



DISABLED VETERAN LEAVE

August 17, 2016
Webcast Material



New Law

- Wounded Warriors Federal Leave Act of 2015, Public Law 114-75, November 5, 2015
- Section 2(a) of Act added a new section 6329, Disabled Veteran Leave, in title 5, United States Code
- Section 2(c) provided that section 6329 applies to employees hired on or after November 5, 2016
- Section 2(d) of Act gave the U.S. Office of Personnel Management (OPM) authority to prescribe necessary regulations for all covered Federal employees (except Postal employees)



OPM Regulations

- Proposed regulations with request for comments issued June 6, 2016
- Final regulations issued August 5, 2016
- Effective date is November 5, 2016
- New subpart M added to OPM leave regulations in 5 CFR part 630
- OPM memo to Chief Human Capital Officers issued on August 9, 2016, announcing issuance of regulations and providing summary

<https://www.chcoc.gov/content/disabled-veteran-leave>



Intent of the Law

- Congress was concerned that veterans with a service-connected disability rating of 30 percent or more have zero hours of accrued sick leave when newly hired in a civilian position in the Federal Government.
- Congress wanted such newly-hired veterans to have immediate access to up to 13 days (104 hours) of paid leave so that they did not have to take unpaid leave for treatment of their service-connected injuries.



Who is Covered?

- Employee in civil service (as defined in 5 U.S.C. 2105) (excludes employees of Department of Defense nonappropriated fund instrumentalities).
- Covered by 5 U.S.C. 6329 (i.e., not covered by another authority—Federal Aviation Administration (FAA), Transportation Security Agency (TSA), etc.).
- Veteran with service-connected disability rating of 30% or more (as determined by the Department of Veterans Affairs) who was discharged under conditions other than dishonorable.
- Has scheduled tour of duty (i.e., not an intermittent work schedule or leave-exempt Presidential appointee).
- “Hired” in a covered civilian position on or after Nov. 5, 2016.



Definition of “Hired”

“Hired” means

- Initial appointment in covered position;
- Qualifying reappointment in covered position (break in covered employment of at least 90 days); or
- Return to duty in covered position following military service (performed while in civilian leave status).



Qualifying Service-Connected Disability

- A service-connected disability rating of 30 percent or more.
- Disability rating must be provided by the Veterans Benefits Administration (VBA).
- Includes a VBA rating of one disability rated at 30% or more, or a combined degree of disability of 30 percent or more that reflects the combined effect of multiple individual disabilities.
- Temporary VBA rating issued under 38 U.S.C. 1156 is valid.
- Employee must provide official documentation of the VBA rating to the employing agency.



