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**TAG POLICY LETTER 20-03**

**20 February 2020**

**NEW JERSEY NATIONAL GUARD DOMESTIC RESPONSE AND  
STATE ACTIVE DUTY (SAD) POLICY FOR FULL-TIME EMPLOYEES**

- 1. PURPOSE:** To provide instruction on the policies and procedures that govern domestic response and State Active Duty (SAD) in response to contingency situations within the United States by full-time employees of the New Jersey National Guard (NJNG).
- 2. APPLICABILITY:** This policy applies to all Soldiers and Airmen in a full-time status with the New Jersey National Guard, including Active Guard/Reserve (AGR), Dual Status Title 32 Technicians, Title 5 Civilians, Full Time National Guard Duty personnel, and members in a Title 32 status at the time a domestic response contingency situation occurs.
- 3. REFERENCES:**
  - a. Title 5 United States Code (U.S.C.) 5519, *Crediting amounts received for certain Reserve or National Guard Service.*
  - b. Title 5 U.S.C. 6323(b), *Military Leave; Reserves and National Guardsmen.*
  - c. Title 10 U.S.C. 101, *Definitions.*
  - d. Title 10 U.S.C. 10508, *National Guard Bureau, General Provisions.*
  - e. Title 32 U.S.C. 502, *Required Drills and Field Exercises.*
  - f. Title 32 U.S.C 709 *Technicians: Employment, Use, Status.*
  - g. National Guard Bureau (NGB) Office of the Chief Counsel, 2019 Domestic Operations Law and Policy Manual, Second Edition, 28 November 2018.

h. NGB Office of the Chief Counsel, Contract and Fiscal Law Division, 2019 Fiscal Law Guidebook, 26 March 2019.

i. Chief, National Guard Bureau (CNGB) Instruction 1400.25, Vol. 630, National Guard Technician Absence and Leave Program, 6 August 2018.

j. CNGB Instruction 1302.01, Guidance for Members Performing Duty Under the Authority of 32 USC 502(f), 23 April 2012.

k. Department of Defense (DoD) Directive 3025.18, Incorporating Change 2, Defense Support of Civil Authorities (DSCA), 19 March 2018.

l. DoD Instruction 3025.22, Incorporating Change 1, The Use of the National Guard for Defense Support of Civil Authorities, 15 May 2017.

m. National Guard Regulation (NGR) - Army (AR) National Guard 600-5, The Active Guard/Reserve (AGR) Program Title 32, Full Time National Guard Duty (FTNGD) Management, 21 September 2015.

n. Air National Guard Instruction (ANGI) 36-101, Air National Guard Active Guard Reserve (AGR) Program, 14 August 2014.

o. New Jersey Statutes Annotated (N.J.S.A.) 38A:2-4, *Militia ordered to active duty in certain cases*.

p. N.J.S.A. 38A:3-6.1, *Aid to localities in circumstances which threaten or endanger public health, safety or welfare*.

q. N.J.S.A 38A:4-3, *Pay and allowances*.

r. N.J.S.A 38A:4-4, *Leave of absence for employees without loss of pay; additional to regular vacation*.

#### **4. DOMESTIC RESPONSE AND STATE ACTIVE DUTY (SAD) POLICY:**

##### **a. State Active Duty:**

(1) State Active Duty Orders: SAD orders will be requested and processed in accordance with the New Jersey National Guard Domestic Operations Concept Plan (CONPLAN).

(2) Pay and Allowances:

(a) N.J.S.A 38A:4-3 states that an officer or enlisted member ordered to SAD shall receive the pay and allowances prescribed by Federal laws and regulations for an officer or enlisted member of corresponding grade and length of service when on Federal active duty, provided that an officer or enlisted member of the NJNG shall be paid a minimum of \$100 of base pay for each day of the member on SAD.

(b) The State shall not provide pay and allowance for SAD service when pay and allowance for such service is provided out of federal funds, unless federal funds are insufficient to provide an officer or enlisted member with the minimum of \$100 for each day of SAD service. This provision shall not limit or restrict the applicability of N.J.S.A. 38A:4-4 to individuals detailed to the Department of Defense in a permanent duty status.

