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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

RIN: 3206-AN31

Disabled Veteran Leave and Other Miscellaneous Changes

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations to implement the Wounded Warriors Federal Leave Act of 2015, which establishes a separate new leave category, to be known as “disabled veteran leave,” available during a 12-month period beginning on the first day of employment to be used by an employee who is a veteran with a service-connected disability rated at 30 percent or more for purposes of undergoing medical treatment for such disability. We are also rescinding two obsolete leave-related regulations.

DATES: This final rule is effective on November 5, 2016.

FOR FURTHER INFORMATION CONTACT: Doris Rippey by telephone at (202) 606-2858 or by email at pay-leave-policy@opm.gov.

SUPPLEMENTARY INFORMATION: On June 6, 2016, the Office of Personnel Management (OPM) published proposed regulations (81 FR 36186) to add a new subpart M, Disabled Veteran Leave, in part 630 (Absence and Leave) of title 5, Code of Federal Regulations, and rescind two obsolete regulations. These final regulations implement the Wounded Warriors Federal Leave Act of 2015 (Public Law 114-75, November 5, 2015) (hereafter referred to as “the Act”). The Act adds section 6329 to title 5, United States Code,

which establishes a separate new leave category, to be known as “disabled veteran leave.” This new leave category entitles any employee who is a veteran with a qualifying service-connected disability to use disabled veteran leave during a 12-month period beginning on the first day of employment for the purposes of undergoing medical treatment for such disability.

Disabled veteran leave available to an eligible employee may not exceed 104 hours for a regular full-time employee. Disabled veteran leave not used during the established 12-month period may not be carried over to subsequent years and will be forfeited. By law, disabled veteran leave is available only to covered employees who are hired (as defined at § 630.1303) on or after November 5, 2016.

The 30-day comment period for the proposed regulations ended on July 6, 2016. We received comments from 12 individuals, 1 agency, and 1 Federal labor organization. This **Federal Register** notice provides general information regarding the regulation, addresses the comments received, and issues final regulations that reflect three changes to the proposed regulations in §§ 630.1301, 630.1303, and 630.1307(b).

Comments on Proposed Regulations

We organized our responses to comments by the affected regulatory section number. We did not receive comments on all regulatory sections. Therefore, not all sections are discussed within this Supplementary Information.

We received comments expressing general support for the new type of leave for disabled veterans. A Federal labor organization expressed that “disabled veteran leave is an excellent way to help mitigate the adverse effects of military service and prevent veterans from experiencing unnecessary personal hardships as they transition into the civilian workforce.” The labor organization stated that having the new 104-hour leave entitlement available during the

initial 12-month period of employment “will greatly contribute to assisting veterans in making a more seamless transition to civilian duty by affording them the flexibility they need to undergo medical treatment.”

Comments from individuals reflected that veterans often have multiple appointments necessary to treat their service-connected disabilities and may not have sufficient accrued sick or annual leave to attend those appointments. The comments expressed that the new leave category will make it possible for veterans to obtain necessary medical treatment for their service-connected disabilities (during the 12-month eligibility period) without having to take leave without pay, use accrued sick or annual leave, or become indebted for advanced sick or annual leave.

Contrary to Law

We received several comments from individuals suggesting changes that would be contrary to the statutory requirements in law. These comments fell into three general categories: (1) the requirement that the disabled veteran leave benefit is applicable only to those hired on or after November 5, 2016, (2) the amount of disabled veteran leave provided (up to 104 hours), and (3) the 12-month period in which to use disabled veteran leave (i.e., that disabled veteran leave is a one-time entitlement rather than a recurring annual entitlement). Changes in these three categories would require a change in law; therefore, no changes were made to the regulations based on these comments.

Required Documentation for Eligibility

A labor organization provided a comment on a section of the Supplementary Information of the proposed regulations related to § 630.1304 (Eligibility) (81 FR 36189). In that section, we stated it is important that agencies be able to identify as soon as possible

whether an employee is entitled to the benefit since the disabled veteran leave is only available during the first 12 months after the first day of employment. However, we also noted that employees have a responsibility to provide proper documentation/certification from the Veterans Benefits Administration (VBA), a subcomponent of the Department of Veterans Affairs (VA) to enable agencies to make determinations about eligibility for disabled veteran leave. The labor organization stated that the proposed regulations place the burden on veteran employees to provide the necessary documentation upon being employed to gain access to this benefit. The labor organization stated that our proposed regulations are silent on how employees will be notified of the existence of this benefit when they become employed and recommended that agencies provide notice to veterans upon employment by including literature on disabled veteran leave in their new hire packets. Additionally, the labor organization urged that VBA notify employees of this benefit upon certifying their status as a veteran with a qualifying service-connected disability. The labor organization acknowledged that the regulations contain a retroactivity provision at § 630.1304(c), which addresses delayed employee submissions of VBA ratings; however, it asserted that having VBA provide notice of this new leave category would maximize the possibility of veterans taking advantage of the statutory entitlement to disabled veteran leave within the fixed 12-month eligibility period.