Benefit Period

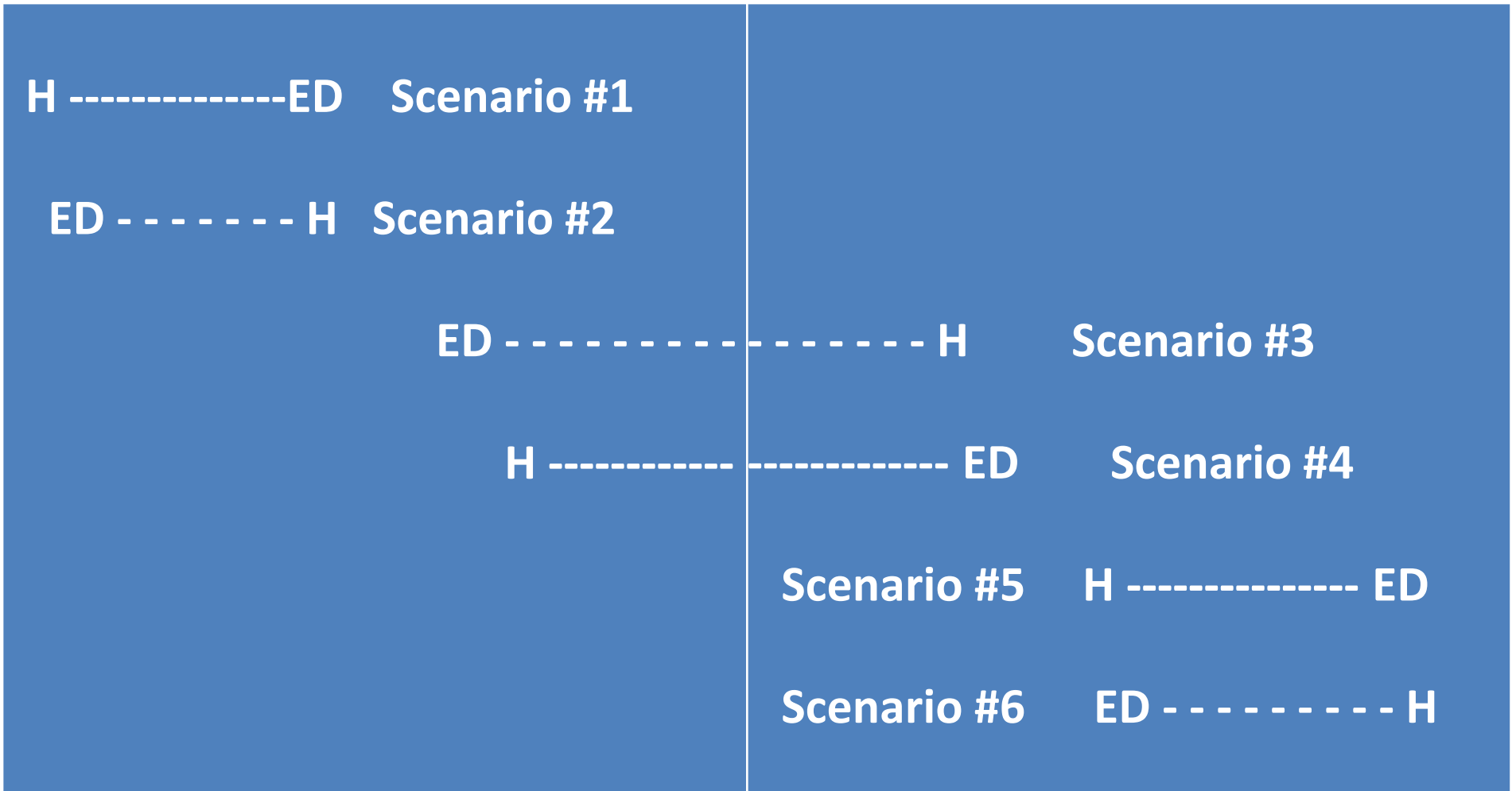
- Single “12-month eligibility period” during which Disabled Veteran Leave may be used.
- Period starts on “first day of employment,” which is the first day as a qualified veteran in a covered position occurring on the **later of—**
 - The earliest date (on or after Nov. 5, 2016) an employee is “hired” after the effective date of a qualifying disability; or
 - The effective date of a qualifying disability (i.e., hiring event before the effective date).

Note: The effective date is generally either the day after the date of military discharge (if person filed disability claim within 1 year of discharge date) or the date the claim was filed.



Determining Eligibility and First Day of Employment

Nov. 5, 2016



H = hiring date, ED = effective date of disability rating



Determining Eligibility and First Day of Employment - Scenarios

Scenario #1 – Employee is not eligible. Hiring date is before November 5, 2016.

Scenario #2 – Employee is not eligible. Hiring date is before November 5, 2016.

Scenario #3 – Employee is eligible. Hiring date is on or after November 5, 2016, and that hiring date is the first day of employment (i.e., the beginning of the 12-month eligibility period).

