

ET HANDBOOK NO. 384
UNEMPLOYMENT COMPENSATION FOR EX-SERVICEMEMBERS (UCX)

CHAPTER 1 - ADMINISTRATION

1. History of Unemployment Compensation for Ex-Servicemembers (UCX) Program. The Ex-Servicemen's Unemployment Compensation Act of 1958, Public Law 85-848, added Section 1511, which is now known as Unemployment Compensation for Ex-Servicemembers (UCX), Title XV of the Social Security Act. In 1966, Public Law 89-554 repealed Title XV, including Public Law 85-848, codifying the UCX requirements in Chapter 85, Title 5, and Section 1919, Chapter 93, Title 18, U.S. Code (These may be cited as 5 U.S.C. Chapter 85 and 18 U.S.C. 1919). In 1982, Public Law 97-362 amended 5 U.S.C. 8521 to increase the amount of active duty 90 continuous days to be considered "Federal Service" for UCX purposes, to require a 4-week waiting period before UCX benefits were payable, and to limit the duration of benefits to 13 times the weekly benefit amount (WBA).

In 1991, Public Law 102-164 amended 5 U.S.C. 8521(a) by reducing the amount of active duty in a reserve from 180 continuous days to 90 continuous days necessary to be considered "Federal service" for UCX purposes. The Act also repealed provisions of 5 U.S.C. 8521(c) which required a 4-week waiting period and a 13 times WBA maximum benefit amount.

References to Veterans' Reemployment Rights (VRR) are drawn from 38 U.S.C. 2021-2026.

2. General Legal Provisions of 5 U.S.C. Chapter 85. Under the provisions of 5 U.S.C. Chapter 85, the U.S. Secretary of Labor is authorized to issue rules and regulations as may be necessary to carry out the provisions of the Act. The implementing regulations are published at 20 CFR Part 614.

To be entitled to UCX benefits, the ex-servicemember must have performed active Federal military service. The period of active military service must have terminated under honorable conditions and meet requirements of Federal law (5 U.S.C. 8521 et seq.). Federal findings with respect to military service are final and not subject to adjudication under State law.

To establish entitlement and eligibility for UCX benefits, Federal military service and wages will be assigned to the State, including either the District of Columbia, the Commonwealth of Puerto Rico, or the Virgin Islands, as the case may be, in which the first intrastate or interstate claim for unemployment compensation (whether State unemployment insurance (UI), unemployment compensation for Federal employees (UCFE), UCX, or

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some combination thereof) that establishes a benefit year is filed after the most recent separation from Federal military service. When the first claim filed is an interstate claim, the wages are assignable to the agent State. **NOTE:** The benefit year established does not have to be in the State where the claim is filed. (Refer to Chapter II, page II-9 and Chapter III, page III-5.)

An ex-servicemember filing a claim for UCX benefits is subject to the same entitlement and eligibility provisions as an individual claiming benefits based on State-covered employment and wages. Except that, a State shall not apply eligibility provisions of the State UI law to UCX claimants with respect to reasons for separation from (1) active military service; or (2) a failure to seek or accept employment with a pre-service employer.

3. State's Agreement with Secretary. Under 5 U.S.C. 8502, the Secretary is authorized to enter into an agreement with each State to administer the UCX program. Except as required by the Act, Regulations and Secretary's opinions, the State is required to determine entitlement and eligibility and make unemployment compensation payments to ex-servicemembers under the same terms and conditions as it would have had their Federal military service and wages been included as employment and wages covered under the UI law of the State to which such military service and wages are assigned.

4. UCX Benefit Payments in Absence of a State Agreement. The Federal UCX law (5 U.S.C. 8503) provides that if Federal military service and wages are assignable to a State which has no administrative agreement with the Secretary, the Secretary shall administer the UCX program for ex-servicemembers filing against such service and wages and shall make determinations and payments under the same terms and conditions as would have applied under the State's law if the State had an agreement with the Secretary.

If the ex-servicemember has sufficient State covered employment and wages to establish a benefit year, the UCX payment by the Secretary shall represent only the amount by which a joint UI-UCX benefit amount exceeds the actual or potential UI benefit amount whether or not the individual has filed a claim for UI benefits.