We agree that agencies should strive to make employees aware of the disabled veteran leave benefit. While we do not believe it is necessary to incorporate a formal notice requirement in regulations, we will encourage agencies through other means to educate and notify employees regarding the disabled veteran leave benefit. We have also informed VBA of the labor organization's recommendation that it notify veterans of this Federal employee leave benefit when it certifies that they have a 30 percent service-connected disability rating.

§ 630.1302—Applicability and § 630.1303 –Definitions

Commenters expressed that it was “unfair” to provide this leave benefit only to veterans hired on or after November 5, 2016, and expressed the need for the new leave category to apply to all veterans with a 30 percent or more service-connected disability rating.

Section 2(c) of the Act specifically provides that disabled veteran leave is available to veterans with a 30 percent or more service-connected disability rating who are hired on or after November 5, 2016. Thus, comments received regarding the application of the disabled veteran leave benefit only to those hired on or after November 5, 2016, are outside the scope of OPM’s authority and regulations. OPM cannot prescribe regulations that are contrary to statutory requirements.

While current Federal employees who were hired before November 5, 2016, are not eligible for disabled veteran leave, the Federal Government offers a wide range of leave options and workplace flexibilities available to assist employees who need to be away from the workplace, including veterans who must take time off from work to receive medical treatment for their service-connected disabilities. These options include advanced annual leave or advanced sick leave, alternative work schedules, earned credit hours under a flexible work schedule, and earned compensatory time off. Depending on an employee’s particular circumstances, leave without pay under the Family and Medical Leave Act (FMLA) or donated leave under the voluntary leave transfer program or voluntary leave bank program may also be options for employees needing time away from work for the treatment of their service-connected disabilities. (See also the discussion of leave rights under Executive Order 5396 at the end of this Supplementary Information.)

Since the term “hired” is not defined in the statute, we define the term “hired” within these regulations to be broader than merely an employee’s first appointment with the Federal Government. As discussed in the Supplementary Information of the proposed regulations, although the legislative history of the Act indicates that Congress was focused on the most common scenario—addressing veterans with 30 percent or more service-connected disabilities who are “new” employees and begin their Federal careers with zero hours of sick leave (see House Report 114-180 and Senate Report 114-89)—the law itself does not exclude those with previous Federal civilian service.

Therefore, we provide in these regulations that employees also will be considered to have a hiring event that may qualify them for disabled veteran leave (assuming they meet all other eligibility requirements) if, on or after November 5, 2016, they are (1) reappointed with at least a 90-day break in service or (2) return to civilian duty following a break in civilian duty (with continuous civilian leave status) to perform military service. (See definition of the term *hired* in § 630.1303.)

One commenter expressed concern that some employees may wait until after they are hired to file a claim for VA disability benefits, which would “leave little or no time to make this process work,” given the delays in the VA process for making disability determinations.

This comment appeared to reflect a misunderstanding of when the 12-month eligibility period begins. The 12-month eligibility period begins on the *first day of employment*, which is defined to mean the later of (1) the date the employee is first hired (in qualifying employment) or (2) the effective date of the employee’s qualifying service-connected disability. The hiring date is the later date when an employee is hired after the effective date of the employee’s qualifying service-connected disability. The effective date of the disability determination is the later date if

the employee has already been hired. Thus, it is possible for the 12-month eligibility period to begin after an employee's hiring date. Because of comments indicating confusion about this matter, we are revising the definition of *first day of employment* to more clearly state the rule. We are also making a corresponding clarification in § 630.1301 (Purpose and authority), which relies on the clarified definition of *first day of employment*.

As discussed in the Supplementary Information for the proposed regulations, the effective date of a service-connected disability is generally either the day after the date of military discharge (if the person filed a disability claim within 1 year of discharge date) or the date the claim was filed. Thus, a delay in a determination by VBA can prevent an employee from using disabled veteran leave during the earlier portion of the 12-month eligibility period that may be retroactively established for certain employees. However, the regulations in § 630.1306(c) address this situation by allowing such employees to retroactively substitute disabled veteran leave for other leave they may have taken for covered medical treatment.