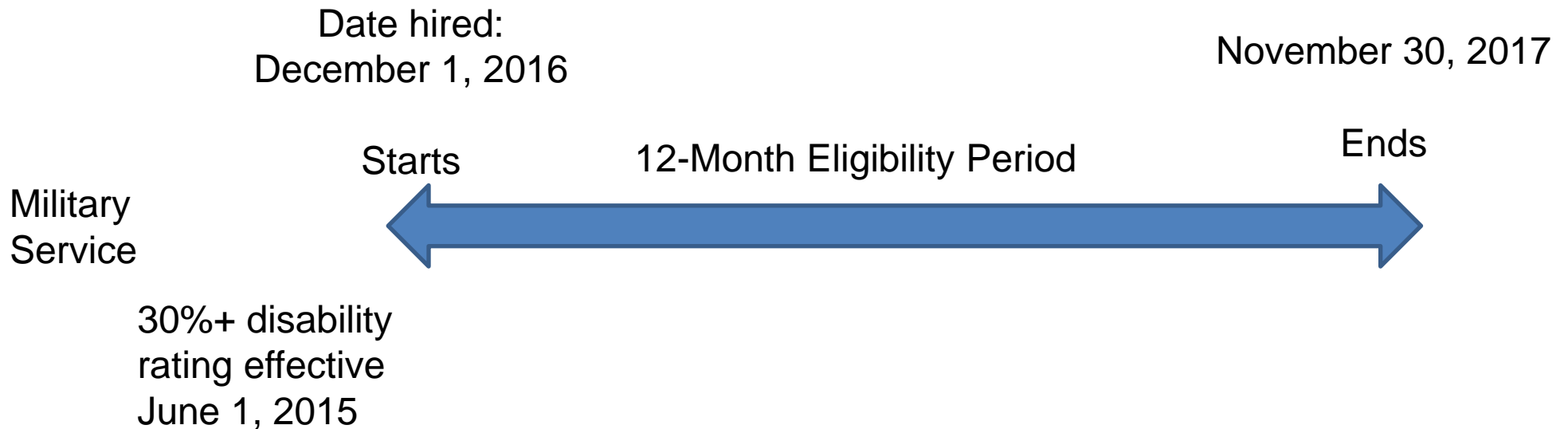
Scenario #4 – Employee is not eligible. Hiring date is before November 5, 2016.

Scenario #5 – Employee is eligible. The first day of employment (i.e., beginning of 12-month eligibility period) would be the effective date.

Scenario #6 – Employee is eligible. The first day of employment (i.e., beginning of 12-month eligibility period) would be the hiring date.



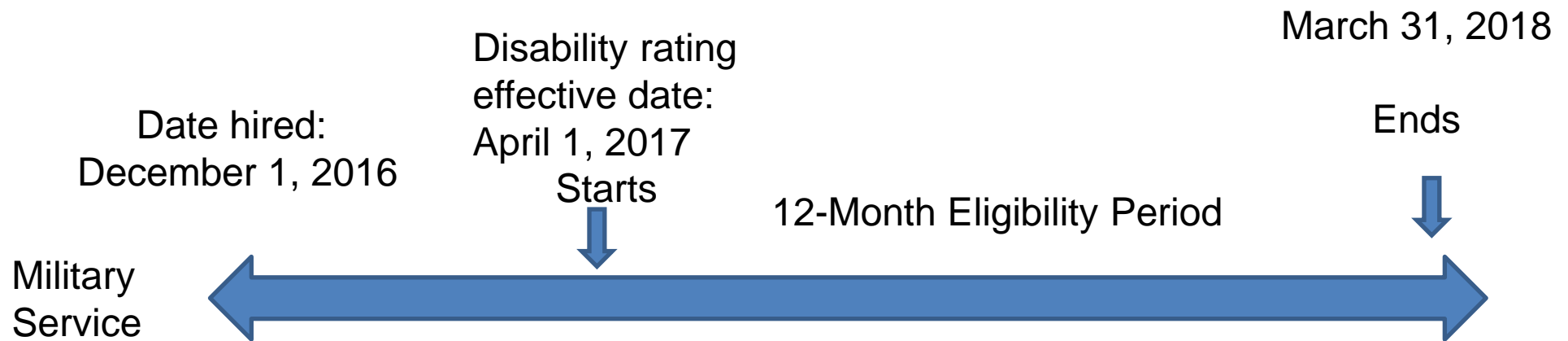
Hiring Date After Effective Date of Disability Rating



An employee's VBA-issued qualifying disability rating is effective before the employee is hired.



