



Richard Wrenn

National President

Amend 32 U.S.C. § 709 to Eliminate Impediments to Recruitment and Retention of National Guard Technicians

Recruitment and retention of National Guard technicians has become increasingly difficult due to Guard managers' erosion of the promise of career employment that Congress embraced in enacting the original 1968 National Guard Technicians Act, P.L. 90-486.

Other disincentives to become and remain a Guard technician include unwarranted restrictions that deny technicians TRICARE health care benefits and military re-enlistment bonuses—both of which are provided to Guard members who are not technicians. Ineligibility of Guard technicians to receive overtime pay is another unwarranted restriction.

Our separate paper shows that TRICARE discrimination against technicians (and other federal employees) should be eliminated by amendment of 10 U.S.C. § 1076d. Restoration of the promise of career technician employment; and elimination of the prohibition against overtime pay, re-enlistment bonus discrimination, and any similar discrimination against technicians should be accomplished by amendment of 32 U.S.C. § 709.

Restore the Promise of Career Technician Employment

When Congress enacted the Technicians Act in 1968, Senate Report 1446 expressly stated on page 12 that Guard technicians who properly do their jobs should be retained in the military and employed until they reach age 60, normal retirement age. In recent years, however, the National Guard increasingly has used military Retention Boards to terminate technicians' military membership—and consequently their eligibility to remain employed as technicians—long before they reach normal retirement age. These terminations are not for cause or unsatisfactory performance, but primarily just to make way for younger, less experienced military members—an appropriate reason as to infantry, but an irrational reason as to technicians who are, predominantly, equipment maintainers or office workers. Retention Board deliberations are secret, and the Boards state no reasons for their decisions.

Technicians whose military memberships are terminated by Retention Boards typically are in their 40s and are veterans of overseas deployments. They find themselves in mid-career with a family to support, no income, no affordable health insurance, and an uncertain future.

To avoid this harsh situation, technicians approaching imminent vulnerability to potential Retention Board separation have a strong incentive to search for other employment. And, of course, the technicians most likely to do so successfully are the best and the brightest.

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Vulnerability to mid-career separation by a Retention Board, moreover, is an impediment to recruitment of persons who are eligible for technician employment—such as former Regular Active Duty veterans who have transferred to the Guard—and who are aware of this vulnerability and have other attractive options. Again, the candidates most likely to have other options and to be deterred by this vulnerability are the best and the brightest.

Currently, 32 U.S.C. § 709(f)(1) states:

(1) a person employed under subsection (a) who is a military technician (dual status) and otherwise subject to the requirements of subsection (b) who—

(A) is separated from the National Guard or ceases to hold the military grade specified by the Secretary concerned for that position shall be promptly separated from military technician (dual status) employment by the adjutant general of the jurisdiction concerned; and

(B) fails to meet the military security standards established by the Secretary concerned for a member of a reserve component under his jurisdiction may be separated from employment as a military technician (dual status) and concurrently discharged from the National Guard by the adjutant general of the jurisdiction concerned;

Thus, current law leaves technicians vulnerable to mid-career termination of their employment by decision of a Retention Board that operates secretly and gives no reasons for its decisions.

To restore the original promise of career technician employment—employment until normal retirement (or disability retirement), § 709(f)(1) should be amended to state:

(1) a person employed under subsection (a) who is a military technician (dual status) and otherwise subject to the requirements of subsection (b) who—

(A) is separated from the National Guard for cause or ceases to hold the military grade specified by the Secretary concerned for that position shall be promptly separated from military technician (dual status) employment by the adjutant general of the jurisdiction concerned, except as provided in paragraph (B);

(B) is separated from the National Guard by reason of a disability that disqualifies the person from military membership, and who applies for disability retirement, shall continue to be employed under subsection (a), and shall not be subject to the requirements of subsection (b), until determination by the Office of Personnel Management of the person's entitlement to disability retirement;

(C) is separated from the National Guard other than for cause shall continue to be employed under subsection (a), and shall not be subject to the requirements of subsection (b); and

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(D) fails to meet the military security standards established by the Secretary concerned for a member of a reserve component under his jurisdiction may be separated from employment as a military technician (dual status) and concurrently discharged from the National Guard by the adjutant general of the jurisdiction concerned;

Proposed new paragraph (C) does not prohibit military separation of technicians by Retention Boards; rather, it preserves career technician employment by providing that such no-cause military separation is not a ground for termination of civilian technician employment.