§ 630.1304—Eligibility

We received one comment regarding the requirement in proposed § 630.1304(b) that, “[i]n order to be eligible for disabled veteran leave, an employee must provide to the agency documentation from the Veterans Benefits Administration certifying that the employee has a qualifying service-connected disability.” The commenter expressed concerns about the VBA’s ability “to provide timely decisions” and suggested that, in addition to the VBA rating, we also consider using the following documentation as a proof of a service-connected disability rated at 30 percent or more: a Report of Separation showing medically retired (30 percent) or Temporary Disability Retired List (TDRL) and/or a Medical Evaluation Board (MEB)/ Physical Evaluation Board (PEB) evaluation from the service department concerned.

The commenter also expressed concerns that “while many veterans will seamlessly transition from active duty to VA care, there will be those who do not immediately file a claim with VBA.” The commenter stated that “for those who wait to file until after they are hired there may be little or no time to make this process work,” and “[i]f the veteran does not have the decision in hand when hired, the veteran has no ability to push the process within the first year and only a limited ability for after the fact adjustments.” The same commenter mentioned that there are other problematic issues that can delay a rating from VBA.

The Act requires a formal finding by VA under title 38 that an employee is a veteran with a service-connected disability rated at 30 percent or more. (The Act relies on the title 38 definitions of terms “veteran” and “service-connected.” Only VA issues service-connected disability ratings to veterans under title 38.) The regulations already provide that a temporary disability rating by VA under 38 U.S.C. 1156 is considered a valid rating as long as it is in effect. (See definition of the term *qualifying service-connected disability* in § 630.1303.) Accordingly, we are not making any changes to the regulations in response to the commenter’s suggestions to use other forms of documentation as a basis for providing disabled veteran leave. As already noted, in the event that VA delays prevent an employee from using disabled veteran leave during a portion of the 12-month eligibility period, the regulations allow the employee to retroactively substitute disabled veteran leave for other leave used for attending medical treatment of the qualifying service connected-disability. (See § 630.1306(c).)

For example, assume a veteran is discharged from the military in July 2014 and is hired to fill a qualifying Federal civilian position on December 1, 2016, but has not filed a claim for veteran disability benefits. The agency cannot credit the employee with the disabled veteran leave at the time of hire because the employee’s eligibility for the benefit has not been

established by VA. Subsequently, on March 4, 2017, the employee files a claim and on June 5, 2017, VBA issues a decision that the employee has a service-connected disability rating of 30 percent. In this case, the disability rating is effective on the date the employee filed the claim, March 4, 2017. After the employee provides the employing agency with documentation, the agency establishes March 4, 2017, as the “first day of employment” (as a veteran with a service-connected disability of 30 percent or more) and as the beginning date of the employee’s 12-month eligibility period, and credits the employee with disabled veteran leave. The employee will have a 12-month period starting on March 4, 2017, and ending on March 3, 2018, in which to use the leave.

While the disability may have existed as the employee awaited the VBA determination, the Act provides that disabled veteran leave may be provided only to an employee who actually has a service-connected disability rating of 30 percent or more in effect. VBA provides disability ratings to veterans in order to determine compensation benefits related to the veteran’s service-connected disability.

In the example scenario, the employee was retroactively determined to be eligible for disabled veteran leave starting on March 4, 2017; however, the determination was not made until June 5, 2017. Thus, the employee was not allowed to use disabled veteran leave during the March 4-June 4 period; however, as provided by § 630.1306(c), the agency must allow the employee to substitute disabled veteran leave retroactively for a qualifying period of absence during the March 4-June 4 period (including leave without pay, sick leave, annual leave, compensatory time off, or other paid time off, but excluding periods of suspension or absence without leave (AWOL)).

§ 630.1305—Crediting disabled veteran leave

We received three comments regarding the crediting of 104 hours of disabled veteran leave on a one-time basis. One commenter thought 104 hours was too much and recommended the regulations be changed to provide a maximum of 80 hours. The commenter also suggested that those 80 hours be provided on an annual basis and recommended changing the effective date from November 5, 2016, to January 1, 2017, to avoid providing the leave benefit twice to an employee in a short amount of time.

