



To enhance mission performance, TSA is committed to promoting a culture founded on its values of Integrity, Innovation and Team Spirit.

NOTE: Pursuant to Section 101 of the Aviation and Transportation Security Act (49 U.S.C. 114(n)), this directive establishes Transportation Security Administration (TSA) policy and supersedes Federal Aviation Administration (FAA) orders, policies, guidance, bulletins regarding uniformed services employment and reemployment issued under the FAA personnel management system. This directive is TSA policy and must be applied accordingly.

REVISION: This revised directive supersedes TSA MD 1100.30-17, *Uniformed Services Employment and Reemployment*, dated December 28, 2006.

SUMMARY OF CHANGES: Section 3, Authorities, provides updated ATSA reference and removes references that are not authorities; Section 4, Definitions, provides additional definitions for clarification; Section 5, Responsibilities, replaces references to OHC Designated Program Officer; Section 6, Policy, clarifies general standards for reemployment and requirements for determining that reemployment is impossible or unreasonable; material which previously appeared in Section 7, Procedures, has been moved to the accompanying Handbook.

1. **PURPOSE:** This directive establishes TSA policy and procedures for employment and reemployment of members of the uniformed services, consistent with the provisions of 38 U.S.C. §§ 4301-4334 and the Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994, as amended.
2. **SCOPE:** This directive applies to all TSA organizational elements and employees, with the limitations noted herein for positions in the Transportation Security Officer (TSO) career progression.
3. **AUTHORITIES:**
 - A. Public Law 107-71, the Aviation and Transportation Security Act, (ATSA)
 - B. Sections 403(2) and 423 of the Homeland Security Act of 2002
 - C. Applicable TSA and U.S. Department of Homeland Security delegations of authority
 - D. 38 U.S.C. §§ 4301-4334, the Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994, as amended
4. **DEFINITIONS:**
 - A. Management Official(s): Any TSA employee who is a higher-level official in the employee's chain of supervision, such as a supervisor or manager (e.g., Office Director, Assistant Administrator, Federal Security Director, Special Agent in Charge).

- B. Position of Record: The TSA position, as documented on the employee's most recent Standard Form 50, *Notification of Personnel Action* and current Job Analysis Tool (i.e., job/position description), to which the employee was officially assigned at the time of his/her entry into uniformed service. The position of record is defined by the title, pay band, occupational category, occupational (job) series, work schedule type, and any other condition(s) that determine coverage under the TSA Core Compensation system. A position to which, or in which, an employee is temporarily detailed, acting, or temporarily promoted is *not* considered the position of record for that employee.
- C. Reemployment or Restoration: Restoring an employee to TSA's employment rolls (if he/she is no longer on TSA employment rolls), or returning him/her to pay and duty status (if he/she is still on the rolls) after service in the uniformed services. For the purposes of this directive, restoration and reemployment have the same meaning.
- D. Service in the Uniformed Services: Performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority. Service in the uniformed services includes active duty, active and inactive duty for training, National Guard duty under Federal statute, and a period for which a person is absent from a position of employment for an examination to determine the fitness of the person to perform such duty. The term also includes a period for which a person is absent from employment to perform funeral honors duty as authorized by law (10 U.S.C. §12503 or 32 U.S.C. §115). The Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Pub. L. 107-188, provides that service as an intermittent disaster-response appointee upon activation of the National Disaster Medical System (NDMS) or as a participant in an authorized training program is deemed "service in the uniformed services."
- E. TSA Employee: For the purposes of this directive, all persons appointed to a position with TSA.
- F. TSO/TSOs: TSA employee(s) assigned to a TSO, Lead TSO, or Supervisory TSO position(s) and/or any other position(s) that contain(s) "TSO" in the position title and is/are considered to be part of the TSO career progression, but which does not include any managerial positions.
- G. Uniformed Services: The Armed Forces; the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty; the commissioned corps of the Public Health Service; and any other category of persons designated by the President in time of war or national emergency. For purposes of USERRA coverage only, service as an intermittent disaster response appointee of the NDMS when federally activated or attending authorized training in support of their Federal mission is deemed "service in the uniformed services," although such appointee is not a member of the "uniformed services" as defined by USERRA.

