

(2) Within 31 days of release from active duty (or from hospitalization incident to the military service, or 1 year after the employee's scheduled release from military training, whichever is earlier), in the case of employees returning under 38 U.S.C. 4304(c).

(c) *Length of military duty.* Each time an employee leaves his or her employment to enter military service, he or she is subject to the time limits prescribed in 38 U.S.C. 4304 (a) and (b) for purposes of restoration rights. Generally, these are as follows:

(1) *Regular active duty* soldiers have 4 years plus 1 additional year if the additional duty was "at the request and for the convenience of the Federal Government." (Their orders or DD Form 214 must so state.) Also, in the event of a Presidential call-up such as Operation Desert Storm, numerous active duty troops in key positions may be held over beyond their enlistments. This additional duty is covered because it is "additional service imposed pursuant to law."

(2) *Reserves and National Guard* are covered under 38 U.S.C. 4304(b)(2). Normally, their restoration rights are limited to 4 years. (They do not get the extra 5th year "at the request and for the convenience of the Federal Government.") To go beyond 4 years, their service has to be other than for training, it is limited by the time period that the President is authorized to call up troops (currently 180 days), and, if voluntary, their orders or DD Form 214 must say that the additional duty was at the request and for the convenience of the Government.

(3) *Mobilization authority.*

(i) Since 1978, 10 U.S.C. 673b has authorized the President to call up as many as 200,000 members of the Selected Reserve for up to 90 days. In 1986, this authority was broadened to allow the President to extend the call-up for an additional 90 days, if necessary, without regard to a state of national emergency or war, for the purpose of augmenting the active component forces for an operational mission.

(ii) The President is also authorized by 10 U.S.C. 673a to call up as many as one million members of the Ready Reserves for not longer than 24 months in a national emergency.

(iii) Under 10 U.S.C. 672, with a declaration of war or national emergency by the Congress, all Reserve components, including Standby and Retired, could be ordered to active duty for the duration of the war, plus 6 months.

§ 353.203 Physical disqualification.

An individual who is physically disqualified for the former position or an equivalent one because of disability sustained during military service shall be placed in the agency in another position for which qualified that will provide the employee with the same seniority, status, and pay, or the nearest approximation consistent with the circumstances in each case.

§ 353.204 Retention protection.

(a) *While on military duty.* An employee with restoration rights under 38 U.S.C. 4301 or 4304 (a), (b), or (c) may not be demoted or separated (other than military separation) while on military duty. He or she is not a "competing employee" under § 351.404 of this chapter. If the employee's position is abolished during such absence, the agency must reassign the employee to another position of like seniority, status, and pay. An employee on a leave of absence under 38 U.S.C. 4304 (d) or (e) has no special protections in a reduction in force.

(b) *Upon reemployment.* Upon reemployment, an employee with a restoration right under 38 U.S.C. 4301 or 4304 (a) or (b) may not be discharged for a period of 1 year except for cause. A member of a Reserve component returning from an initial period of active duty for training under 38 U.S.C. 4304(c) may not be discharged for a period of 6 months except for cause. (Reduction in force is not considered "for cause.") Employees returning from a leave of absence under 38 U.S.C. 4304 (d) or (e) have no special protections against discharge.

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

§ 353.205 Prohibition against discrimination.

A person who seeks or holds a position in the Federal Government may not be denied hiring, retention in employment, or any promotion or other incident or advantage of employment because of any obligation as a member of a Reserve component of the Armed Forces.

Subpart C—Compensable Injury

§ 353.301 Restoration rights.

(a) *Fully recovered within 1 year.* An employee who fully recovers from a compensable injury within 1 year from the date eligibility for compensation began (or from the time compensable disability recurs if the recurrence begins after the employee resumes regular full-

time employment with the United States), is entitled to be restored immediately and unconditionally to his or her former position or an equivalent one. Although these restoration rights are agencywide, the employee's basic entitlement is to the former position or equivalent in the local commuting area the employee left. If a suitable vacancy does not exist, the employee is entitled to displace an employee occupying a continuing position under temporary appointment or tenure group III. If there is no such position in the local commuting area, the agency may offer the employee a position (as described in this paragraph) in another location. This paragraph also applies when an injured employee accepts a lower-graded position in lieu of separation and subsequently fully recovers. A fully recovered employee is expected to return to work immediately upon the cessation of compensation.

(b) *Fully recovered after 1 year.* An employee who was separated because of a compensable injury and whose full recovery takes longer than 1 year from the date eligibility for compensation began (or from the time compensable disability recurs if the recurrence begins after the injured employee resumes regular full-time employment with the United States), is entitled to priority consideration, agencywide, for restoration to the position he or she left or an equivalent one provided he or she applies for reappointment within 30 days of cessation of compensation. Priority consideration is accorded by entering the individual on the agency's reemployment priority list for the competitive service or reemployment list for the excepted service. If the individual cannot be placed in the former commuting area, he or she is entitled to priority consideration for an equivalent position elsewhere in the agency. (See parts 302 and 330 of this chapter for more information on how this may be accomplished for the excepted and competitive services, respectively.) This subpart also applies when an injured employee accepts a lower-graded position in lieu of separation and subsequently fully recovers.

(c) *Physically disqualified.* An individual who is physically disqualified for the former position or equivalent because of a compensable injury is entitled to be placed in another position for which qualified that will provide the employee with the same seniority, status, and pay, or the nearest approximation thereof, consistent with the circumstances in each case. This right is agencywide and applies for a period of 1 year from the date eligibility