This comment is misdirected, as it appears that the commenter believes that disabled veteran leave is provided to qualified employees on a recurring annual basis. As the law clearly provides—and as stated in the proposed and final regulations—employees who otherwise qualify are provided disabled veteran leave only once during their Federal careers. The intent of the Act is to allow qualifying veterans access to this special category of leave during a single 12-month eligibility period that commences on the employee’s “first day of employment.” The focus of Congress was to address the problem of new Federal employees who have a zero balance of sick leave when initially appointed. In subsequent years, employees can use accrued sick and annual leave balances to receive medical treatment for their service-connected disabilities. Also, contrary to the commenter’s assumption, disabled veteran leave is granted for an individualized 12-month eligibility period, not on a calendar year or leave year basis.

Another commenter also recommended that the benefit be provided on an annual basis if the employee has a need for it and if the employee continues to have the service-connected disability.

A third commenter stated that 104 hours was not enough time to cover the various medical appointments veterans with service-connected disabilities rated at 30 percent or more

have. The commenter also stated that the location and operating hours of VA medical centers should have been taken into account when determining the amount of hours of disabled veteran leave to provide to an employee. The commenter suggested that VA medical appointments should be authorized as “company time.” The commenter did not feel he should have to supplement disabled veteran leave by using his own accrued sick leave to attend VA medical appointments.

The comments received regarding the amount of leave to credit under the new leave category and how often this leave is made available are outside the scope of OPM’s authority and regulations; therefore, no changes were made to the regulations based on these comments. Under section 6329(b)(1), the amount of disabled leave credited to an employee may not exceed 104 hours. The Act provides a one-time benefit of up to 104 hours of disabled veteran leave to an eligible veteran to be used during the 12-month period beginning on the first day of employment.

§ 630.1306—Requesting and using disabled veteran leave

One commenter expressed concern that the retroactive substitution provisions at § 630.1306(c) are too complex. These provisions allow an employee to substitute disabled veteran leave retroactively for other leave or paid time off used for the medical treatment of a qualifying service-connected disability during the employee’s established 12-month eligibility.

We disagree and do not view these provisions as too complex to implement. In addition, the provisions allowing for retroactive substitution are necessary to assist employees who have not yet received their disability determination rating of 30 percent or more from the VBA. Therefore, we are not adopting any changes to this portion of the rule.

§ 630.1307—Medical certification

We received one agency comment regarding this section. The agency recommended that, in the final rule, § 630.1307(b)(1) be changed from “A statement by the health care provider that the medical treatment is for one or more service-connected disabilities of the employee rated at 30 percent or more” to read as “A statement by the health care provider that the medical treatment is for one or more service-connected disabilities of the employee that resulted in 30 percent or more disability rating” or other similar statement. The agency stated that the proposed section could be interpreted to mean that only individual disabilities rated at 30% or higher are eligible when in reality the leave may be used for any of the disabilities listed in the veteran’s disability rating determination that were combined to reach a total disability rating of 30 percent or more. The agency acknowledges that the intent of this section is covered elsewhere in the proposed rule, but expressed concern that this particular verbiage could be misunderstood.

We agree with the comment and are adopting the recommended language for § 630.1307(b)(1) in the final rule.

The same agency also commented on the proposed language regarding the time limits within which an employee must provide any required written medical certification to the agency after the agency requests it. In § 630.1307(c)(1) of the proposed rule, the employee must provide the requested medical certification no later than 15 calendar days after the date the agency requests it.

However, § 630.1307(c)(2) provides that if it is not practicable under the particular circumstances to provide the requested medical certification within 15 calendar days after the date requested by the agency despite the employee’s diligent, good faith efforts, the employee must provide the medical certification within a reasonable period of time under the

circumstances involved, but no later than 30 calendar days after the date the agency requests such documentation.

The agency recommended removing the phrase “diligent, good faith effort” from the final regulations stating that “good faith” is not further clarified or defined in the proposed rule and agencies will have difficulty defending determinations that an employee did not meet “diligent and good faith efforts.”

While we understand the commenter’s concerns, we are not adopting a change to the final regulations. We recognize there may be circumstances in which the employee cannot provide the requested documentation within this prescribed time period; therefore, we provide a limited extended time period for the employee. The employee should make every effort to meet the initial 15 calendar days. However, if more time is needed by the employee, the agency should allow for additional days. The employee bears the responsibility for the required medical certification, and part of his or her effort should be periodic updates to the agency on the status of the required medical certification. The employee must provide the required medical certification no later than 30 days after the agency’s initial request for such documentation.

Analogous language regarding an employee’s “diligent, good faith efforts” is also included in the medical certification provisions of both the sick leave regulations at § 630.405(b) and the Family and Medical Leave Act (FMLA) regulations at § 630.1208(h). We included parallel provisions in these regulations, so that agencies have one standard to administer regarding the timeframes for employees to provide supporting medical documentation to them. Additionally, we have not had any feedback from agencies expressing any difficulty in administering the sick leave and FMLA provisions based upon the “diligent, good faith efforts” language included under those regulations.