5. RESPONSIBILITIES:

- A. The Assistant Administrator for Human Capital (AA/OHC), or his/her designee, is responsible for taking final action on behalf of TSA to resolve issues or inquiries, or to respond to complaints related to rights, benefits, or obligations under USERRA and this directive.

- B. The Office of Human Capital (OHC) is responsible for providing advice and guidance related to the application of this directive to specific situations and recommending disposition of employee requests related to uniformed services employment or reemployment. OHC is responsible for consulting with management officials, and the Office of Chief Counsel (OCC), to determine appropriate agency action and recommend final disposition to the AA/OHC.
- C. Management officials, either alone or through their administrative staff, are responsible for:
 - (1) assisting their current or former employees in obtaining and understanding the contents of this directive;
 - (2) reviewing, approving, and submitting for processing any necessary actions within their delegated authority related to uniformed services employment or reemployment in accordance with the provisions of this directive; and
 - (3) consulting with OHC and/or OCC attorney(s) for clarification and assistance, as needed, where there is any question as to the appropriate action to take.

6. POLICY:

- A. TSA is committed to protecting the employment and reemployment rights of employees who voluntarily or involuntarily leave TSA employment to undertake uniformed service or certain types of service in the NDMS. TSA is also committed to prohibiting discrimination against past and present members of the uniformed services, and applicants to the uniformed services. When TSA employees either voluntarily or involuntarily perform active duty service in the uniformed services, TSA will, to the extent possible, and without undue hardship to the agency, provide the appropriate employment and reemployment benefits as provided in 38 U.S.C. §§ 4301-4334, the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended (USERRA).
- B. Due to the limiting provisions of ATSA, TSOs are not within the definition of “employees” under USERRA. TSA is, however, committed to treating both TSO and non-TSO employees similarly, to the greatest extent possible, with regard to uniformed services employment and reemployment benefits. Where possible, and without undue hardship to the agency, TSA will endeavor to uphold the spirit of USERRA by applying to TSOs the same processes and procedures applicable to non-TSO employees, subject to the limitations set forth herein. Provisions of 5 CFR §§ 353.101-353.304 and 20 CFR Part 1002 may be used for guidance in applying this directive in TSA. Nothing in this directive shall be construed, however, as providing TSA employees with substantive legal rights not otherwise available by operation of law, nor shall this directive confer or consent to jurisdiction of any judicial or administrative body responsible for enforcing USERRA rights, except as explicitly provided herein.
- C. Limited circumstances may preclude TSA from reemploying an employee returning from service in the uniformed services who otherwise meets all USERRA reemployment eligibility requirements.
 - (1) Specifically, TSA is not required to reemploy a returning employee if TSA’s circumstances have so changed as to make reemployment impossible or unreasonable,

or, under certain circumstances, if the reemployment would create an undue hardship on TSA.

- (2) Furthermore, nothing in this directive or under USERRA requires that TSA establish and fill a position of a type and/or in a location where it would not otherwise exist, waive established promotion procedures, or waive or modify qualification requirements or certification standards that are necessary to perform the essential duties or functions of a position.
- (3) Before denying reemployment to a TSA employee who meets all established reemployment requirements, management officials shall review the considerations and the justification for denying reemployment, and fully comply with the processes outlined in the Basic Procedures section of [TSA MD 1100.30-17, Handbook on Uniformed Services Employment and Reemployment](#).

7. PROCEDURES: Refer to [TSA MD 1100.30-17, Handbook on Uniformed Services Employment and Reemployment](#).

8. EFFECTIVE DATE & IMPLEMENTATION: This policy is effective immediately upon signature.

APPROVAL

Signed

9/8/2009

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Date

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