

CHAPTER 17

EMERGENCY ESSENTIAL CIVILIANS SUPPORTING MILITARY OPERATIONS

REFERENCES

1. Criteria for Designating Emergency Essential Employees, 10 U.S.C. § 1580.
2. Anthrax Notification Requirements, 10 U.S.C. § 1580a.
3. U.S. DEP'T OF DEFENSE DIR. 1404.10, DoD CIVILIAN EXPEDITIONARY WORKFORCE (23 Jan. 2009).
4. U.S. DEP'T OF DEFENSE DIR. 1400.31, DoD CIVILIAN WORK FORCE CONTINGENCY AND EMERGENCY PLANNING AND EXECUTION (28 Apr. 1995).
5. U.S. DEP'T OF DEFENSE INSTR. 1400.32, DoD CIVILIAN WORK FORCE CONTINGENCY AND EMERGENCY PLANNING GUIDELINES AND PROCEDURES (24 Apr. 1995).
6. U.S. DEP'T OF DEFENSE INSTR. 1000.13, IDENTIFICATION CARDS FOR MEMBERS OF THE UNIFORMED SERVICES, THEIR DEPENDENTS, AND OTHER ELIGIBLE INDIVIDUALS (23 Jan. 2014).
7. U.S. DEP'T OF DEFENSE INSTR. 5525.11, CRIMINAL JURISDICTION OVER CIVILIANS EMPLOYED BY OR ACCOMPANYING THE ARMED FORCES OUTSIDE THE UNITED STATES, CERTAIN SERVICE MEMBERS, AND FORMER SERVICE MEMBERS (3 Mar. 2005).
8. U.S. DEP'T OF ARMY, REG. 690-11, USE AND MANAGEMENT OF CIVILIAN PERSONNEL IN SUPPORT OF MILITARY CONTINGENCY OPERATIONS (26 May 2004).
9. U.S. DEP'T OF AIR FORCE, INSTR. 36-3026_IP (AR 600-8-14), IDENTIFICATION CARDS FOR MEMBERS OF THE UNIFORMED SERVICES, THEIR ELIGIBLE FAMILY MEMBERS, AND OTHER ELIGIBLE PERSONNEL (17 June 2009) (Joint Instruction Adopted by Order of the Secretaries of the Air Force, Army, Navy, Marine Corps and Coast Guard).
10. U.S. DEP'T OF ARMY, PAM. 690-47, DA CIVILIAN EMPLOYEE DEPLOYMENT GUIDE (1 Nov. 1995).
11. Army Civilian Personnel Online (CPOL) “Civilian Deployment/Mobilization” guidance, *available at* <http://cpol.army.mil/library/mobil/civ-mobil.html>.
12. Army Civilian Personnel Online (CPOL) “Anthrax Immunization and Emergency Essential Civilians (EECs) Policy”, *available at* <http://cpol.army.mil/library/permis/114dd.html>
13. Office of Personnel Management, “Pay & Leave: Pay Administration” *available at* <http://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/#url=Combat-Zone-Employees>
14. Department of State Office of Allowances (Foreign Post Differential and Danger Pay Allowance), *available at* <http://www.state.gov/m/a/als>.
15. Limitation on Premium Pay, 5 U.S.C. § 5547 (2000).
16. Federal Employees’ Compensation Act (FECA), 5 U.S.C. § 8101 (2000).
17. Hours of Duty, 5 C.F.R. § 610.
18. Military Extraterritorial Jurisdiction Act (MEJA) of 2000, 18 U.S.C. § 3261.

I. INTRODUCTION

A. Throughout our history, civilians have accompanied the force during operations. Recent operations highlight civilian employees’ importance to the military mission. Civilian employees perform a number of jobs formerly held by Soldiers, in areas as diverse as recreation specialists and intelligence analysts. Civilian employees’ importance is reflected in the following Department of Defense (DoD) Directive:

DoD civilian employees are an integral part of the Total Force. They serve in a variety of positions, provide essential capabilities and, where appropriate for civilians to do so, support mission requirements . . .¹

B. An understanding of the process for designating, training, and directing the efforts of emergency-essential (EE) civilians while deployed is essential for Judge Advocates (JA) advising commanders.

¹ U.S. DEP'T OF DEFENSE DIR. 1404.10, DoD CIVILIAN EXPEDITIONARY WORKFORCE para. 4.a (23 Jan. 2009).

