




Department of Energy
Washington, DC 20585

December 18, 2001

MEMORANDUM FOR DISTRIBUTION

FROM: STEPHANIE WEAKLEY, DIRECTOR
CONTRACTOR HUMAN RESOURCE
MANAGEMENT DIVISION 

SUBJECT: Existing Department of Energy Policy Regarding Operation
Enduring Freedom Participants

We reviewed historical policy related to Department of Energy (DOE) Contractors' employee military leave. In a May 28, 1991, memorandum, the Secretary of Energy, consistent with President George Herbert Walker Bush's objective of protecting the employment of employees who participated in Operation Desert Shield/Desert Storm, stated that, "Military reservists and members of the Air and Army National Guard who are returning to their DOE contractor employment, should be restored to the same jobs they left, and the legal flexibility of placement in equivalent jobs should be used only when absolutely necessary."

The Department's policy with respect to DOE contractor employees who participated in Desert Shield/Desert Storm in 1991 was to make them whole, i.e., they should suffer no loss of salary or wages for their Desert Shield/Desert Storm military service, and to assure continuity of benefit coverage, e.g., pensions and health care benefits for such employees and their dependents without additional cost.

The cost associated with this compensation was allowable under DOE contracts.

The Department has **NOT** formulated a policy to address contractor employee compensation under Operation Enduring Freedom. Accordingly, cost associated with contractor employee military leave for those who participate in Operation Enduring Freedom are subject to the cost principles at Federal Acquisition Regulation (FAR) 31.205-6, "Compensation for Personal Services," and the Department of Energy Acquisition Regulation (DEAR) 970.3102-05-6, "Compensation for Personal Services." The FAR and DEAR both mandate that in no case, will contractor payments be allowable for employee compensation that cause the total compensation received by an employee on active military duty (i.e., contractor extended military leave benefits plus active duty pay) to exceed that which the employee enjoyed prior to entry into active military duty. Active duty pay includes basic pay, all specialty pay, and all allowances except subsistence, travel, and uniform allowances.



Some of you may recall, that Departmental policy regarding theater participants was formed after the conclusion of Desert Shield/Desert Storm (when DOE liability was calculable) and after the release of the President's March 8, 1991 Memorandum to Heads of Executive Departments and Agencies regarding treatment of returning Desert Shield/Desert Storm participants. The President's memorandum stated that "...the Federal Government has always been a model for other employers in the protections and benefits provided for those who serve, and I am committed to ensuring that we continue to set an example for the Nation in this regard..." This memo was the precedent for subsequent DOE policy regarding theater participants. Unless the current Secretary of Energy or the President issues similar guidance, costs associated with contractor employees who participate in Operation Enduring Freedom will continue to be subject to the cost principles at FAR 31.205-6, "Compensation for Personal Services," and the DEAR 970.3102-05-6, "Compensation for Personal Services."

A copy of The Uniform Services Employment and Reemployment Rights Act (USERRA) enacted October 1994 and amended in 1996, 1998 and 2000 (which provides job protection and rights of reinstatement to employees who participate in the National Guard and Reserve) can be found at the National Committee for Employer Support of the Guard and Reserve's (ESGR) website: esgr.org.

If further information is required, please contact Rose Johnson of my staff at (202) 586-5323 or rosemary.johnson@pr.doe.gov.

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