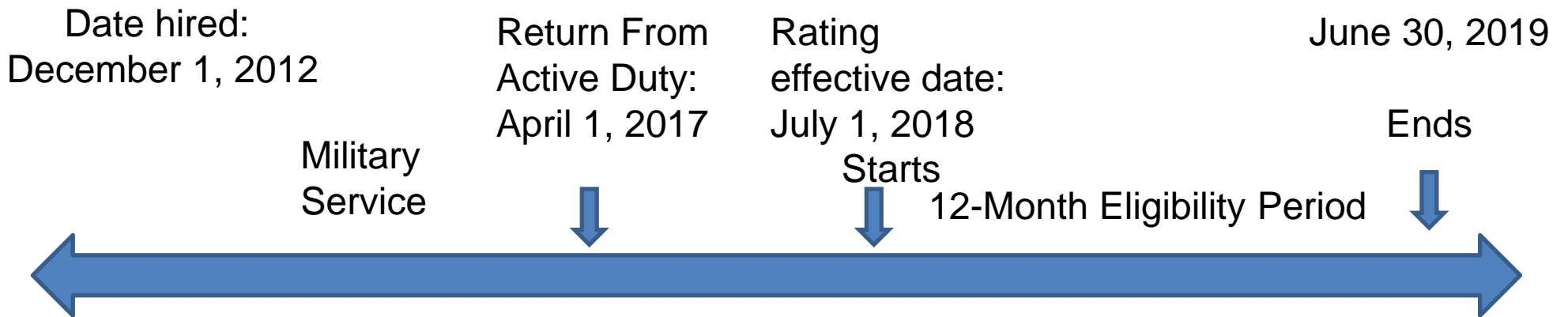
Disability Rating Effective After Hiring Date



The employee's VBA-issued qualifying disability rating is effective after the employee's hiring date. (Note: The amount of creditable leave will be offset by any sick leave balance in effect as of the beginning of the 12-month eligibility period.)



Returning Reservist Timeline



The employee is called up to perform military duty. After his or her return to civilian employment, the employee later establishes eligibility for Disabled Veteran Leave. (Note: The amount of creditable leave will be offset by any sick leave balance in effect as of the beginning of the 12-month eligibility period.)



Leave Benefit

- One-time credit of appropriate amount of leave into an employee's Disabled Veteran Leave account at beginning of the employee's 12-month eligibility period. Leave must be used during that period.
- Separate leave authority. It is not a subset of sick leave.
- Leave benefit expires at end of 12-month eligibility period; unused leave is forfeited (not cashed out).
- 104 hours is credited for regular full-time employee. Leave credit is proportionally adjusted based on work schedule. Leave credit may be subject to offset.



Crediting of Hours by Work Schedule

Work Schedule	# Hours	Example	Offset
Full-time nonseasonal	104	104	Reduced by # of hours of (1) sick leave to employee's credit as of the first day of employment or (2) equivalent Disabled Veteran Leave used under another authority (if in 12-month period)
Part-time nonseasonal	$(h/80) \times 104$	40 hrs./biweekly → 52	
Uncommon tour	$(h/80) \times 104$	144 hrs./biweekly → 187	
Seasonal	$(h/2,080) \times 104$	Full-time for half year (1,040 hours) → 52	



Why is there an offset applied in crediting Disabled Veteran Leave?

- Full crediting was intended for those with zero hours of accrued sick leave as of the first day of employment. Those who are reappointed or returning to civilian duty following military service may have accrued sick leave. Also, those whose qualifying disability rating is effective after being hired may have accrued sick leave.
- Employees may receive an equivalent disabled leave benefit while in a Federal position not covered by 5 U.S.C. 6329 (e.g., FAA or TSA). If an employee is in the 12-month period for that equivalent benefit, leave hours already used must be applied to reduce the hours credited under section 6329.



For what purpose may the leave be used?

- Disabled Veteran Leave may be used only for a purpose meeting both of the following conditions:
 - used for a purpose for which regular sick leave may be used; and
 - used for “medical treatment” of a VBA-approved qualifying service-connected disability.
- Medical treatment must be carried out or prescribed by a “health care provider.”



