

## Attachment 1

### Disabled Veteran Leave

Disabled veteran leave is provided by the Wounded Warriors Federal Leave Act of 2015 (Public Law 114-75, November 5, 2015) (hereafter referred to as “the Act”). The Act added a new section 6329 in title 5, United States Code, which provides a one-time credit of “disabled veteran leave” to any Federal employee *hired on or after November 5, 2016*, who is a veteran with a service-connected disability rated at 30 percent or more for purposes of undergoing medical treatment for such disability for which sick leave could regularly be used.

#### Definitions

The Act defines the following terms:

- **Employee.** Has the same meaning as provided for in the definition of “employee” under section 2105 of title 5, United States Code, and also includes employees of the United States Postal Service and the Postal Regulatory Commission.
- **Veteran.** Means a person who served in the active military, naval, or air service, and who was discharged or released under conditions other than dishonorable.
- **Service-Connected.** Refers to a disability that was incurred or aggravated in the line of duty in the active military, naval, or air service (as determined by the Veterans Benefits Administration).

#### Coverage

- Disabled veteran leave will be available only to an eligible employee *hired on or after November 5, 2016* (which is the date that is one year after the date of enactment). The term “hired” refers to employees who are—
  - newly hired with no previous Federal service,
  - reappointed with at least a 90-day break in service, and
  - military reservists or members of the National Guard that return to duty in their civilian positions after a period of military service (during which the individual was in continuous civilian leave status).
- Disabled veteran leave is only available to employees with a service-connected disability rated at 30 percent or more, as determined by the Veterans Benefits Administration.
- The new leave benefit applies to Federal civilian employees as defined in 5 U.S.C. 2105 that are covered by 5 U.S.C. 6329. By law, employees of the United States Postal Service and the Postal Regulatory Commission are covered but are subject to regulations issued by the Postmaster General.
- The new leave benefit does not apply to employees who are not covered by section 6329 based on an exemption provided by another law, such as employees of the Federal Aviation Administration or the Transportation Security Administration. However, those agencies may administratively adopt a parallel leave benefit for their employees.

- The new leave benefit also does not apply to employees who do not have an established tour of duty under which leave is charged for periods of absence—e.g., employees with an intermittent work schedule or certain Presidential appointees who are leave exempt.

### **Qualifying Service-Connected Disability**

- For purposes of disabled veteran leave, a “qualifying service-connected disability” means a service-connected disability rated at 30 percent or more, as determined by the Veterans Benefits Administration. This would include a combined degree of disability of 30 percent or more that reflects the combined effect of multiple individual disabilities. A disability is not qualifying unless the 30 percent rating is in effect, based on the effective date established by the Veterans Benefits Administration.
- For the purpose of determining whether an employee has a qualifying service-connected disability, a temporary disability rating issued by the Veterans Benefits Administration under 38 U.S.C. 1156 is considered a valid rating for as long as such rating is in effect.
- To establish eligibility for disabled veteran leave, an employee must provide his or her employing agency with documentation from the Veterans Benefits Administration certifying that the employee has a qualifying service-connected disability.

### **Benefit Period**

- Disabled veteran leave is available during the continuous 12-month period following the “first day of employment.” In the regulations, we are using the term “12-month eligibility period.” This new leave category is a one-time benefit. Once an employee has been provided the leave benefit, he or she will not have any further entitlements to the benefit.
- For any eligible employee, there is a single 12-month eligibility period during which disabled veteran leave may be used. The leave benefit expires at end of the 12-month eligibility period, and any unused leave is forfeited at that time. Unused disabled veteran leave may not be cashed out and paid in a lump sum.
- The 12-month eligibility period starts on “first day of employment,” which is the first day in a covered position occurring on the later of—
  - The earliest date an employee is hired after the effective date of a qualifying disability; or
  - The effective date of a qualifying disability (i.e., the hiring event occurs before the effective date).

*Note:* The effective date is generally either the day after the date of military discharge (if person filed disability claim within 1 year of discharge date) or the date the claim was filed.

## Leave Benefit

Disabled veteran leave credited to a regular full-time employee may not exceed 104 hours. Employees with part-time, seasonal, or uncommon tours of duty will be provided a proportionally equivalent amount of leave. (See 5 CFR 630.1305(a)-(b).) This proportional adjustment is similar to the adjustments made for sick leave and annual leave for employees who are not regular full-time employees. Hours of disabled veteran leave are credited as follows:

Work Schedule	# Hours*	Example	Offset
Full-time nonseasonal	104	104	Reduced by # of hours of (1) sick leave to employee's credit as of the first day of employment or (2) hours of an equivalent disabled veteran leave used under another authority (if in 12-month period). See 5 CFR 630.1305(d) and (e).
Part-time nonseasonal	$(x/80) \times 104$	20 hrs./week $\rightarrow$ 52 since $(40/80) \times 104 = 52$	
Uncommon tour of duty	$(x/80) \times 104$	144 hrs./biweekly $\rightarrow$ 187 since $(144/80) \times 104 = 187$	
Seasonal tour (part-time or full-time)	$(x/2080) \times 104$	Full-time for half year $\rightarrow$ 52 since $(1040/2080) \times 104 = 52$	

\* Where "x" represents the hours in the established tour for the period of time designated (i.e., 80 hours for a biweekly period and 2,080 hours for a 52-week annual period). For part-time employees, the hours are based on the scheduled part-time tour established for the purpose of charging leave when absent.

## Usage of Leave for Medical Treatment

- Disabled veteran leave may be used only for the purpose of medical treatment of a qualifying service-connected disability.
- The employee will be required to self-certify that the disabled veteran leave is being used (or was used) for the treatment of the qualifying service-connected disability.
- An agency may require, at its own discretion, additional medical certification from a health care provider that the treatment provided was for the qualifying service-connected disability.
- Qualifying medical treatment may be provided or prescribed by any health care provider who is covered by the definition of "health care provider" in OPM's Family and Medical Leave Act (FMLA) regulations at 5 CFR 630.1202.

## Retroactive Usage

- If, for any reason, an eligible employee doesn't provide certifying documentation that the employee has a qualifying service-connected disability before receiving medical

treatment for such disability, the employee may still use disabled veteran leave for that medical treatment through retroactive substitution. The medical treatment must have occurred within the employee's 12-month eligibility period. One reason that retroactive substitution may be necessary is because of the lag in time between an employee's filing of a claim with the Veterans Benefits Administration and the approval of that claim (since the disability rating may be effective retroactive to the date the claim was filed and that effective date may retroactively start the 12-month eligibility period).

- When retroactive substitution is appropriate, disabled veteran leave to the employee's credit may be substituted for a period of absence for qualifying medical treatment—excluding periods of suspension or absence without leave (AWOL), but including approved leave without pay, sick leave, annual leave, compensatory time off, or other paid time off.
- Given the possibility of retroactive substitution as described above, an employee with a pending disability claim under review at the Veterans Benefits Administration should keep records regarding medical treatment for disabilities covered by the claim.