

MEMORANDUM

State of Alaska
Department of Administration
Division of Personnel

To: All Division of Personnel Staff
Date: November 16, 2005

Thru: Mila Cosgrove
Director

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Subject: Personnel Memorandum 06-01
USERRA; effect of leave without pay on
probationary periods and merit anniversary dates

Further review of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) and relevant court decisions revealed that a change in practice regarding the return of a probationary employee upon release from military service when the absence is covered under USERRA is necessary. This memorandum supercedes guidance provided in Personnel Memorandum 02-03, #5.

Effective immediately, when a probationary employee returns from military leave, the employee's permanent status eligibility and merit anniversary dates will be advanced one month for every 23 days of leave without pay. However, once the employee successfully completes the probationary period, permanent status and the subsequent merit increase, if appropriate, must be granted retroactive to the date the employee would have been eligible had it not been for military service.

When a permanent employee incurs leave without pay due to military service, the employee's merit anniversary date is not advanced if it is determined that within reasonable certainty the employee would have been granted the merit increase if it were not for military service. "Reasonable certainty" is demonstrated if the employee was granted a merit increase on his/her last merit anniversary date. The only exception is if the employee was granted a merit increase due to the supervisor's failure to deny the merit increase through a written performance evaluation prior to the merit anniversary date, and there is a performance evaluation on record which documents that the merit increase would have been denied if the evaluation had been prepared timely.

Please do not hesitate to contact me if you have any questions regarding this practice.

cc: Art Chance, Director, Division of Labor Relations
Kim Garner, Director, Division of Finance