

Subpart C—Compensable Injury

353.301 Restoration rights.

353.302 Status upon reemployment.

Subpart D—Appeal Rights

353.401 Appeals to the Merit Systems Protection Board.

Authority: 38 U.S.C. 4301, et seq., and 5 U.S.C. 8151.**Subpart A—General Provisions****§ 353.101 Scope.**

The rights and obligations of employees and agencies in connection with leaves of absence or restoration to duty following military service under 38 U.S.C. 4301 et seq., and restoration under 5 U.S.C. 8151 for employees who sustain compensable injuries, are subject to the provisions of this part. Subpart A covers those provisions that are common to both of the above groups of employees. Subpart B deals with provisions that apply just to military duty and subpart C covers provisions that pertain just to injured employees. Subpart D covers the appeal rights of both groups.

§ 353.102 Definitions.

In this part:

Agency means:

(1) With respect to restoration following a compensable injury, any department, independent establishment, agency, or corporation in the executive branch, including the U.S. Postal Service and the Postal Rate Commission, and any agency in the legislative or judicial branch; and

(2) With respect to military duty, all of the foregoing except for any agency in the legislative or judicial branch, but including the Government of the District of Columbia.

Fully recovered means compensation payments have been terminated on the basis that the employee is able to perform all the duties of the position he or she left or an equivalent one.

Injury means a compensable injury sustained under the provisions of 5 U.S.C. chapter 81, subchapter I, and includes, in addition to accidental injury, a disease proximately caused by the employment.

Leave of absence means military leave, annual leave, leave without pay (LWOP), furlough, continuation of pay, or any combination of these.

Military duty means a period of:

(1) Active duty for training or for service in the Armed Forces of the United States;

(2) Inactive duty training in the Armed Forces of the United States; and

(3) Active duty in the Public Health Service that is covered by 38 U.S.C. 4304 (b). For the purpose of coverage

under 38 U.S.C. 4304 (c) and (d), full-time training or other full-time duty performed by a member of the National Guard under 32 U.S.C. 316, 502, 503, 504, or 505 is considered active duty for training in the Armed Forces of the United States. For the purpose of 38 U.S.C. 4304 (d), inactive duty training performed by that member under 32 U.S.C. 502 or 37 U.S.C. 206, 301, 309, 402, or 1002 is considered inactive duty training.

Partially recovered means an injured employee, though not yet able to resume the full range of his or her regular duties, has recovered sufficiently to return to part-time or light duty or to another position with less demanding physical requirements. Ordinarily, it is expected that a partially recovered employee will fully recover eventually.

Physically disqualified means that:

(1) (i) For medical reasons the employee is unable to perform the duties of the position formerly held or an equivalent one, or

(ii) There is a medical reason to restrict the individual from some or all essential duties because of possible incapacitation (for example, a seizure) or because of risk of health impairment (such as further exposure to a toxic substance for an individual who has already shown the effects of such exposure).

(2) The condition is considered permanent without little likelihood for improvement or recovery.

§ 353.103 Persons covered.

(a) The provisions of this part concerned with military duty cover each employee of an agency who enters on military duty from:

(1) A career or career-conditional appointment in the competitive service; or

(2) An appointment with time limitation in a position outside the competitive service.

(b) The provisions of this part concerning employee injury cover a civil officer or employee in any branch of the Government of the United States, including an officer or employee of an instrumentality wholly owned by the United States, who was separated or furloughed from an appointment without time limitation as a result of a compensable injury; but do not include—

(1) A commissioned officer of the Regular Corps of the Public Health Service;

(2) A commissioned officer of the Reserve Corps of the Public Health Service on active duty; or

(3) A commissioned officer of the National Oceanic and Atmospheric Administration.

(c) Section 353.111 covers the restoration rights of employees serving under temporary appointments pending establishment of a register (TAPER).

§ 353.104 Notification of rights and obligations.

When an agency separates, places on leave of absence, restores or fails to restore an employee because of military duty or compensable injury, it shall notify the employee his or her rights, obligations, and benefits relating to Government employment, including any appeal rights to the Merit Systems Protection Board (MSPB) as required by § 1201.21 of this title, or where appropriate, the right to grieve under a negotiated grievance procedure. However, regardless of notification, an employee is still obligated to exercise due diligence in ascertaining his or her rights, and to seek reemployment within the time limits provided by chapter 43 of title 38 of the U.S. Code, for reemployment after military service or as soon as he or she is able after a compensable injury.

§ 353.105 Maintenance of records.

Each agency shall identify the position vacated by an employee who is injured or leaves to enter on military duty. It shall also maintain the necessary records to assure that all such employees are preserved the rights and benefits granted by this law and this part.

§ 353.106 Personnel actions during employee's absence.

(a) Agency promotion plans must provide a mechanism by which employees who are absent because of military duty or compensable injury can be considered for promotion.

(b) An employee whose position is reclassified while he or she is absent because of military duty or compensable injury shall be considered for that position in accordance with the provisions in part 335 of this chapter.

§ 353.107 Status upon reemployment.

Upon reemployment, an employee who was absent on military duty or because of compensable injury is generally entitled to be treated as though he or she had never left. This means the entire period from the time the employee entered military service or was injured until he or she was reemployed is creditable for purposes of rights and benefits based upon seniority and length of service, including within-grade increases, career tenure,