Miscellaneous Comment(s)

We received one comment regarding Executive Order (E.O.) 5396 issued on July 17, 1930. E.O. 5396 provides a basic entitlement for any veteran to use annual leave, sick leave, or leave without pay when absent from work for medical treatment of a service-connected disability (regardless of the disability rating). The commenter questioned why E.O. 5396 is not mentioned in the proposed rule. The commenter stated that “the will of Congress was to expand the intent of the E.O. by actually paying the disabled Vet for some of the leave without pay (LWOP) that they were granted in the 1930 E.O. and that this E.O. is still in effect.” The commenter further recommended that the final rule provide that E.O. 5396 be the first choice after disabled veteran leave has been exhausted.

While we agree that E.O. 5396 is still in effect and valid, we did not mention it in the proposed rule because the rights provided by the Executive order and benefits under the disabled veteran leave law are two separate entitlements. OPM is authorized to issue regulations on disabled veteran leave under section 2(d) of Public Law 114-75. OPM has no authority to issue regulations regarding E.O. 5396. These disabled veteran leave regulations do not change an employee’s entitlement under E.O. 5396 to use annual leave, sick leave, or leave without pay for medical treatment of the employee’s service-connected disability.

The commenter was also concerned that the term AWOL (absent without leave) was mentioned several times within the proposed rule and expressed concerns that “management would be quick to build up reasons to fire an individual.”

The regulations include two references to AWOL. The first reference to AWOL in the proposed rule simply states that disabled veteran leave cannot be applied retroactively to time charged as AWOL, but may be applied retroactively to time initially charged as leave without

pay (LWOP). The second instance permits an employee to be charged as AWOL if he or she fails to produce the medical documentation required by the agency. See § 630.1306 and 630.1307. We have no reason to believe agencies will abuse this authority. Therefore, no change was made to the regulations based on this comment.

Executive Order 13563 and Executive Order 12866

The Office of Management and Budget has reviewed this rule in accordance with E.O. 13563 and 12866.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 630

Government employees.

Office of Personnel Management.

Beth F. Cobert,
Acting Director.

Accordingly, OPM is amending part 630 of title 5 of the Code of Federal Regulations as follows:

PART 630 – ABSENCE AND LEAVE

1. Revise the authority citation for part 630 to read as follows:

Authority: 5 U.S.C. 6311; §630.205 also issued under Pub. L. 108-411, 118 Stat 2312; §630.301 also issued under Pub. L. 103-356, 108 Stat. 3410 and Pub. L. 108-411, 118 Stat 2312;

§ 630.303 also issued under 5 U.S.C. 6133(a); §§ 630.306 and 630.308 also issued under 5 U.S.C. 6304(d)(3), Pub. L. 102-484, 106 Stat. 2722, and Pub. L. 103-337, 108 Stat. 2663; subpart D also issued under Pub. L. 103-329, 108 Stat. 2423; §630.501 and subpart F also issued under E.O. 11228, 30 FR 7739, 3 CFR, 1974 Comp., p. 163; subpart G also issued under 5 U.S.C. 6305; subpart H also issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332, Pub. L. 100-566, 102 Stat. 2834, and Pub. L. 103-103, 107 Stat. 1022; subpart J also issued under 5 U.S.C. 6362, Pub. L 100-566, and Pub. L. 103-103; subpart K also issued under Pub. L. 105-18, 111 Stat. 158; subpart L also issued under 5 U.S.C. 6387 and Pub. L. 103-3, 107 Stat. 23; and subpart M also issued under section 2(d) of Pub. L. 114-75, 129 Stat. 640.

§ 630.310 [Removed and Reserved]

2. Remove and reserve § 630.310.
3. Revise subpart M to read as follows:

Subpart M—Disabled Veteran Leave

Sec.

- 630.1301 Purpose and authority.
- 630.1302 Applicability.
- 630.1303 Definitions.
- 630.1304 Eligibility.
- 630.1305 Crediting disabled veteran leave.
- 630.1306 Requesting and using disabled veteran leave.
- 630.1307 Medical certification.
- 630.1308 Disabled veteran leave forfeiture, transfer, reinstatement.

Subpart M—Disabled Veteran Leave

§ 630.1301 Purpose and authority.

