completion of probation, and leave rate accrual.

§ 353.108 Effect of performance and conduct on restoration rights.

The laws covered by this part do not permit an agency to circumvent the protections afforded by other laws to employees who face the involuntary loss of their positions. Thus, an employee may not be denied restoration rights because of poor performance or conduct that occurred prior to the employee's departure for compensable injury or military duty. However, separation for cause that is substantially unrelated to the injury or to the performance of military duty negates restoration rights. If during the period of injury or military duty the employee's conduct is such that it would disqualify him or her for employment under OPM or agency regulations, restoration rights may be denied.

§ 353.109 Transfer of function to another agency.

If the function of an employee absent on military duty or compensable injury is transferred to another agency, and if the employee would have been transferred with the function under part 351 of this chapter had he or she not been absent, the employee is entitled to be reinstated to a position in the gaining agency that is equivalent to the one he or she left. It shall also assume the obligation to restore the employee in accordance with law and this part.

§ 353.110 OPM placement assistance.

- (a) Employee returning from military duty.
- (1) OPM will provide placement assistance to an employee with restoration rights in the executive or legislative branch, who either has competitive status, or if in the legislative branch is able to acquire competitive status under 5 U.S.C. 3304(c), provided—
- (i) The employee's executive branch agency is abolished and its functions are not transferred, or it is not possible for the agency to restore the employee, or
- (ii) It is not possible for a legislative branch employee to be restored in the legislative branch.
- (2) If OPM determines the individual is qualified for a position in the executive branch which is either vacant or filled under temporary appointment, the returning employee will be offered the position.
- (b) Employee returning from compensable injury. OPM will provide placement assistance to an employee with restoration rights in the executive, legislative, or judicial branches who

cannot be placed in his or her former agency and who either has competitive status or is eligible to acquire it under 5 U.S.C. 3304(c). If the employee's agency is abolished and its functions are not transferred, or it is not possible for the employee to be restored in his or her former agency, OPM will provide placement assistance by enrolling the employee in OPM's Priority Placement Program under part 330 of this chapter.

(c) This section does not apply to employees serving under a temporary appointment pending establishment of a register (TAPER).

§ 353.111 Restoration rights of TAPER employees.

An employee serving in the competitive service under a temporary appointment pending establishment of a register (TAPER) under § 316.201 of this chapter (other than an employee serving in a position classified above GS–15), is entitled to be restored to the position he or she left or an equivalent one in the same commuting area.

Subpart B—Military Service

§ 353.201 Leaves of absence.

- (a) Entitlement.
- (1) The following employees are entitled under 38 U.S.C. 4304 to a leave of absence in connection with military duty:
- (i) A member of a Reserve component (Reserve or National Guard) who performs active duty for training or inactive duty (38 U.S.C. 4304(d)), or
- (ii) An employee who reports for enlistment, induction or physical examination (38 U.S.C. 4304(e)).
- (2) There is no limitation in law as to the timing or duration of leaves of absence, nor is there any authority for an agency to deny a leave of absence. If an agency has concerns about the timing, frequency, or length of an employee's requests for a leave of absence, it should contact the commander of the military unit to determine if the duty can be changed.
- (b) Authorization required. To be eligible for a leave of absence, the employee must be under military orders. Any of the following is acceptable evidence of orders:
 - (1) Written military orders,
- (2) An inactive duty training or "drill schedule" published by the employee's military command or unit, or
- (3) Verbal confirmation of such orders from the employee's military command or unit or military superior.
- (c) Work schedules. An agency is not required to reschedule an employee's work in order to accommodate his or her Reserve obligation, and may not

require the employee to reschedule his or her work in order to perform military duty on his or her own time.

- (d) Return to duty.
- (1) An employee on a leave of absence for military duty is required to report for work at the beginning of the first regularly scheduled workday following release, rejection for service or completion of physical examination. If hospitalized incident to training or examination, the employee is required to report at the beginning of the first regularly scheduled workday following discharge from hospitalization, or within 1 year or release from military duty, whichever is earlier. In all cases, necessary travel time or other delays beyond the individual's control may extend the reporting date. An employee who fails to report within these time limits is subject to normal agency disciplinary procedures related to absences from work.
- (2) An employee on a leave of absence returns to the position he or she left, or if applicable, to the position to which reassigned or promoted while absent. The employee is entitled to the same seniority, status, pay and vacation he or she would have had if not absent on military duty.
- (3) An employee returning from a leave of absence has no special protections against discharge without cause. However, the employee may not be disadvantaged where vacation leave is concerned. Thus, insofar as possible, the employee is entitled to have an annual vacation period of extended leave for rest and recreation approved for the same time as it would ordinarily have been granted.

§ 353.202 Mandatory restoration.

- (a) Basic entitlement. An individual returning from military duty who is entitled to restoration rights under 38 U.S.C. 4301 (inducted) or 4304 (a), (b), or (c) (enlisted, called to active duty, Reservist entered on active duty, or Reservist serving basic training), must be restored as soon as possible after making application, but in no event later than 30 days after the individual's release from military duty.
- (b) *Conditions.* To be eligible for restoration, the employee must have left his or her employment for the purpose of entering the military, must satisfactorily complete his or her period of service, and apply for restoration—
- (1) Within 90 days of release from active duty (or from hospitalization continuing after discharge for a period of no more than 1 year) in the case of employees returning under 38 U.S.C. 4304 (a) or (b); and