(c) SAD pay will be requested and processed in accordance with the New Jersey National Guard Domestic Operations CONPLAN and current NJ Department of Treasury rules and guidelines.

b. **Immediate Response Authority:** Paragraph 4i of DoD Directive 3025.18 states that in response to a request for assistance from a civil authority, under imminently serious conditions and if time does not permit approval from higher authority, DoD officials may provide an immediate response by temporarily employing the resources under their control, subject to any supplemental direction provided by higher headquarters, to save lives, prevent human suffering, or mitigate great property damage within the United States. This authority is known as Immediate Response Authority (IRA). In the State of New Jersey, the Adjutant General is the only authorizing official for IRA.

(1) An immediate response shall end when the necessity giving rise to the response is no longer present (e.g., when there are sufficient resources available from State, local, and other Federal agencies to respond adequately and that agency or department has initiated response activities) or when the initiating DoD official or a higher authority directs an end to the response. The DoD official directing a response under IRA shall reassess whether there remains a necessity for the DoD to respond under this authority as soon as practicable but, if immediate response activities have not yet ended, not later than 72 hours after the request for assistance was received.

(2) The authority of State officials is recognized to direct a State immediate response using National Guard personnel under State command and control (including personnel in a Title 32 status in accordance with N.J.S.A. 38A:3-2.4 and 3-6.1, but National Guard personnel will not be placed in or extended in Title 32 status to conduct State immediate response activities).

(3) By statute, Title 5 civilians may be utilized to “execute the missions of the National Guard.” By DoD policy, CNGB, in coordination with the Adjutant General, may designate them as “essential personnel.” Designation permits the Title 5 employee to be assigned to duty in preparation for, or in response to, a state emergency or disaster declaration. Designations are time limited to fourteen (14) days unless approved otherwise in advance by CNGB.

(4) Pursuant to the 2019 Domestic Operations Law and Policy, Title 5 NJNG civilian employees who are not designated as “essential personnel” may perform properly directed IRA activities within the limitations of their position description; or within the limitations of “other duties as assigned” if such terminology is included in their existing position description. Utilization of personnel in this manner should be strictly limited to the immediate time period after state emergency or disaster declaration.

c. **Active Guard and Reserve (AGR) During Domestic Response Activities:** Pursuant to paragraph 3-4 of NGR (AR) 600-5 and ANGI 36-101, when a unit is ordered to operational status under Title 32 U.S.C. 502(a), Title 32 U.S.C. 502(f), or SAD status to support a contingency situation, its AGR members may accompany the unit and continue to perform their normal AGR duties.

(1) An AGR member may NOT, by taking leave, be placed in a different military duty status to be used as an individual.

(2) If an AGR member has a critical skill set needed by a deploying unit, that individual may be attached or cross-leveled into the deploying unit if no other reasonable option exists.

(3) For units composed entirely of AGR members and established by law to perform specific functions in contingency situations, such as Civil Support Teams, performing those functions in response to the specified contingency situations falls within their normal AGR duties.

d. **Title 32 Full Time National Guard Duty Operational Support (FTNGDOS) and Full Time National Guard Duty Counter Drug (FTNGDCD):**

(1) Per CNGB Instruction 1302.01, members performing duty under the authority of Title 32 U.S.C. 502(f) will not perform duties that are not specific requirements of the mission for which the members were ordered to duty. If circumstances require a change of duty, Commanders must amend/curtail the current order.

(2) A change in status may affect entitlement to certain benefits and the status change can adversely affect the member. Individual circumstances, such as when member’s dependent is currently undergoing medical treatment, should be considered before ordering such members to support a contingency operation.

e. **Dual Status (Title 32) Military Technicians:**

(1) Per the 2019 Domestic Operations Law and Policy guidance, NG technicians are statutorily limited in the functions they can perform. Their primary functions are to organize, administer, instruct, and train the National Guard of their State. They may also perform certain specified additional duties to the extent that the performance of those duties does not interfere with the performance of their (primary technician) duties.

(a) Pursuant to Enclosure L of CNGBI 1400.25, “(d)ual compensation rules dictate that any employee who performs SAD be required to take a full day of leave for each day of such service, even if the SAD functions are performed after the normal employee working hours. The only exception to this requirement occurs when the employee first learns of the necessity to perform SAD during a workday. In this circumstance, the employee will be required to take leave only for the hours absent from work for the remainder of that day. Employees will be required to take a full day of leave for each subsequent day of SAD. There is no charge of leave when SAD is performed on non-workdays or holidays.”