Proposed new paragraph (B) ensures that employment of technicians separated militarily for disability will continue until determination of their entitlement to either regular disability retirement under 5 U.S.C. § 8451 or special technician retirement under 5 U.S.C. § 8456—as a longstanding, but now rescinded, National Guard Bureau policy previously provided.

These technicians automatically are entitled at least to special technician disability retirement; but Office of Personnel Management policy precludes implementation of this entitlement until the Office determines whether they are entitled to regular disability retirement. In the vast majority of cases, disabled technicians are entitled only to special technician disability retirement, not regular disability retirement; but the Office normally requires many months to make this determination. Retention during these months is necessary to ensure that disabled technicians are not subjected to an unwarranted interruption of income.¹

End Re-Enlistment Bonus Discrimination and Similar Discrimination

Under current policy, a technician has an incentive to remain in the Guard militarily but leave technician employment for non-technician federal employment, or a private sector or State or local government job. Leaving technician employment for these other options triggers entitlement to military re-enlistment bonuses, which are denied to technicians.

This incentive to leave technician employment, or not accept it in the first place, should be eliminated by amendment of 32 U.S.C. § 709(d). Subsection (d) currently states, “The Secretary concerned shall designate the adjutants general referred to in section 314 of this title to employ and administer the technicians authorized by this section.” Subsection (d) should be amended to state:

¹ Current policy allows separation of disabled technicians, with total termination of income, while they wait months for determination of their disability retirement eligibility. The guaranteed retirement entitlement, once determined, is retroactive to the date of separation; but current policy essentially asks disabled technicians, “Why are you worried about starving for six months when your guaranteed retroactive entitlement will enable you to have a feast once the big lump of retroactive benefits arrives?” The disabled technician’s answer is, “I and my family may not survive until that lump arrives; and my spouse, impoverished for months and cognizant of my disability, may have no faith in what I say about my guaranteed benefits and, to protect our children, may move on.” Current policy is tone deaf to such potential reality.

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The Secretary concerned shall designate the adjutants general referred to in section 314 of this title to employ and administer the technicians authorized by this section. Technicians subject to the requirements of subsection (b) are entitled as members of the National Guard to all benefits, including re-enlistment bonuses, provided to members of the National Guard who are not employed under this section.

Provide Eligibility for Overtime Pay

Currently, 32 U.S.C. § 709(h) states:

(h) Notwithstanding sections 5544(a) and 6101(a) of title 5 or any other provision of law, the Secretary concerned may prescribe the hours of duty for technicians. Notwithstanding sections 5542 and 5543 of title 5 or any other provision of law, such technicians shall be granted an amount of compensatory time off from their scheduled tour of duty equal to the amount of any time spent by them in irregular or overtime work, and shall not be entitled to compensation for such work.

Mission requirements sometimes require overtime work over an extended period of time, resulting in accumulation of amounts of compensatory time off so large that they cannot be fully used, without mission impairment, by the current use-or-lose deadline—twenty-six pay periods. Section 709(h) should be amended, as follows, to afford discretion to grant overtime pay instead of compensatory time off and to require substitution of overtime pay for any compensatory time off that technicians are not permitted to use within twenty-six pay periods of its accrual:

(h) Notwithstanding sections 5544(a) and 6101(a) of title 5 or any other provision of law, the Secretary concerned may prescribe the hours of duty for technicians. Such technicians shall be granted an amount of compensatory time off from their scheduled tour of duty equal to the amount of any time spent by them in irregular or overtime work, may instead of that time off be granted overtime pay at the rate of one and a half times their normal pay rate, and shall be entitled to substitution of such overtime pay for any accrued compensatory time off that they are not permitted to use within fifty-two weeks of its accrual.

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