This subpart implements 5 U.S.C. 6329, which establishes a leave category, to be known as “disabled veteran leave,” for an eligible employee who is a veteran with a service-connected disability rated at 30 percent or more. Such an employee is entitled to this leave for purposes of

undergoing medical treatment for such disability. Disabled veteran leave must be used during the 12-month period beginning on the first day of employment. OPM's authority to regulate section 6329 is found in section 2(d) of Public Law 114-75.

§ 630.1302 Applicability.

This subpart applies to an employee who is a veteran with a service-connected disability rated at 30 percent or more, subject to the conditions specified in this subpart. This subpart does not apply to employees of the United States Postal Service or the Postal Regulatory Commission who are subject to regulations issued by the Postmaster General under section 2(d)(2) of Public Law 114-75. This subpart applies only to an employee who is hired on or after November 5, 2016.

§ 630.1303 Definitions.

In this subpart:

12-month eligibility period means the continuous 12-month period that begins on the first day of employment. For an employee who was eligible (or later determined to have been eligible) for disabled veteran leave as an employee of the United States Postal Service or the Postal Regulatory Commission and who subsequently commences employment covered by this subpart, the 12-month eligibility period is the period that began on the first day of employment with the United States Postal Service or the Postal Regulatory Commission (as determined under regulations issued by the Postmaster General to implement 5 U.S.C. 6329).

Agency means an agency of the Federal Government. In the case of an agency in the Executive branch, it means an Executive agency as defined in 5 U.S.C. 105. When the term "agency" is used in the context of an agency making determinations or taking actions, it means

management officials of the agency who are authorized by the agency head to make the given determination or take the given action.

Employee has the meaning given that term in 5 U.S.C. 2105.

Employment means service as an employee during which the employee is covered by a leave system under which leave is charged for periods of absence. This excludes service in a position in which the employee is not covered by 5 U.S.C. 6329 due to application of another statutory authority.

First day of employment means the first day of service that qualifies as employment that occurs on the later of—

(1) The earliest date an employee is hired after the effective date of the employee's qualifying service-connected disability, as determined by the Veterans Benefits Administration;

or

(2) The effective date of the employee's qualifying service-connected disability, as determined by the Veterans Benefits Administration.

Health care provider has the meaning given that term in § 630.1202.

Hired means the action of—

(1) Receiving an initial appointment to a civilian position in the Federal Government in which the service qualifies as employment under this subpart;

(2) Receiving a qualifying reappointment to a civilian position in the Federal Government in which the service qualifies as employment under this subpart; or

(3) Returning to duty status in a civilian position in the Federal Government in which the service qualifies as employment under this subpart, when such return immediately followed a

break in civilian duty (with the employee in continuous civilian leave status) to perform military service.

Medical certificate means a written statement signed by a health care provider certifying to the treatment of a veteran's qualifying service-connected disability.

Medical treatment means any activity carried out or prescribed by a health care provider to treat a veteran's qualifying service-connected disability.

Military service means "active military, naval, or air service" as that term is defined in 38 U.S.C. 101(24).

Qualifying reappointment means an appointment of a former employee of the Federal Government following a break in employment of at least 90 calendar days.

Qualifying service-connected disability means a veteran's service-connected disability rated at 30 percent or more by the Veteran Benefits Administration, including a combined degree of disability of 30 percent or more that reflects the combined effect of multiple individual disabilities, which resulted in the award of disability compensation under title 38, United States Code. A temporary disability rating under 38 U.S.C. 1156 is considered a valid rating in applying this definition for as long as it is in effect.

Service-connected has the meaning given such term in 38 U.S.C. 101(16).

Veteran has the meaning given such term in 38 U.S.C. 101(2).

Veterans Benefits Administration means the Veterans Benefits Administration of the Department of Veterans Affairs.

§ 630.1304 Eligibility.

(a) An employee who is a veteran with a qualifying service-connected disability is entitled to disabled veteran leave under this subpart, which will be available for use during the

12-month eligibility period beginning on the first day of employment. For each employee, there is a single first day of employment.

(b) In order to be eligible for disabled veteran leave, an employee must provide to the agency documentation from the Veterans Benefits Administration certifying that the employee has a qualifying service-connected disability. The documentation should be provided to the agency—

(1) Upon the first day of employment, if the employee has already received such certifying documentation; or

(2) For an employee who has not yet received such certifying documentation from the Veterans Benefit Administration, as soon as practicable after the employee receives the certifying documentation.

(c) Notwithstanding paragraph (b) of this section, an employee may submit certifying documentation at a later time, including after a period of absence for medical treatment, as described in § 630.1306(c). The 12-month eligibility period is fixed based on the first day of employment and is not affected by the timing of when certifying documentation is provided.