If the claimant needs both State and Federal employment and wages to qualify, the Secretary will determine and pay the individual's entitlement based on the combined total of all base period employment and wages.

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5. State Administration of the UCX Program.

a. Coordination of UCX Activities. In order to assure that UCX operations are coordinated within the organizational framework of the State's UI program, it is recommended that an individual within the agency's central office be designated, with sufficient authority and staff assistance, to carry out the following responsibilities:

- Ensuring that appropriate UCX procedural instructions are promptly prepared and distributed both in the central and local (or area) offices.

- Making on-site appraisals on the effectiveness of, and adherence to, procedures, with particular emphasis on claims determination and payment operations.

- Developing methods to ensure the use of Federal military service and wages, when applicable.

- Making recommendations for the training of claims taking, interviewing, processing, adjudication, and appeals personnel.

- Ensuring uniform interpretation of the UCX requirements within the State agency, including the requirement to determine UCX claimants entitlement and eligibility under the same terms and conditions as apply to State UI claimants.

- Ensuring that UCX control data is transmitted via the appropriate interstate network to the LCCC immediately upon the filing of a new claim.

- Coordinating visits to military installations responsible for the separation of active military servicemembers, when considered necessary.

b. Administrative Procedures and Forms. In carrying out its responsibility to administer the UCX program, the State agency should use the same procedures and forms as apply to individuals filing under the State program, except in situations where there are Federally prescribed procedures or forms.

The following forms are Federally prescribed:

(1) ETA 841 (formerly ES 970), Request for Determination of Federal Military Service and Wages; and

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(2) ETA 843, Request for Military Document/Information for Unemployment Compensation Purposes - UCX.

State agencies are responsible for reproducing the ETA 841 and ETA 843, with the appropriate State agency organizational designation on each form. Refer to Chapter IV, Item 4.e. for authorized adaptations of these forms. **NOTE:** The Office of Management and Budget (OMB) approval numbers are no longer required on UCX program forms.

6. Finality of Federal Findings. In accordance with 5 U.S.C. 8523(b), State agencies and the Secretary must accept as final and conclusive information contained in military documents, including the DD Form(s) 214/215, or decisions furnished by the appropriate branch of the service concerning: (1) whether the person performed active military service; (2) the beginning and ending dates of each period of such service; (3) number of days lost, if any, during periods of active duty; (4) the type of discharge or release from the latest period of Federal military service, including the, "Upgraded Character of Discharge;" and (5) the narrative reason for separation. Such decisions of the military services are not subject to modification or reversal by the Secretary or a State's appellate authority.

7. Re-employment Rights of Ex-servicemembers Under Federal Statute. Federal statutes (38 U.S.C. Chapter 43) provide certain legal rights to re-employment with pre-service employers for individuals who leave employment to enter U.S. military service for extended active duty, active duty for training, and inactive duty training. These rights apply whether the individual enlisted, was inducted, or entered active duty from a reservist, voluntarily or involuntarily. Re-employment rights apply to all private employers; the executive, legislative, and judicial branches of the Federal government; all branches of the government of the District of Columbia; and the U.S. Postal Service. Such rights also may be afforded by State governments and their political subdivisions pursuant to the requirements contained in 38 U.S.C. 2021(c).

State agency employees are not expected to advise persons of their re-employment rights, but claims interviewers need to know whether ex-servicemembers have taken the steps available to them to obtain re-employment.

However, to exercise re-employment rights under Federal law, an ex-servicemember generally must apply for re-employment with the pre-service employer within 90 days after discharge or release

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from active military service or from hospitalization "continuing after discharge for a period of not more than one year" (38 U.S.C. 2021(a)). In some cases, a shorter period is provided to exercise re-employment rights. A member of a reserve component who is ordered to an initial period of active duty for training of not less than 12 consecutive weeks must exercise re-employment rights within 31 days after release from active duty or discharge from hospitalization incident to that active duty, provided hospitalization is not for more than 1 year after scheduled release from duty (38 U.S.C. 2024(c)).