II. DESIGNATING EMERGENCY-ESSENTIAL POSITIONS

A. An EE employee is one in a position that is designated to support the success of combat operations or the availability of combat-essential systems in accordance with 10 U.S.C. § 1580. EE civilians are not contractor employees. DoD officials should identify a subset of the DoD civilian workforce as the DoD Civilian Expeditionary Workforce. These civilian employees are organized, ready, trained, cleared, and equipped in a manner that enhances their availability to mobilize and respond urgently to expeditionary requirements.² The timeframes during which the DoD Civilian Expeditionary Workforce is susceptible to expeditionary assignments will be designated in six-month rotational periods. Individual deployment tours shall not exceed two years. Consecutive deployments should generally not be approved without at least a 90-day period of reintegration between deployments and assurance that medical clearance requirements are met. Civilian manpower requirements are determined based on DoD Instruction 1100.22.

B. The specific crisis situation duties, responsibilities, and physical requirements of each EE position must be identified and documented to ensure that EE employees know what is expected. Documentation can include annotation of EE duties in the existing peacetime position descriptions, a brief statement of crisis situation duties attached to position descriptions if materially different than peacetime duties, or separate EE position descriptions.

C. DoD Civilian Expeditionary Workforce positions should be pre-identified whenever practicable. Applicants for vacant EE and noncombat essential (NCE) positions must sign DD Form 2365 as a condition of employment. Job announcements and position descriptions must contain a statement that the position is designated EE or NCE, that it is part of the DoD Civilian Expeditionary Workforce, and that signing the form is a condition of employment.³

D. Management must give DoD civilian employees whose positions are identified as EE or NCE as much notice as possible. Generally at least 90 calendar days advance notice of the EE or NCE designation is provided to the employee. The incumbents shall be asked to accept the new designation of the position as an EE or NCE position and to sign the DD Form 2365 as a condition of continued employment. If an incumbent employee is unable or unwilling to accept such requirements, then every effort will be undertaken to reassign the employee to a different position, consistent with the needs of the DoD mission and approval of management.⁴

E. DoD civilian employees in E-E or NCE positions may be directed to accept deployment requirements of the position. However, whenever possible, the DoD Civilian Expeditionary Workforce will be asked to serve expeditionary requirements voluntarily.⁵

F. The EE position designation is included in the position description of each EE-identified position.
Example:

This position is emergency-essential. In the event of a crisis situation, the incumbent, or designated alternate, must continue to perform the EE duties until relieved by proper authority. The incumbent, or designated alternate, may be required to take part in readiness exercises. This position cannot be vacated during a national emergency or mobilization without seriously impairing the capability of the organization to function effectively; therefore, the position is designated “key,” which requires the incumbent, or designated alternate, to be screened from military recall status.

G. **DoD Civilian Expeditionary Workforce.** Members of the DoD Civilian Expeditionary Workforce shall be organized, trained, cleared, equipped, and ready to deploy in support of combat operations by the military; contingencies; emergency operations; humanitarian missions; disaster relief; restoration of order; drug interdiction; and stability operations of the DoD in accordance with DoDD 3000.05.⁶ DoD Civilian Expeditionary Workforce will be coded as:⁷

² *Id.* para. 4.b.

³ *Id.* para. 4.e.

⁴ *Id.*

⁵ *Id.* para. 4.d.

⁶ *Id.* para. 1.a.

⁷ *Id.* para. 4.d.

a. **Emergency Essential (EE).** A position-based designation to support the success of combat operations or the availability of combat-essential systems, in accordance with section 1580 of title 10, United States Code, and will be designated as Key.

b. **Non-Combat Essential (NCE).** A position-based designation to support the expeditionary requirements in other than combat or combat support situations and will be designated as Key.

c. **Capability-Based Volunteer (CBV).** An employee who may be asked to volunteer for deployment, to remain behind after other civilians have evacuated, or to backfill other DoD civilians who have deployed to meet expeditionary requirements in order to ensure that critical expeditionary requirements that may fall outside or within the scope of an individual's position are fulfilled.

d. **Capability-Based Former Employee Volunteer Corps.** A collective group of former (including retired) DoD civilian employees who have agreed to be listed in a database as individuals who may be interested in returning to Federal service as a time-limited employee to serve expeditionary requirements or who can backfill for those serving other expeditionary requirements. When these individuals are re-employed, they shall be deemed CBV employees.

e. **Key Employees.** DoD civilian employees in positions designated as E-E and/or NCE will be designated Key in accordance with DoDD 1200.7.⁸

H. The FY 2001 National Defense Authorization Act amended Title 10, U.S. Code, to require that EE civilians be notified of anthrax immunization requirements. The most recent guidance on the Anthrax Vaccine Immunization Program can be found at <http://www.anthrax.mil>. The notification requirement applies to both current and new EE employees. The notice must be written, and the employee must sign to acknowledge receipt. File a copy of the notice and acknowledgement with the signed DD Form 2365. A sample notice follows:

This is to notify you that your position has been designated as emergency essential. You may be required, as a condition of employment, to take the series of anthrax vaccine immunizations, to include annual boosters. This may also include other immunizations that may in the future be required for this position, or for a position you may fill as an emergency-essential alternate. Failure to take the immunizations may lead to your removal from this position or separation from Federal service. [Acknowledgement: This is to acknowledge that I have read and fully understand the potential impact of the above statement. (employee signature and date)].