(d) If an employee's service-connected disability rating is decreased or discontinued during the 12-month eligibility period such that the employee no longer has a qualifying service-connected disability—

(1) The employee must notify the agency of the effective date of the change in the disability rating; and

(2) The employee is no longer eligible for disabled veteran leave as of the effective date of the rating change.

§ 630.1305 Crediting disabled veteran leave.

(a) Upon receipt of the certifying documentation under § 630.1304, an agency must credit 104 hours of disabled veteran leave to a full-time, nonseasonal employee or a proportionally equivalent amount for employees with part-time, seasonal, or uncommon tours of duty, except as otherwise provided in this section.

(b) The proportional equivalent of 104 hours for a full-time employee is determined for employees with other schedules as follows:

(1) For an employee with a part-time work schedule, the 104 hours is prorated based on the number of hours in the part-time schedule (as established for leave charging purposes) relative to a full-time schedule (e.g., 52 hours for a half-time schedule);

(2) For an employee with a seasonal work schedule, the 104 hours is prorated based on the total projected hours to be worked in an annual period of 52 weeks (based on the seasonal employee's seasonal work periods and full-time or part-time schedule during those periods) relative to a full-time work year of 2,080 hours (e.g., 52 hours for a seasonal employee who works full-time for half a year); and

(3) For an employee with an uncommon tour of duty (as defined in § 630.201 and described in § 630.210), 104 hours is proportionally increased based on the number of hours in the uncommon tour relative to the hours in a regular full-time tour (e.g., 187 hours for an employee with a 72-hour weekly uncommon tour of duty.)

(c) When an employee is converted to a different tour of duty for leave purposes, the employee's balance of unused disabled veteran leave must be converted to the proper number of hours based on the proportion of hours in the new tour of duty compared to the former tour of duty. For seasonal employees, hours must be annualized in determining the proportion.

(d) The amount of disabled veteran leave initially credited to an employee under paragraphs (a) and (b) of this section must be offset by the number of hours of sick leave an employee has credited to his or her account as of the first day of employment. For example, if an employee is being reappointed and having sick leave reccredited upon such reappointment, the amount of disabled veteran leave must be reduced by the amount of such reccredited sick leave. Similarly, if an employee is returning to civilian duty status after a period of leave for military service, that employee may have a balance of sick leave, which must be used to offset the disabled veteran leave.

(e)(1) An employee who was previously employed by an agency whose employees were not subject to 5 U.S.C. 6329 must certify, at the time the employee is hired in a position subject to 5 U.S.C. 6329, whether or not that former agency provided entitlement to an equivalent disabled veteran leave benefit to be used in connection with the medical treatment of a service-connected disability rated at 30 percent or more. The employee must certify the date he or she commenced the period of eligibility to use disabled veteran leave in the former agency.

(2) If 12 months have elapsed since the commencing date referenced in paragraph (e)(1) of this section, the employee will be considered to have received the full amount of an equivalent benefit and no benefit may be provided under this subpart.

(3) If the employee is still within the 12-month period that began on the commencing date referenced in paragraph (e)(1) of this section, the employee must certify the number of hours of disabled veteran leave used at the former agency. The gaining agency must offset the number of hours of disabled veteran leave to be credited to the employee by the number of such hours used by the employee at such agency, while making no offset under paragraph (d) of this section. If the employee had a different type of work schedule at the former agency, the hours

used at the former agency must be converted before applying the offset, consistent with § 630.1305(c).

§ 630.1306 Requesting and using disabled veteran leave.

(a) An employee may use disabled veteran leave only for the medical treatment of a qualifying service-connected disability. The medical treatment may include a period of rest, but only if such period of rest is specifically ordered by the health care provider as part of a prescribed course of treatment for the qualifying service-connected disability.

(b)(1) An employee must file an application—written, oral, or electronic, as required by the agency—to use disabled veteran leave. The application must include a personal self-certification by the employee that the requested leave will be (or was) used for purposes of being furnished medical treatment for a qualifying service-connected disability. The application must also include the specific days and hours of absence required for the treatment. The application must be submitted within such time limits as the agency may require.

(2) An employee must request approval to use disabled veteran leave in advance unless the need for leave is critical and not foreseeable—e.g., due to a medical emergency or the unexpected availability of an appointment for surgery or other critical treatment. The employee must provide notice within a reasonable period of time appropriate to the circumstances involved. If the agency determines that the need for leave is critical and not foreseeable and that the employee is unable to provide advance notice of his or her need for leave, the leave may not be delayed or denied.

