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# HRDG 4630 - Absence and Leave - Section H - Subsection e

Last Modified:

**Subchapter 4630 - Absence and Leave**

**Section H - Absences to Perform Duty with the Uniformed Services**

**Subsection e—Reservists Differential**

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## References

- 5 U.S.C. 5538 [added by section 751 of the Omnibus Appropriations Act, 2009 (Public Law 111-8, March 11, 2009) and amended by section 745 of the Consolidated Appropriations Act, 2010 (Public Law 111-117, December 16, 2009)]
- *OPM Policy Guidance Regarding Reservist Differential under 5 U.S.C. 5538*, issued on December 8, 2009 via memorandum to agency Chief Human Capital Officers, and amended on December 22, 2009
- Additional OPM regulations are under development.

It is a differential paid to civilian employees who are members of the Reserve or National Guard (referred to as "reservists") that are called or ordered to active duty. This differential is paid during those pay periods when:

## What is a "reservist differential (RD)?"

- You are called to military duty,
- You are in a leave without pay (LWOP) status, and
- It is determined that your projected civilian "basic pay" for the affected pay period(s) exceeds your actual military "pay and allowances."

For example, if your biweekly civilian pay is \$3,000 and your monthly military pay is calculated on a biweekly pay period to be \$2800, then your RD would be \$200.

Effective March 15, 2009, you are eligible for the reservist differential if you are:

- In a LWOP status from your Federal job due to being called or ordered to perform active duty in the uniformed services under a provision of law referenced below, **and**
- Entitled to reemployment rights under the Uniformed Services Employment and Reemployment Rights Act (USERRA - 38 USC Chapter 43).

Authority Cited on Military Orders	Contingency Operation for More than 30 Days	Covered by USERRA	May be RD Eligible
Title 10 USC Sections 688, 12301(a), 12302, 12304, 12305, or 12406	√	√	√
Title 10 USC Chapter 15 Sections 331, 332, or 333	√	√	√
Title 10 USC Section 12301(d)	√	√	
Title 10 USC Section 12301(d) (When not a contingency operation for > than 30 days)		√	
Title 32 USC Sections 316, 502, 503, 504, or 505		√	
National Guard Service under authority of State law			

**Eligibility**

The receipt of a RD does not affect your civilian pay and leave status. While absent from your civilian job, you are considered to be on leave without pay (LWOP) — unless you take civilian paid leave or other paid time off.

<b>If while serving on active duty, you use</b>	<b>Then you are eligible for the RD.</b>	<b>Then you are not eligible for the RD because you will already be receiving full civilian pay.</b>
Leave Without Pay (LWOP)	√	
Military Leave		√
Annual Leave		√
Credit Hours		√
Compensatory Time Off in Lieu of Overtime Pay		√
Compensatory Time Off for Travel		√

### **Military Duty Pay and Leave Status Chart**

There are two types of military leave that may be used by civilian employees during qualifying military active duty:

1. Regular military leave under 5 U.S.C. 6323(a) - providing 15 days of leave each fiscal year with no military pay offset (i.e., full military and civilian pay); and
2. Additional military leave for contingency operations or law enforcement purposes under 5 U.S.C. 6323(b) - providing up to 22 days of leave each calendar year but with civilian pay offset by the amount of military pay allocated to those leave days, as required by 5 U.S.C. 5519.

In considering whether to use additional military leave under section 6323(b) or to receive a RD, HRD recommends that you take into account the following facts:

The RD must be paid:

- From the same appropriation or fund that would have been used to pay your civilian salary but for the interruption to perform military active duty.
- At the same frequency as regular civilian salary payments (e.g., generally on a biweekly basis for executive branch employees). Given that it may take time to collect the needed information in order to perform the necessary determinations, an RD is considered payable on a scheduled date that is no later than 8 weeks (4 biweekly pay periods) after the normal civilian salary payment date for a given pay period, except that this scheduled date may be pushed back beyond 8 weeks you do not provide HRO-LCT with a copy of any needed military orders and military leave and earnings statement on a timely basis.

### **Payment of the RD**

**Note:** The RD is not basic pay for any purpose. However, the RD is considered to be pay for the purposes of various other laws governing Federal employee compensation (e.g., laws governing salary offset for debt collection, waiver of overpayments, garnishment, back pay). The RD will not be counted as part of aggregate compensation in applying the aggregate pay limit in 5 U.S.C. 5307.

The Internal Revenue Service has provided the following guidance regarding the treatment of RDs paid under 5 U.S.C. 5538 for Federal tax purposes. RDs are:

**Taxability**

- Taxable income for Federal income tax purposes.
- Treated as wages for Federal income tax withholding purposes, regardless of the length of the active duty. Reservist differentials would be reported as wages in box 1 of Form W-2 and in line 7 of Form 1040.
- Not subject to FICA (Social Security and Medicare) taxes if those differential payments are paid for periods of active duty of more than 30 days.
- Subject to FICA taxes if those differential payments are paid for periods of active duty of 30 days or less.

Step	Who?	Will do what?
1	Program	Advise the staffing specialist of the date(s) the employee is going on military duty and will be on LWOP.
		Provide the staffing specialist with a copy of the military orders.
2	Staffing Specialist	<p>Determine RD eligibility based on the military orders provided.</p> <p>Code the Standard Form (SF) 52 to reflect LWOP for the military duty and send a letter to the employee:</p>
3	Staffing Specialist	<ul style="list-style-type: none"> <li>• Advising of the RD;</li> <li>• Advising who their Leave and Compensation Team (LCT) point of contact (POC) is, and;</li> <li>• Instructing him/her to send LCT the monthly military Leave and Earnings Statements (LES).</li> </ul>
		Send a copy of the above letter along with the military orders to LCT.
		Access his or her military Leave and Earnings Statements (LESs) through his or her military pay account, MyPay.
<b>Procedures Chart</b> 4	Employee	<p>Note: MyPay stores only the previous three (3) months of LESs for reservists. If copies of older LESs are needed, he or she contacts MyPay customer service at 1-888-332-7411.</p> <p>Upon receipt of the military orders and applicable military LESs:</p> <ul style="list-style-type: none"> <li>• Calculate projected gross civilian</li> </ul>

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