I. Notice of the anthrax vaccine requirements must also be included in all vacancy announcements for EE positions. The notice may mirror that provided above.

J. Personnel selected for, or occupying, EE and alternate positions will meet the medical fitness and physical requirements of the job, as determined by the combatant or major command commander. Any special medical fitness requirements must be job-related and/or theater-specific.

K. By memorandum dated March 30, 1999, the Under Secretary of Defense made it mandatory for all military personnel and Department of Defense emergency essential civilian employees and contractor personnel assigned, deployed or on temporary duty in high threat areas and contiguous waters of Southwest Asia for one day or more, to be vaccinated against anthrax. Countries included are Kuwait, Saudi Arabia, Bahrain, Jordan, Qatar, Oman, United Arab Emirates (UAE), YEMEN, Israel and the Korean Peninsula. In those situations where existing EECs refuse to be vaccinated, Army policy requires that management first consider taking a non-adverse action, such as a reassignment to a non-EEC position; identification of an alternate employee who is willing to be immunized and serve as an EEC; curtailment of tour, etc. If none of these are possible, the EEC could be subject to adverse actions, up to and including, removal from the federal service for failure to meet a condition of employment. This is very similar to the position that Army has taken on applying drug testing and the Lautenberg Amendment to employees already in covered positions.⁹

L. Future job announcements for new EEC recruitment actions in high threat areas should specifically identify that the anthrax vaccination is a condition of employment of the position. Newly hired EECs should also be required

⁸ *Id.*

⁹ Army Civilian Personnel Online (CPOL) "Anthrax Immunization and Emergency Essential Civilians (EECs) Policy", available at <http://cpol.army.mil/library/permis/114dd.html>

to acknowledge and accept this requirement in writing prior to entry on duty. This requirement is currently being incorporated in the new version of Army Regulation 690-11, Planning For and Management of Civilian Personnel in Support of Military Contingency Operations.¹⁰

III. DEPLOYMENT PREPARATIONS

A. **Identification.** Issue Geneva Convention Identity Cards to EE employees, or employees occupying positions determined to be EE. Emergency essential employees shall also be issued passports, visas, country clearances, and any required security clearances.

B. **Documentation.** Civilian employees must fill out DD Form 93, “Record of Emergency Data.” Components will establish procedures for storing and accessing civilian DD Forms 93. Civilian casualty notification and assistance should be the same as, or parallel to, that provided to military personnel.

C. **Clothing and Equipment Issue.** All deploying Department of the Army (DA) civilians are expected to wear the appropriate military uniform, as determined and directed by the theater commander. Department of the Army Pamphlet 690-47 and AR 670-1 contain more details on the issuance and wear of military uniforms and equipment. Maintenance and accountability of military uniforms and equipment is the employee’s responsibility. Personal clothing and care items are also the responsibility of the individual. Civilian employees should bring work clothing required by their particular job.

D. **Training Requirements.** Training for civilian employees who are part of the DoD Civilian Expeditionary Workforce shall consist of initial orientation upon becoming part of the DoD Civilian Expeditionary Workforce, annual refresher training, pre-deployment (including theater-specific) training, as well as on the job training, and post-deployment reintegration training, as appropriate and practicable. Training shall also cover topics, to include, but not limited to, the use of any required specialized equipment needed for their specific missions such as vehicles and communication systems, obtaining medical treatment, and on recognizing stress-related conditions that may result from serving expeditionary requirements. Of particular interest to Judge Advocates, members of the DoD Civilian Expeditionary Workforce shall receive training on their legal status under the Uniform Code of Military Justice in accordance with Public Law 109-364 (2006), the Military Extraterritorial Jurisdiction Act under DoDI 5522.11, SECDEF Memorandum, and implementing regulations.¹¹

