the technician will return to duty to earn and repay advanced credits.

(3) Authority is delegated to the Human Resource Officer to approve/disapprove requests. The request will be returned through channels, indicating approval/disapproval.

C. Sick leave is earned at the rate of 4 hours per pay period.

D. Sick leave is earned only for full bi-weekly pay periods.

7. FAMILY MEDICAL LEAVE.

A. Permanent and Indefinite Technicians are entitled to Family Medical Leave, 12 workweeks of unpaid leave, during any 12 month period, for the following purposes:

- (1) The birth of a son or daughter of the technician and the care of such son or daughter;
- (2) The placement of a son or daughter with the technician for adoption or foster care;
- (3) The care of a spouse, son, daughter, or parent of the technician who has a serious health condition; or
- (4) A serious health condition of the employee that makes the technician unable to perform the essential functions of his or her position.

B. Family Medical Leave (FML) may be taken intermittently or the technician may work under a work schedule that is reduced by the number of hours of leave taken as family and medical leave. A technician may elect to substitute other paid time off, as appropriate, for any unpaid leave under the FMLA. FML is in addition to other paid time off available to a technician.

C. Upon return from FML, a technician must be returned to the same position or to an “equivalent position with equivalent benefits, pay status, and other terms and condition of employment”. If FML is used for a serious health condition of the employee, employee may be required to provide medical documentation that they are able to perform the essential functions of their position.

D. A technician who takes FML is entitled to maintain health benefits coverage. A technician may pay the employee share of the premiums on a current basis or pay upon return to work.

E. The technician should provide notice of his or her intent to take FML not less than 30 days before leave is to begin or as soon as is practicable. FML must be recorded on block 5 of OPM Form 71 Request for Leave or Approved Absence.

8. FAMILY FRIENDLY LEAVE PROGRAM.

A. This program allows Permanent, Indefinite, and Temporary Technicians to use sick leave to care for family members in certain instances under the Family Friendly Leave Act.

B. DEFINITIONS.

- (1) “Technician.” Any permanent, indefinite, or temporary Federal employee of the WVNG who occupies a management, supervisory, or non-supervisory position.
- (2) “Family.” The following relatives of the technician:
 - (a) Spouse, parents and grandparents thereof;
 - (b) Children, including adopted and step-children, and spouses thereof;
 - (c) Parents;
 - (d) Grandparents;
 - (e) Brothers and sisters, and spouses thereof; and

- (f) Grandchildren; and
- (g) Any individual related by blood or affinity whose close association with the technician is the equivalent of a family relationship.

C. Technicians may elect to use up to thirteen days of accrued sick leave in a leave year to care for family members as a result of:

- (1) physical or mental illness;
- (2) injury;
- (3) pregnancy;
- (4) childbirth;
- (5) to accompany family members to medical, dental, or optical examinations or treatments; or
- (6) to make arrangements for or attend the funeral of a family member.

D. Technicians are guaranteed a minimum 40 hours of their own accrued sick leave each leave year for the above purposes. To be able to use up to the maximum of 104 hours (13 days), the technician must maintain a balance of at least 80 hours of sick leave. This requirement ensures a reasonable amount of sick leave is available for the technician's personal illness or injury.

E. Approval of the use of sick leave under the Family Friendly Leave Program is delegated to the First Line Supervisor. The First Line Supervisor must keep records of the use of sick leave in order to assure the maximum limits are not exceeded. Time cards should be annotated to reflect "___hours Family Sick Leave to care for family members or funeral purposes."

9. EXPANDED SICK LEAVE – SERIOUS HEALTH CONDITION.

A. Technicians may use a total of up to 12 weeks (480 hours) of accrued sick leave during a leave year to care for a family member with a serious health condition.

B. The definition of family member is the same as para 8B under the Family Friendly Leave Program.

C. "Serious Health Condition" means an illness, impairment, or physical or mental condition that involves:

- (1) Any period of incapacity or treatment in connection with or consequent to inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility.
- (2) Any period of incapacity requiring absence from work, school, or other regular daily activities, of more than 3 calendar days, that also involves continuing treatment by (or under the supervision of) a health care provider; or
- (3) Continuing treatment by (or under the supervision of) a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than 3 calendar days; or for prenatal care.
- (4) Childbirth

D. Childbirth and recovery are included in the definition of "serious health condition." In the case of both the new mother and her caregiver, the entitlement to use sick leave is limited to the period of incapacitation of the new mother (generally about six weeks following the birth). The birth parents must use annual leave and/or leave without pay for absences from work beyond the mother's period of incapacitation such as bonding with the child.