Health Care Provider

Must be a “health care provider” as defined in OPM’s Family and Medical Leave Act (FMLA) regulations at 5 CFR 630.1202.

Broad definition that includes Christian Science practitioners and Native American traditional healing practitioners.



How does an employee request to use Disabled Veteran Leave?

- An employee must first provide documentation of eligibility for Disabled Veteran Leave.
- An employee must file an application to use credited Disabled Veteran Leave.
- Each agency must determine the manner in which the employee must file the application. This can be written, oral, or electronic.
- The filed application must include a personal self-certification from the employee that the Disabled Veteran Leave is being used in connection with a qualifying disability.
- An employee must request to use the leave in advance unless the need to use the leave is critical.



What additional documentation can the agency request from the employee?

An agency may require that an employee provide medical certification signed by a health care provider to verify that use of the Disabled Veteran Leave was appropriate. The certification may include—

1. A statement by the health care provider that the medical treatment is for a qualifying service-connected disability;
2. The date(s) and time of the treatment;
3. If the leave was not requested in advance, a statement that the treatment was urgent or could not be scheduled in advance; and
4. Any additional information that the agency determines is essential to verify that use of the leave was appropriate.



When does the medical certification need to be provided to the agency?

- If an agency requires medical certification, an employee must provide such documentation no later than 15 calendar days after the agency makes the request to the employee.
- If an agency determines the 15-day deadline is not practical, despite the diligent and good faith efforts of the employee, the employee must provide in a reasonable period of time, but no later than 30 calendar days after the initial agency request.



What happens if the medical certification is not provided?

- If an employee fails to meet the requirement to provide medical certification to the agency, the agency may charge the employee as Absent Without Leave (AWOL).
- The agency can also allow the employee to request that the absence be charged to Leave Without Pay (LWOP), sick leave, annual leave, or other forms of paid time off.

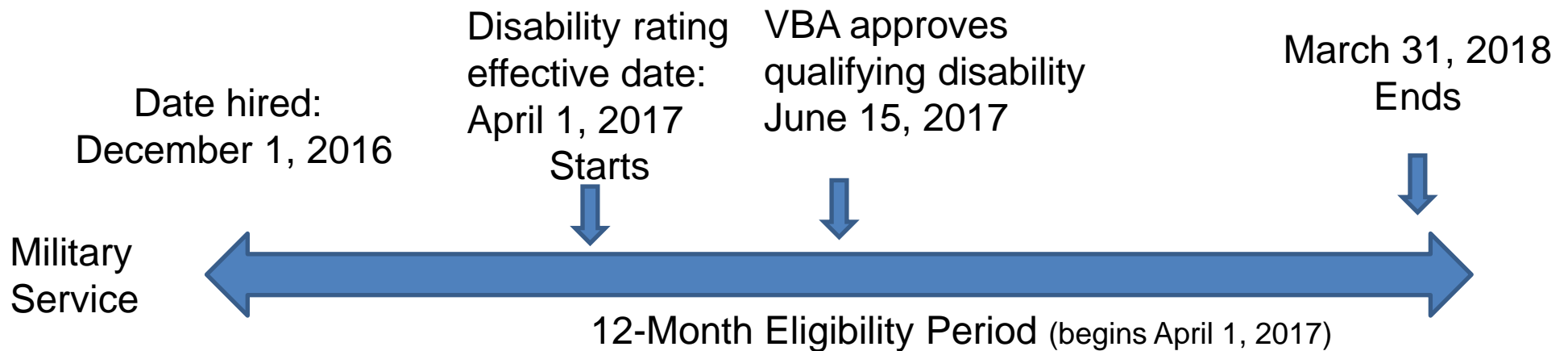


Retroactive Substitution of Disabled Veteran Leave for Other Leave

- If an employee did not provide documentation of eligibility for Disabled Veteran Leave until after a period of absence for a purpose later determined to be qualifying, the employee may retroactively substitute Disabled Veteran Leave during that absence (except for periods of AWOL or suspension). Leave or paid time off that was originally used will be cancelled and replaced.
- The medical treatment must have occurred during the employee's 12-month eligibility period.