Under the Federal law, the pre-service employer is required to place the ex-servicemember requesting re-employment in the job he/she would have attained had he/she not been absent in military service or a job of like seniority, status and pay. Re-employment rights in the job to which the returning ex-servicemember is entitled include the right to the seniority status which would have accrued with his/her pre-service employer, but for military service, and to promotions and pay increases and certain other advantages he/she would have received if military service had not intervened (38 U.S.C. 2021(a)(2)(B)(b)).

The above paragraphs describe some of the highlights of Federally mandated re-employment rights. However, an ex-servicemember's specific rights under Federal law must be determined in each case. If an ex-servicemember request information concerning re-employment rights or help in safeguarding such rights, the person should be referred to the nearest Local Veterans' Employment Representative (LVER). The LVER will refer the individual to the proper authorities in the State offices of the Veterans Employment and Training Service, U.S. Department of Labor.

8. Other Cooperative Arrangements With Departments or Agencies. In addition to the agreement between the Secretary and each State agency to operate the UCX program, other cooperative arrangements with respect to the program have been entered into as follows:

a. Department of Defense (DOD). The DOD has agreed that each branch of the service will provide an individual being separated, from active U.S. military service, with general information pertaining to the UCX program at the time it issues a DD Form 214, Certificate of Release or Discharge From Active Duty. For UCX determination purposes, each branch of service also includes information pertaining to the number of days of military accrued leave for which a lump-sum payment was made and the dates of "days lost", etc., on the DD Form 214. The DOD also maintains the DOL's Federal schedule of remuneration for use in

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determining the wage credits of UCX claimants and agrees that, upon request, each branch of service, will provide a replacement DD Form 214 and essential information missing from the form.

b. Department of Justice (DOJ). The DOJ and the Federal Bureau of Investigation (FBI) have agreed with the DOL that the authority to investigate criminal fraud matters arising from and pertaining to the UCX program shall be vested in the U.S. Department of Labor's Office of the Inspector General (OIG). When fraud is detected, if prosecution is warranted, the case will be referred to the appropriate U.S. Attorney's office.

c. Louisiana Claims Control Center (LCCC). The Louisiana Department of Labor (LADOL) and the Dallas Regional Office have an agreement with the DOL National Office for the operation of the LCCC by the LADOL, on a fiscal year basis, beginning October 1 and ending September 30 of each year. The purpose of the agreement is to define the roles of the State, and the Regional and National Offices of the Employment and Training Administration, essential to the operation and maintenance of the UCX claims control function.

9. Visit to the Military Separation Installation. The purpose of a visit to a military separation installation is to ensure that the staff understands the requirements to provide correct and complete UCX program information to servicemembers at the time of their separation.

If possible, arrangement should be made to attend an exit orientation for military personnel being separated to ensure that accurate UCX information is provided.

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a. Authorizing Memorandum from Asst. Secretary of DOD.



OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D. C. 20301

JAN 10 1980

MANPOWER,
RESERVE AFFAIRS
AND LOGISTICS

(Military Personnel Policy)

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY (MARA)
ASSISTANT SECRETARY OF THE NAVY (MNAI)
ASSISTANT SECRETARY OF THE AIR FORCE (MRAFI)

SUBJECT: Visits to Military Separation Activities for Review of DD
Forms 214 Operations

Representatives of the U.S. Department of Labor and/or State Employment Security Agencies are authorized to make on-site visits to ensure for unemployment insurance purposes that military separation activities are performing the several requirements, listed below, related to issuance of DD Forms 214 required by DoD Instruction 1336.1, "Certificate of Release or Discharge from Active Duty (DD Form 214/5 Series)."

1. Promptly mailing Copy No. 5 of DD Form 214 to the U.S. Department of Labor Design Center, Baton Rouge, Louisiana, within one day of the individual's separation date.
2. Emphasizing, to individuals being processed for separation, the importance of Copy No. 4 of DD Forms 214 and 215 in obtaining veterans' benefits, including unemployment insurance; and
3. Completing appropriate items on Copy No. 5 of DD Form 214, including character of service, and dates of time lost, which are used by State Employment Security Agencies to determine a separatee's entitlement to unemployment compensation for ex-servicemen (UCX) under the Federal law, Subchapter II of 5 U.S.C. 8501, et seq. Valid DD Forms 214 must be presented in person in a local unemployment insurance office of a State Employment Insurance Office of a State Employment Security Agency in order to establish entitlement to UCX benefits.