E. This expanded sick leave may only be granted when supported by medical certification from the health care provider documenting that a serious health condition exists.

F. A technician may not use more than a total of 12 weeks (480 hours) of accrued sick leave under the Family Friendly Leave Program and this expanded sick leave for serious health condition.

G. Abuse: While the latitude for use of Family Sick Leave is very liberal, it is understood that some individuals may abuse this policy. In the event abuse may become an issue, technicians may be required to furnish “certification” to substantiate Family Sick Leave absences. However, this action will not be invoked without first advising the technician of the questionable Family Sick Leave record. Should further action be required, it will be in accordance with the Labor Management Relations Agreement, Section 3-5c.

10. LEAVE WITHOUT PAY.

Requests for 30 days or more of Leave Without Pay will be submitted, through channels, on SF 52 to the Human Resource Office. Authority is delegated to the Human Resource Office for approval/disapproval.

11. MILITARY LEAVE.

A. Military leave is authorized for active or inactive duty for all permanent and indefinite technicians and may be used at any time during the leave year. Military leave is charged in increments of hours. Temporary technicians are not eligible for military leave until they have been employed for more than one year. Technicians may use available military leave, annual leave, compensatory time, or leave without pay for the performance of military duty.

B. Military leave (120 hours) will be credited to the technician on a fiscal year basis. Up to 120 hours of unused military leave may be carried over to the next fiscal year.

C. If military leave is used to perform active duty, the technician must provide a copy of the active duty orders to the appropriate leave approving authority.

D. Military leave may be used to perform a Unit Training Assembly (UTA), Readiness Management Assembly (RMA), and Additional Flying Training Periods (AFTPs). The technician must provide IDT performance verification (signed by a unit representative) to the appropriate leave approving authority.

12. ACTIVE DUTY MORE THAT THIRTY DAYS.

The Human Resource Office will be notified by use of AGO Form 690-1-R-E, Declaration of Leave, for all periods of active duty for more that thirty days. This notification is required regardless of the type leave being use.

13. LAW ENFORCEMENT LEAVE UNDER STATE ACTIVE DUTY.

A. Law Enforcement Leave (LEL) is authorized to permanent and indefinite technicians without loss or reduction of leave to which otherwise entitled, for the purpose of providing aid to enforce the law. Based on congressional intent, the statute also includes situations where the National Guard does not a actually perform “law enforcement” duties while assisting civil authorities.

For example:

- (1) Participation in rescue or protective work in connection with fires, floods or other natural phenomena;
- (2) Dropping feed to cattle during a blizzard;
- (3) Providing support services during a strike;
- (4) Assisting State officials during refugee processing;
- (5) Support of Drug Interdiction Operations.

B. Entitlement is limited to not more than 22 workdays in a calendar year for the reasons stated above. LEL will be charged in increments of one hour. Excused absence may not be granted for performing such duty.

C. Technicians ordered to state active duty may elect to use annual leave, compensatory time, or leave without pay prior to using Law Enforcement Leave.

D. A technician who elects law enforcement leave is entitled to the greater of his or her technician pay or state active duty pay, but not both.

E. If the technician elects law enforcement leave, a calculation will be accomplished by the civilian pay section as to the amount which will be collected from the technician. Deductions for income tax withholding, thrift savings plan, and FICA, FERS, or CSRS will be based on the resulting balance.

F. If the technician performed his/her normal technician duties before reporting for state active duty with her/her military unit, no collection will be made for that day. The technician was not excused from his/her technician duties and was not under military control at that time.

14. FORTY FOUR (44) DAYS OF ADDITIONAL MILITARY LEAVE FOR CERTAIN OVERSEAS DUTY.

A. Technicians are authorized an additional 44 days (352 hours) of military leave for certain overseas duty.

B. Technicians who elect to use this military leave will be in military status under the protection of Status of Forces Act Agreements (SOFA).