Disability Rating Effective After Hiring Date



The employee's VBA-issued qualifying disability rating is effective after the employee's hiring date. The employee had qualifying medical treatment during the April 1, 2017-June 15, 2017 period before the rating was approved; therefore, Disabled Veteran Leave is retroactively substituted.



How does the leave transfer or become reinstated?

- When an employee has a positive leave balance and transfers to a covered position in a different agency during the 12-month eligibility period, the losing agency must certify to the gaining agency—
 - the number of hours of unused leave;
 - the expiration date of the employee’s 12-month eligibility period;
 - other information, as specified by OPM.
- For this purpose “transfer” means movement from a position in one agency to a position in another agency without a break in employment of 1 workday or more.



How does the leave transfer or become reinstated? (continued)

- When an employee has a break in employment of at least 1 workday during the 12-month eligibility period, and later recommences covered employment within the 12-month eligibility period, the employee is entitled to a recredit of any unused balance of Disabled Veteran Leave. The losing agency must certify to the gaining agency—
 - the number of hours of unused leave;
 - the expiration date of the employee’s 12-month eligibility period;
 - other information, as specified by OPM.



Agency Responsibilities

- Inform all current employees about the new leave benefit.
- During the onboarding process, include information about this new benefit in orientation materials.
- Train supervisors, Human Resources staff, and timekeeping employees.
- Develop agency policies within framework of regulations (e.g., policies on approving leave request and on requiring medical certification).
- Establish systems and procedures for tracking the 12-month eligibility period and leave balances.



Agency Responsibilities (continued)

- Make determinations regarding (1) whether employees are eligible to receive Disabled Veteran Leave, (2) the dates of the 12-month eligibility period, and (3) the number of hours to be credited;
- Administer the leave program;
- Document information regarding eligibility period, hours used, and balance of unused hours (so that agencies hiring the employee in the future have access to that information).



Summary

Who: A veteran hired on or after November 5, 2016, with a service-connected disability rating of 30% or more.

What: Up to 104 hours of leave (or proportionally equivalent amount) for purposes of medical treatment related to the rating.

Where: Agencies that are covered under 5 U.S.C. 6329 (i.e., not covered by another authority—FAA, TSA, etc.).

When: A continuous 12-month period beginning on the “first day of employment” which can be either on the hiring date or the effective date of the VBA disability rating (whichever is later).

Why: To provide veterans with a paid time off entitlement when he or she would otherwise have zero sick leave hours in which to attend medical appointments and/or treatments for his/her rated disability.



Background

Statutory Text



Eligibility

5 U.S.C. 6329(a)

(a) During the 12-month period beginning on the first day of employment, any employee who is a veteran with a service-connected disability rated at 30 percent or more is entitled to leave, without loss or reduction in pay, for purposes of undergoing medical treatment for such disability for which sick leave could regularly be used.



Crediting and Forfeiture of Hours

5 U.S.C. 6329(b)

(b)(1) The leave credited to an employee under subsection (a) may not exceed 104 hours.

(2) Any leave credited to an employee pursuant to subsection (a) that is not used during the 12-month period described in such subsection may not be carried over and shall be forfeited.



Usage of Leave

5 U.S.C. 6329(c)

(c) In order to verify that leave credited to an employee pursuant to subsection (a) is used for treating a service-connected disability, such employee shall submit to the head of the employing agency certification, in such form and manner as the Director of the Office of Personnel Management may prescribe, that such employee used such leave for purposes of being furnished treatment for such disability by a health care provider.



Definitions

5 U.S.C. 6329(d)

(d) In this section-

(1) the term "employee" has the meaning given such term in section 2105, and includes an officer or employee of the United States Postal Service or of the Postal Regulatory Commission;

(2) the term "service-connected" has the meaning given such term in section 101(16) of title 38; and

(3) the term "veteran" has the meaning given such term in section 101(2) of such title.



Definition of “Veteran”

38 U.S.C. 101(2):

A person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.