E. **Medical and Dental Care.** All DoD civilian employees who encumber an E-E or NCE position are required to have an annual health assessment to determine whether the employee is available for worldwide deployment. DoD civilian employees designated as CBVs and former DoD employees will undergo a health assessment to determine whether they can meet a specific expeditionary requirement. Force health protection pre- and post-health assessments shall be conducted for DoD civilian employees in accordance with DoDI 6490.03. DoD civilian employees who become ill, contract diseases, or who are injured or wounded while deployed in support of U.S. military forces engaged in hostilities are eligible for medical evacuation and health care treatment and services in military treatment facilities (MTFs) at no cost to the civilian employee and at the same level and scope provided to military personnel. Deployed DoD civilian employees who were treated in theater continue to be eligible for treatment in an MTF or civilian medical facility for compensable illnesses, diseases, wounds, or injuries under the Department of Labor Office of Workers’ Compensation Program (DOL OWCP) (5 U.S.C. §§ 8101-8173) upon their return at no cost to the civilian employee. DoD civilian employees who deployed and are subsequently determined to have compensable illnesses, diseases, wounds, or injuries under the DOL OWCP programs also are eligible for treatment in an MTF or civilian sector medical facility at no cost to the civilian employee.¹²

F. **Administrative Preparedness.** Members of the DoD Civilian Expeditionary Workforce receive a valid Official Passport, Common Access Card, Geneva Conventions Identification Card, and required security clearances, when appropriate. DoD civilian employees who are part of the DoD Civilian Expeditionary Workforce are required to maintain current and valid administrative documents and clearances and current Family Care Plans.¹³

¹⁰ *Id.*

¹¹ DoDD 1404.10, *supra* note 1, para. 4.g (23 Jan. 2009).

¹² *Id.*

¹³ *Id.*

G. Legal Assistance. Legal assistance, including wills and any necessary powers of attorney relating to deployments, is available to EE civilians notified of deployment, as well as their families, and will be available throughout the deployment. It is limited to deployment-related matters as determined by the on-site supervising attorney. DoD civilian employees who are serving with the Armed Forces of the United States in a foreign country (and their family members who accompany them) are eligible to receive legal assistance (without limitation) (see AR 27-3, para. 2-5a(6)(b)).

H. Weapons Certification and Training. Under certain conditions, and subject to weapons familiarization training in the proper use and safe handling of firearms, EE employees may be issued a personal military weapon for personal self-defense. Acceptance of a personal weapon is voluntary. Authority to carry a weapon for personal self-defense is contingent upon the approval and guidance of the Combatant Commander. Only Government-issued weapons/ammunition are authorized. Civilians may not be assigned to guard duty or perimeter defense or to engage in offensive combat operations.¹⁴

IV. COMMAND AND CONTROL DURING DEPLOYMENTS

A. During deployments, EE civilians are under the direct command and control of the on-site supervisory chain, which will perform the normal supervisory functions, such as performance evaluations, task assignments and instructions, and disciplinary actions.

B. On-site commanders may impose special rules, policies, directives, and orders based on mission necessity, safety, and unit cohesion. These restrictions need only be considered reasonable to be enforceable.

V. COMMON ISSUES DURING DEPLOYMENTS

A. Accountability. The Army has developed an automated civilian tracking system called Civilian Tracking System (CIVTRACKS) to account for civilian employees supporting unclassified military contingencies and mobilization exercises. CIVTRACKS is a web-based tracking system designed to allow input of tracking data from any location with Internet access; its use is required. It is the employee's responsibility to input his/her data into CIVTRACKS, and data should be entered each time there is a change in duty location while deployed, to include the initial move from home station. The employee's home station is responsible for providing the employee a deployment card with user identification and password for access to CIVTRACKS (<https://cpolrhp.belvoir.army.mil/civtracks/default.asp>).

B. Tour of Duty. The administrative workweek constitutes the regularly-scheduled hours for which an EE civilian must receive basic and premium pay. Under some conditions, hours worked beyond the administrative workweek may be considered to be irregular and occasional, and compensatory time may be authorized in lieu of overtime/premium pay. The in-theater commander or his/her representative has the authority for establishing and changing EE tours of duty. The in-theater commander will establish the duration of the change.

C. On-Call Employees. Emergencies or administrative requirements that might occur outside the established work hours may make it necessary to have employees "on-call." On-site commanders may designate employees to be available for such a call during off-duty times. Designation will follow these guidelines: (1) a definite possibility that the designated employee's services might be required; (2) required on-call duties will be brought to the attention of all employees concerned; (3) if more than one employee could be used for on-call service, the designation should be made on a rotating basis; and (4) the designation of employees to be "on-call" or in an "alert" posture will not, in itself, serve as a basis for additional compensation (i.e., overtime or compensatory time). If an employee is called in, the employee must be compensated for a minimum of two hours.

