

National Guard Civilian Employee Procedural Guidance for Military Duty in Response to a National Emergency

The below guidance clarifies the benefit procedures for Human Resource (HR) Specialists concerning National Guard (NG) employees that may perform military duty in response to the COVID-19 National Emergency.

Decision Table: The below table can be used to identify the type of personnel action and eligibility for Military Leave (ML) and/or 22 Days (176 Hours) of Law Enforcement Leave (LEL) for military duty in response to a National Emergency.

LEL Decision Logic Table	Yes	No	Personnel Action
Is the employee temporary?	Not Eligible	Go to question 2	
Is the employee a member of the NG or Reserves?	Go to question 3	Not Eligible	
Is the employee 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?	Go to question 4	Not Eligible for LEL	
Is the employee on orders under the authority of 10 USC?	Can use LEL or ML	Go to question 5	ABSENT-US
Is the employee on State Active Duty (SAD) in accordance with State Law?	Can use LEL and not ML	Go to Question 7	LWOP- Personal If not using paid leave
Is the employee on orders under 32 USC 502(f)(2)(a)?	Can use LEL or ML	Not Eligible for LEL	ABSENT-US

Types of Leave Available: An NG employee has flexibilities on what type of paid or unpaid leave they can use during military duty. An NG voluntarily chooses to use ML or LEL while in the performance of military duty in response to a national emergency. They are also eligible to use Annual, Advanced Annual, Comp Time for Travel, and Time Off Award at their discretion. Compensatory Time may be in conjunction with SAD at their discretion. Compensatory Time may be used in conjunction with Absent-Uniformed Service (US) prior to the effective date of the action. NG employees who are performing military duty in response to a National Emergency are not eligible for weather and safety leave.

How to Process Personnel Actions: NG employees who are placed in an Absent-US status should complete an Absent-US checklist. NG employees who

perform SAD should complete a leave without pay (LWOP) checklist in case they run out of paid leave. Employees who choose to use LEL must elect this prior to LWOP to coordinate the effective date. **After pay is received the NG employee must work with their CSR or military pay/finance office and complete the NG SAD Offset Acknowledgement and Worksheet.

How to Code Time Card: LEL is charged on a daily basis unless the employee is (1) notified during the duty day and is scheduled to begin SAD on the same day or (2) the 176 hours of LEL is exhausted and the employee must be placed on another type of appropriate leave status to complete a civilian duty day based on the work schedule in effect. LEL has the ATAAPS time code of LL.

How is LEL Earned and Paid: LEL is earned on a calendar year basis in the amount of 176 hours. LEL is not dual compensation leave. An NG Employee is entitled to leave without loss of pay. An employee who earns less while performing military duty and uses LEL will receive the amount of civilian pay they would earn less the military pay earned. An employee who earns more while performing military duty and uses LEL will have their civilian pay recouped in full. Corrections to pay will occur after military duty is performed and paid. Therefore, an employee initially receives both types of pay, but will have a portion or ALL of that recouped from their civilian pay. The CSR completes attachment 2- the NG LEL Offset worksheet and submits a remedy request to the Defense Finance and Accounting Service under the remedy title "Law/Contingency Leave> Law/ Contingency State Active Duty." Once processed by DFAS the civilian pay will be offset in part or in full by the military pay.

Other Considerations:

NG employees who are placed on Weather and Safety Leave and are subsequently called to military duty are eligible for Weather and Safety leave until the commencement of their military duty.

NG employees injured while performing SAD must contact their State employee human resource office. NG Employees injured while performing military duty that is not SAD should consult their military personnel office.

References:

1. 38 U.S. Code § 4303, "Definitions"
2. 5 U.S. Code § 6323, Military leave; Reserves and National Guardsmen
3. CNGB Instruction 1400.25 Vol 630, National Guard Technician Absence and Leave Program"
4. Guide to Processing Personnel Actions Chapter 15: Placement in a Non-Pay or Non-Duty Status
5. DoD FMR Volume 8 Chapter 052003
6. 5 CFR 630.1601 Weather and Safety Leave: Purpose and Applicability