C. Technicians will be in non-military pay status, however technician pay and withholdings will continue.

D. Technicians will be eligible for military per diem to cover room and meal expenses if incurred.

E. Non-workdays and holidays are not charged.

F. This leave can be used in combination with annual leave, military leave, compensatory leave, and LWOP.

G. This leave will be credited on a calendar year basis. There is no entitlement to carry over any unused leave into the next calendar year.

H. This leave is charged in increments of one hour.

15. MILITARY FUNERAL HONORS.

A. When technicians perform military funeral honors as part of a detail, they must be placed in a military duty status (on orders) and take appropriate leave.

B. Members may be placed in inactive duty training status for Honor Guard Duty to include travel to and from the ceremony.

C. The appropriate Military Personnel Office will administer the Military Funeral Honors Program.

16. COMPENSATORY TIME.

A. Authority is delegated for authorizing compensatory time to first line supervisors.

B. All compensatory time will be utilized within the twenty six pay periods following the bi-weekly pay period in which the time is earned.

C. There are no restoration rights of compensatory time after this period.

17. COURT LEAVE.

A. The use of court leave will be coordinated with the Human Resource Office. The following chart is for guidance.

Nature of service	Type of absence			Fees			Government travel expenses	
	Court leave	Official duty	Annual leave or LWOP	NO	YES		NO	YES*
					Retain	Turn In to agency		
I. JURY SERVICE								
(A) U.S. or D.C court	X			X			X	
(B) State of local court	X					X	X	
II. WITNESS SERVICE								
(A) On behalf of U.S. or D.C. government		X		X				X
(B) On behalf of State or Local government								
(1) in official capacity		X				X		X
(2) not in official capacity	X					X	X	
(C) On behalf of private party								
(1) in official capacity		X				X		X
(2) not in official capacity								
(a) when a party is U.S., D.C., or State or local government	X					X	X	
(b) when a party is not U.S., D.C., or State or local government			X		X		X	

*Offset to the extent paid by the court, authority, or party which caused the employee to be summoned.

18. INABILITY TO REPORT FOR DUTY DUE TO NATURAL PHENOMENA.

Activity Heads may grant technicians excused absence based upon the inability to report for duty caused by a natural phenomena. The following guidance will apply to the granting of excusal:

A. GENERAL POLICY FOR ADVERSE WEATHER CONDITIONS: Technicians will follow the Governor’s official announcement concerning State Government closures. When the Governor declares that State activities will close due to weather conditions, all National Guard activities will comply. Excused absence will be granted to technicians.

B. LOCAL DISMISSAL OR CLOSURE. When the situation appears to be extremely dangerous to all concerned and a local dismissal or closure is believed appropriate, Activity Heads will request approval of The Adjutant General prior to taking any action. In the absence of The Adjutant General, approval authority for the Army National Guard is delegated to the Command Administrative Officer and to the Executive Support Staff Officer for the Air National Guard. If approval is granted, essential selected technicians may be required to work. Local procedures will be developed and coordinated with the local labor organization in accordance with the Labor Management Relations Agreement.

19. EXCUSED ABSENCES:

A. PARTICIPATION IN CIVIL ACTIVITIES: A technician may be granted excused absence for short periods of time to participate in civil activities that the Federal Government is interested in encouraging. Examples: Special Olympics, Governor's Inauguration, School Partnership Program. Approval authority will be the Command Administrative Officer for Army National Guard technicians and the Air Commander for the Air National Guard technicians. A copy will be furnished to the appropriate Civilian Payroll Office.

B. PARTICIPATION IN FUNERALS: Excused absence may be granted by the first line supervisor to technicians, including temporary technicians, for up to 4 hours in any one day while participating in or attending funeral ceremonies for members or former members of the Armed Forces, including the National Guard.

C. VOLUNTEER EMERGENCY SERVICES: Excused absence may be granted by the first line supervisor to permanent and indefinite technicians while participating in community volunteer emergency services such as volunteer fire departments. AGO Form 690-10, Certificate of Performance, must be furnished to the first line supervisor after the duty is completed.

D. BLOOD DONATION: First line supervisors may grant excused absence to technicians for travel to the donation site, actual donation time, and/or for recovery period.

E. CONFERENCES: Technicians may be granted excused absence to attend conferences when attendance will serve the best interest of the National Guard. Examples: State and National Officer Association and Enlisted Association Conferences. The approval authority will be The Adjutant General. The request for excused absence must be forwarded to the HRO for action.

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