On-site visits will be conducted as follows:

1. Representatives of the Department of Labor and/or State Employment Security Agency will make a formal written request to the separation activity for permission to make the visit. The individual(s) who will make the visit will be identified in the request which will also specify the proposed date and time for the visit.

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2. The appropriate administrative authority for the military separation activity will make a prompt written reply to the above request. If the visit is authorized, the visitors will be informed specifically, as to the time and place of the visit and military personnel to contact. Also, the visitors will be informed as to what identification they will be expected to provide or obtain in order to be admitted to the separation activity.

3. At the completion of the visit, military personnel at the separation activity will be furnished a copy of the report prepared by the representative making the visit.



R. Dean Tice
Major General, USA
Deputy Assistant Secretary of Defense

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b. Frequency of Visits. The UCX program coordinator should visit each military separation installation (Air Force, Army, Coast Guard, Marine Corps, and Navy) at least once in each 2-year period. More frequent visits may be made if the State agency determines that a military separation facility does not properly complete the information on the DD Form 214 necessary to the determination of military service and wages under the UCX program. Such a facility may be identified from Item 8 of the incomplete DD Form 214s.

c. Request for Visit. To request a visit, the Officer in charge of the separation installation should be contacted. In scheduling a visit, the purpose of the visit should be thoroughly explained and a firm commitment should be obtained including the name(s) of personnel to contact.

If a military separation installation refuses to permit a State agency representative to make a UCX visit, or does not allow the representative to review pertinent military documents, the State agency should notify the appropriate ETA Regional Office, providing details of the refusal with reference the requirements of this Handbook. The problem will be resolved by the ETA Regional or National Office.

d. Preparation for Visit. The State representative should prepare and carry a copy of the memorandum, from the Office of the Assistant Secretary of Defense to all Assistant Secretaries of the branches of military service, provided in "a" above. The representative should also prepare a review outline to record the information necessary to complete a summary of the visit in accordance with "f" below.

The State representative should be prepared to present proper State agency issued identification, and should arrange to obtain military installation vehicle permits, as required.

e. Review to be Conducted. Review at least 10 copies of DD Form 214 or, if unavailable, the DD Form 214 worksheet. Some branches of service will not have a copy of the actual DD Form 214 on file at the military installation, but will have a DD Form 214 worksheet. Do not include in the review DD Form 214s issued to re-enlistees.

f. Report of Visit. The State agency representative should complete a "Summary of UCX Military Visit", and send it to the National Office, via the appropriate ETA Regional Office within 15 days after the visit. A copy of the report is also to be sent to the military installation visited.

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(1) Facsimile.

SUMMARY OF UCX MILITARY VISIT

State of _____ Date of Visit: _____

Name of Military Installation: _____
Location: _____

Name and Title of
Military Personnel Contacted: _____

Name and Title of RO/SESA
Persons Who Made the Visit: _____

1. After review of DD Forms 214 and discussion with military separation installation's personnel, answer the following questions, "Yes" or "No".

a. Separates informed at the time of release from active military service of their UCX rights and responsibilities?..... _____

b. If exit orientation was attended, was the UCX information given the separates adequate and accurate? . _____

c. Were they informed that Copy No. 4 of DD Form 214 is needed, if separates apply for UCX benefits? _____

d. Is DD Form 214 issued to each individual separated from any period of active military service, including active duty for training (ACDUTRA) or full-time training duty (FTTD), for 90 days, and for less than 90 days if separated due to a service-incurred injury or disability, as provided by DOD Instruction 1336.1? _____

e. Were individuals who "...served under special active duty for training programs..." of 90 days or more for the National Guard or Reserves issued DD Forms 214 as required by DOD Instruction 1336.1, (1/6/89)? _____

2. How many cases were the following items not completed?
Total Number Reviewed:..... _____

a. Character of Service..... _____

b. SSA Number..... _____

c. E, W, or O grade..... _____

d. Entry and separation dates..... _____

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