(c)(1) When an employee did not provide the agency with certification of a qualifying service-connected disability before having a period of absence for treatment of such disability, the employee is entitled to substitute approved disabled veteran leave retroactively for such

period of absence (excluding periods of suspension or absence without leave (AWOL), but including leave without pay, sick leave, annual leave, compensatory time off, or other paid time off) in the 12-month eligibility period. Such retroactive substitution cancels the use of the original leave or paid time off and requires appropriate adjustments. In the case of retroactive substitution for a period when an employee used advanced annual leave or advanced sick leave, the adjustment is a liquidation of the leave indebtedness covered by the substitution.

(2) An agency may require an employee to submit the medical certification described in § 630.1307(a) before approving such retroactive substitution.

§ 630.1307 Medical certification.

(a) In addition to the employee's self-certification required under § 630.1306(b)(1), an agency may additionally require that the use of disabled veteran leave be supported by a signed written medical certification issued by a health care provider.

(b) When an agency requires a signed written medical certification by a health care provider, the agency may specify that the certification include—

(1) A statement by the health care provider that the medical treatment is for one or more service-connected disabilities of the employee that resulted in 30 percent or more disability rating;

(2) The date or dates of treatment or, if the treatment extends over several days, the beginning and ending dates of the treatment;

(3) If the leave was not requested in advance, a statement that the treatment required was of an urgent nature or there were other circumstances that made advanced scheduling not possible; and

(4) Any additional information that is essential to verify the employee's eligibility.

(c)(1) An employee must provide any required written medical certification no later than 15 calendar days after the date the agency requests such medical certification, except as otherwise allowed under paragraph (c)(2) of this section.

(2) If the agency determines it is not practicable under the particular circumstances for the employee to provide the requested medical certification within 15 calendar days after the date requested by the agency despite the employee's diligent, good faith efforts, the employee must provide the medical certification within a reasonable period of time under the circumstances involved, but no later than 30 calendar days after the date the agency requests such documentation.

(3) An employee who does not provide the required evidence or medical certification within the specified time period is not entitled to use disabled veteran leave, and the agency may, as appropriate and consistent with applicable laws and regulations—

(i) Charge the employee as absent without leave (AWOL); or

(ii) Allow the employee to request that the absence be charged to leave without pay, sick leave, annual leave, or other forms of paid time off.

§ 630.1308 Disabled veteran leave forfeiture, transfer, reinstatement.

(a) Disabled veteran leave not used during the 12-month eligibility period may not be carried over to subsequent years and must be forfeited.

(b) If a change in the employee's disability rating during the 12-month eligibility period causes the employee to no longer have a qualifying service-connected disability (as described in § 630.1304(d)), any unused disabled veteran leave to the employee's credit as of the effective date of the rating change must be forfeited.

(c) When an employee with a positive disabled veteran leave balance transfers between positions in different agencies, or transfers from the United States Postal Service or Postal Regulatory Commission to a position in another agency, during the 12-month eligibility period, the agency from which the employee transfers must certify the number of unused disabled veteran leave hours available for credit by the gaining agency. The losing agency must also certify the expiration date of the employee's 12-month eligibility period to the gaining agency. Any unused disabled veteran leave will be forfeited at the end of that eligibility period. For the purpose of this paragraph, the term "transfers" means movement from a position in one agency (or the United States Postal Service or Postal Regulatory Commission) to a position in another agency without a break in employment of 1 workday or more in circumstances where service in both positions qualifies as employment under this subpart.

(d)(1) An employee covered by this subpart, or an employee of the United States Postal Service or Postal Regulatory Commission, with a balance of unused disabled veteran leave who has a break in employment of at least 1 workday during the employee's 12-month eligibility period, and later recommences employment covered by 5 U.S.C. 6329 within that same eligibility period, is entitled to a recredit of the unused balance.

(2) When an employee has a break in employment as described in paragraph (d)(1) of this section, the losing agency must certify the number of unused disabled veteran leave hours available for recredit by the gaining agency. The losing agency must also certify the expiration date of the employee's 12-month eligibility period. Any unused disabled veteran leave must be forfeited at the end of that eligibility period.

(3) In the absence of the certification described in paragraph (d)(2) of this section, the recredit of disabled veteran leave may also be supported by written documentation available to

the employing agency in its official personnel records concerning the employee, the official records of the employee's former employing agency, copies of contemporaneous earnings and leave statement(s) provided by the employee, or copies of other contemporaneous written documentation acceptable to the agency.

(e) An employee may not receive a lump-sum payment for any unused disabled veteran leave under any circumstance.

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