D. Leave Accumulation. Any annual leave in excess of the maximum permissible carry-over is automatically forfeited at the end of the leave year. Annual leave that was forfeited during a combat or crisis situation determined by appropriate authority to constitute an exigency of the public business may be temporarily restored. However, the employee must file for carry-over. Normally, the employee has up to two years to use restored annual leave.

¹⁴ Army Civilian Personnel Online (CPOL) "Requirements for Emergency Essential (E-E) Employees", available at <http://cpol.army.mil/library/permis/114c.html>

E. **Pay and allowances during deployments.** Special pay and benefits apply to eligible civilian Federal employees assigned to duty in certain combat zones such as Iraq and Afghanistan. DoD administers many of the pay and benefits programs provided to Federal civilian employees working in overseas locations, including combat zones. Pay and benefits may vary depending on the employee's pay system, assignment location, scope and nature of duties, and nature of assignment. Effective January 1, 2012, section 1104 of Public Law 112-81, December 31, 2011, extends to calendar year 2012 the authority provided in section 1101(a) of Public Law 110-417, October 14, 2008, as amended by section 1103 of Public Law 111-383, January 7, 2011, for the head of an agency to waive the premium pay cap provisions under 5 U.S.C. 5547.¹⁵

F. The Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101 et seq, provides comprehensive workers' compensation coverage for deployed employees in zones where armed conflict may take place. (See also 20 C.F.R Part 10, Federal (FECA) Procedure Manual and related guidance available from the website identified below.) A wide variety of benefits are available under FECA including medical and wage loss benefits, schedule awards for permanent impairment due to loss of hearing, vision or certain organs, vocational rehabilitation for injured employees; survivor benefits are available if an employee is killed in performance of duty or if an employee later dies from a covered injury. The Department of Labor's Office of Workers' Compensation Programs is authorized to pay an additional death gratuity of \$100,000 to the survivor(s) of an "employee who dies of injuries incurred in connection with the employee's service with an Armed Force in a contingency operation."

G. **Foreign Duty Pay (FPD).** Employees assigned to work in foreign areas where the environmental conditions either differ substantially from CONUS conditions or warrant added compensation as a recruiting and retention incentive, are eligible for FPD after being stationed in the area in excess of forty-one days. FPD is exempt from the pay cap and is paid as a percentage of the basic pay rate, not to exceed 25% of basic pay. The Department of State (DoS) determines which areas are entitled to receive FPD, the FPD rate for the area, and the length of time the rate is in effect. Different areas in the same country can have different rates.

H. **Danger Pay Allowance (DPA).** Civilian employees serving at or assigned to foreign areas designated for danger pay by the Secretary of State (SECSTATE) because of civil insurrection, civil war, terrorism, or wartime conditions which threaten physical harm or imminent danger to the health or well being of a majority of employees stationed or detailed to that area, will receive DPA. The allowance will be a percentage of the employee's basic compensation at the rates of 15, 20, or 25 percent, as determined by the SECSTATE. This allowance is in addition to any FPD prescribed for the area, but in lieu of any special incentive differential authorized the post prior to its designation as a DPA area. For employees already in the area, DPA starts on the date of the area's designation for DPA. For employees later assigned or detailed to the area, DPA starts upon their arrival in the area. For employees returning to the post after a temporary absence, it starts on the date of return. DPA will terminate with the close of business on the date the Secretary of State removes the danger pay designation for the area, or on the day the employee leaves the post, for any reason, for an area not designated for DPA. DPA paid to Federal civilian employees should not be confused with Imminent Danger Pay (IDP) paid to the military. IDP is triggered by different circumstances, and is not controlled by the SECSTATE.

I. **Life Insurance.** Going to a combat zone can be considered "a life event" that allows employees an opportunity to elect different health insurance coverage or enhanced life insurance coverage. Federal civilian employees are eligible for coverage under the Federal Employees Group Life Insurance (FEGLI) program. Death benefits (under basic and all forms of optional coverage) are payable regardless of cause of death. Civilians who are deployed with the military to combat support roles during times of crises are not "in actual combat" and are entitled to accidental death and dismemberment benefits under FEGLI in the event of death. Similarly, civilians carrying firearms for personal protection are not "in actual combat."

J. **Discipline.** For information regarding MEJA, see the chapter on "Contingency Contractor Personnel" in this handbook.

VI. CONTRACTOR EMPLOYEES

For contractor issues during deployment, see the chapter entitled "Contingency Contractor Personnel."

¹⁵ Office of Personnel Management "Pay & Leave: Pay Administration" available at <http://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/#url=Combat-Zone-Employees>.