

This advises you of Office of Personnel Management (OPM) guidance (issued on October 13, 2004) on a court decision in which employees may make administrative claims for military leave used on nonworkdays during a period of military leave. Effective December 21, 2000, 5 U.S.C. 6323(a) was amended so that employees were no longer required to take military leave on nonworkdays during a period of military duty. Since employees were previously charged military leave for nonworkdays when on a period of military duty, they exceeded their allowance of 15 days of military leave per fiscal year and were required to take leave without pay (LWOP) and/or annual leave to complete annual reserve training. The court subsequently ruled (in *Butterbaugh v. the Department of Justice*, dated July 24, 2003) that employees were required to take military leave *only on days in which they were required to work* and that agencies should have allowed 15 *workdays* of military leave in lieu of 15 *calendar days* of military leave. This means that employees may make administrative claims for annual leave used on nonworkdays during a period of active military duty within the applicable claims period.

In accordance with OPM's guidance (attached), leave claims against the Government must be received by the agency within 6 years after the claim accrues. Thus, agencies may accept claims filed after July 24, 2003 (the date the *Butterbaugh* decision was issued) to credit annual leave for military leave used on nonworkdays between the date 6 years prior to the claim filing date and December 21, 2000 (the date of the change in military leave law). For example, if a claim was/is filed on:

- August 1, 2004 (after the court's decision and prior to issuance of OPM's guidance), the Department must consider any period of military service between August 1, 1998, and December 21, 2000; and
- January 15, 2005 (after the court's decision and issuance of OPM's guidance), the Department must consider any period of military service between January 15, 1999, and December 21, 2000.

NOTE that in accordance with *Weillein vs. The Department of Justice and Collins vs. the Department of Agriculture*, the court ruled that there is no statutory time limit for filing a claim under the Uniformed Services Employment and Reemployment Rights Act (USERRA).

Employees making claims must provide a copy of the military orders, certification of attendance, or other documentation indicating that he/she engaged in one or more period of active military duty that included nonworkdays during the applicable period of the claim. Employees will be credited for 1 day of annual leave for each nonworkday occurring within a period of active military duty and for which he/she was required to use military leave. In accordance with the decision, a maximum of 4 days of annual leave may be credited for each fiscal year, where applicable.

Annual leave credited as a result of employee claims must be restored in a separate leave account (see 5 U.S.C. §6304(d)(1)(a)) and must be used by the end of the leave year in effect 2 years after the date of restoration (see 5 C.F.R. §630.306). Employees who receive restored annual leave in leave year 2004 for this purpose will have to the end of leave year 2006 (January 6, 2007) to use the restored leave. Retired or separated employees may file a claim and must

receive a lump-sum payment for any annual leave recredited as a result of the claim, paid at the rate of pay the employee was earning at the time of his or her retirement or separation.

Note that some issues were not addressed by OPM when issuing this guidance. For example, if employees were required to use leave without pay (LWOP) in lieu of military leave for nonworkdays, we are questioning whether the employee is now entitled to compensation. We are also questioning how or if an employee should be compensated if accrued credit hours or compensatory time were used in lieu of annual leave or LWOP. If OPM provides clarification on the issue, we will share it with you.