

LAW REVIEW 13150

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Credit for Military Time for Leave Accrual Purposes as a Federal Employee

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3.0—Reserve retirement and civilian employment

Q: I served on active duty in the Coast Guard for 23 years and retired recently as a warrant officer. After retirement, I took a federal civil service job. This is the first time I have ever worked for the Federal Government as a civilian employee.

Federal civilian employees with less than 3 years of seniority receive 4 hours of annual leave per pay period. Employees with 3-15 years of seniority receive 6 hours of annual leave per pay period. Employees with more than 15 years of seniority receive 8 hours of annual leave per pay period.

It is my understanding that a federal employee who has pre-employment military service receives credit for that service in determining whether the employee is in the 4-hour, 6-hour, or 8-hour category with respect to the accumulation of annual leave. I have 23 years of active duty in the Coast Guard, so I figure that I should receive 8 hours of annual leave per pay period in my new federal civilian job.

The personnel office tells me that I am not entitled to credit for my 23 years of active duty because I am a military retiree. Thus, I only receive 4 hours of annual leave per pay period, not 8. Is the personnel office correct? Where is the law that says I am not entitled to credit for my active duty time in determining the amount of annual leave that I accrue each pay period in my civilian job?

A: The personnel office is correct. As a retired member of the Coast Guard, you are not entitled to use your 23 years of active duty for federal civilian leave accrual purposes. Accrual of annual leave for federal civilian employees is governed by section 6303 of title 5 of the United States Code (5 U.S.C. 6303). The pertinent language is as follows:

“(a) An employee is entitled to annual leave with pay which accrues as follows—

- (1)** one-half day for each full biweekly pay period for an employee with less than 3 years of service;
- (2)** three-fourths day for each full biweekly pay period, except that the accrual for the last full biweekly pay period in the year is one and one-fourth days, for an employee with 3 but less than 15 years of service; and
- (3)** one day for each full biweekly pay period for an employee with 15 or more years of service.

In determining years of service, an employee is entitled to credit for all service of a type that would be creditable under section 8332, regardless of whether or not the employee is covered by subchapter III of chapter 83, and for all service which is creditable by virtue of subsection (e). However, an employee who is a retired member of a uniformed service as defined by section 3501 of this title is entitled to credit for active military service only if—

(A) his retirement was based on disability—

- (i)** resulting from injury or disease received in line of duty as a direct result of armed conflict; or
- (ii)** caused by an instrumentality of war and incurred in line of duty during a period of war as defined by sections [101](#) and [1101](#) of title [38](#);

(B) that service was performed in the armed forces during a war, or in a campaign or expedition for which a campaign badge has been authorized; or

(C) on November 30, 1964, he was employed in a position to which this subchapter applies and thereafter he continued to be so employed without a break in service of more than 30 days.

The determination of years of service may be made on the basis of an affidavit of the employee. Leave provided by this subchapter accrues to an employee who is not paid on the basis of biweekly pay periods on the same basis as it would accrue if the employee were paid on the basis of biweekly pay periods.”

5 U.S.C. 6303(a).

The language of this statute is clear. Except in very unusual circumstances (retired for disability incurred from an act or instrumentality of war), a military retiree is not eligible to use his or her active duty time for federal civilian leave accrual purposes. You do not fit within any of those unusual circumstances, so your 23 years of active duty does not count for federal civilian leave accrual purposes.

Q: I have a good friend who retired from the Coast Guard Reserve, as a Commander, last year. He is now a “gray area retiree” waiting for his 60th birthday in 2023, to receive his reserve retired pay. My friend was on active duty for 5 years, before he affiliated with the Coast Guard Reserve.

My friend started a federal civilian job recently. Is he entitled to use his 5 years of active duty for federal civilian leave accrual purposes?

A: Yes. Your friend is colloquially referred to as a “gray area retiree” but the statutory name of his current status is the “inactive status list” (ISL). 10 U.S.C. 12735. For now, your friend is not considered to be a military retiree for this purpose, and he can use his 5 years of active duty for federal civilian leave accrual purposes.

When your friend attains the age of 60 he will transfer from the ISL to the retired list and start drawing his Coast Guard Reserve retired pay. At that point, your friend will lose the federal civilian leave accrual credit for the 5 years of Coast Guard active duty. Of course, by that time your friend will have 10 years of federal civilian service, assuming that he remains in the federal civilian job for that whole time, and he will have enough federal service to put him in the 6-hour per pay period category.