(b) A technician may be charged leave only for hours that the technician would otherwise have worked and received pay.

(c) If ordered to Title 32 U.S.C. 502(f) status, then the technician must be in an Annual Leave, Compensatory Leave, Time-Off Awards, Military Leave, Law Enforcement Leave, or Leave Without Pay status.

(d) Technicians may not use military leave status while in SAD status.

(2) **Law Enforcement Leave (LEL):** Title 5 U.S.C. 6323 (b) provides for twenty-two (22) LEL workdays (176 hours) per calendar year for emergency duty as ordered by the President, the Secretary of Defense, or the Governor. This leave is provided for employees who perform military duties in support of civil authorities in the protection of life and property or who perform full time military service as a result of a call or order to active duty in support of a contingency operation as defined in Title 10 U.S.C. 101(a)(13). This paid leave is for permanent or indefinite employees. LEL is NOT a dual compensation leave. The LEL days taken under 6323(b) is subject to the provision of Title 5 U.S.C. 5519, which provides that military pay (excluding travel, transportation, or per diem allowance) received for service for days on which civilian pay is received must be offset. Member is entitled to the greatest of his/her civilian pay or his /her military pay, not both.

(3) Military Leave: Title 5 U.S.C. 6323 (a) provides for fifteen (15) days per fiscal year for active duty, active duty training, and inactive duty training to full-time employees whose appointment exceeds one (1) year. An employee can carry over a maximum of fifteen (15) days into the next fiscal year. This leave can be utilized if a technician is ordered to Title 32 U.S.C. 502(f) status to support a contingency situation. This leave can also be utilized by members ordered to duty in Title 10 status who support a domestic contingency situation. This leave status may not be utilized by members on SAD status.

(4) Annual Leave: Technicians may use earned annual leave while in operational Title 32 U.S.C. 502(f) or SAD status to support a contingency situation.

(5) Compensatory Leave:

(a) Technicians may use earned compensatory time off while in operational Title 32 U.S.C. 502(f) or SAD status to support a contingency situation.

(b) Technicians may NOT earn compensatory time while in operational Title 32 U.S.C. 502(f) or SAD status to support a contingency situation.

(6) Time-Off Awards: Technicians may utilize previously earned time off awards while in operational Title 32 U.S.C. 502(f) or SAD status to support a contingency situation.

(7) Leave Without Pay (LWOP):

(a) LWOP is a temporary non-pay status and absence from duty that Technicians may use while in operational Title 32 U.S.C. 502(f) or SAD status to support a contingency situation.

(b) The leave code “Absent – Uniformed Service” or “Military Furlough” is a status that reflects leave without pay due to active military service. This leave code may be utilized for those in Title U.S.C. 32 502(f) status but may NOT be used by those in SAD status.

(c) Employees should be aware that LWOP affects their entitlement to or eligibility for certain Federal benefits, including accrual of annual and sick leave, within-grade increases, and flexible spending account contributions. Full details can be obtained via the Fact Sheet: Effect of Extended Leave Without Pay (LWOP) (or Other Non-pay Status) on Federal Benefits and Programs on [www.opm.gov](http://www.opm.gov).

**f. Title 5 Civilians**

(1) By statute, Title 5 civilians may be utilized to “execute the missions of the National Guard.” By DoD policy, the CNGB, in coordination with the Adjutant General, may designate them as “essential personnel.” Designation permits the Title 5 employee to be assigned to duty in preparation for, or in response to, a state emergency or disaster declaration. Designations are time limited to fourteen (14) days unless approved otherwise in advance by CNGB.

(2) Title 5 employees may utilize Law Enforcement Leave, Military Leave, Annual Leave, Compensatory Leave, Time-Off awards, and/or Leave Without Pay status while in operational Title 32 U.S.C. 502(f) or SAD status to support a contingency situation in accordance with paragraphs 3.e.2 through 3.e.7 above.

The proponent for this Directive is the NJ National Guard, J1 Human Resource Office.

Users are invited to send comments for improvement to:  
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