



## **HUMAN RESOURCES**

<i>Division:</i>	ADMINISTRATION
<i>Chapter:</i>	HUMAN RESOURCES
<i>Policy:</i>	HR 1.1 - MILITARY LEAVE
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## PREFACE

The Department of Public Safety (DPS) complies with the Office of State Personnel Policy governing Military Leave which is administered in accordance with North Carolina General Statute 127A-116 and the Uniformed Services Employment and Reemployment Rights Act of 1994.

Leave shall be granted to employees for certain periods of service in the uniformed services. No employee of the State shall discriminate against any employee or applicant for employment because of their membership, application for membership, performance of service, application for service or obligation for service in the Uniformed Services.

## Eligibility

- A. All full-time or part-time (half-time or more) permanent, trainee, probationary or time-limited employees.
- B. Temporary, intermittent, or less than half-time employees are not eligible.

Note: Although temporary employees are not eligible for military leave benefits, they are covered under the reinstatement policies.

## Responsibilities

- A. Management
  - 1. To determine the employee's eligibility for military leave with or without pay;
  - 2. To explain and provide notification to the employee on their rights, benefits and responsibilities concerning military leave and of their rights under the Uniformed Services Employment and Reemployment Rights Act; and
  - 3. To provide a copy of the employees' Military Leave and Earnings Statement or similar document to the DPS Payroll Office if the employee has submitted it to the work location.
- B. Employee

1. The employee or an appropriate officer of the military service in which such service is to be performed shall provide written and verbal notice of such service &/or service schedule changes as soon as it is known.
2. The employee shall provide a copy of their Leave and Earnings Statement or similar document covering the periods eligible for differential pay to the respective work site or DPS Payroll Office;
3. The employee shall be responsible for returning, or making application for reinstatement, within the time limits as defined in this policy;
4. The employee shall notify management of any decision not to return from military leave; and
5. To receive retirement credit for their period of active duty, employees must submit a copy of the DD214 or similar document along with a Form 462 to the Retirement System.

## Military Leave with Pay

### A. Active Duty Training and Inactive Duty Training

#### 1. Entitlement

Leave with pay, up to the maximum of 120 hours (prorated for part-time employees), shall be granted during each Federal fiscal year beginning October 1 through September 30 when performing:

- a) Active duty for training (annual training or special schools, including an authorized training program for the National Disaster Medical System)
- b) Inactive duty training (drills – usually on weekends)

#### 2. Leave Options

- a) Employees projected to be out of work for 15 consecutive calendar days or greater from the first day the employee is absent on his/her standard work schedule shall be placed on a standard Monday-Friday, forty hour work schedule (D01N08GN).
- b) If the drill is not scheduled on the employee's off-days, the employee has the option of:
  - i. Requesting that the work schedule be rearranged, or
  - ii. Requesting the use of any unused portion of the 120 hours of military training leave
  - iii. Requesting the use of vacation/bonus leave (written request required)
  - iv. Requesting leave without pay.

- c) Additional military leave needed for training shall be charged to Approved Leave or leave without pay at the discretion of the employee. If the employee chooses Approved Leave, it will be applied in the order of the leave hierarchy for Approved Leave (holiday comp, overtime, gap hours, on-call, travel comp, vacation and bonus).
- d) Applicable military leave for training shall be documented in the BEACON/SAP system with the Attendance/Absence (A/A) code 9620 for Military Training Leave. While exhausting applicable leave for military training, employees will receive holidays as they occur.
- e) Hours worked in excess of the employee's established work schedule will be used to offset military leave (A/A 9620) reported in the same overtime period. Military leave will be restored to the employee's balance for later use.
- f) While exhausting applicable leave benefits for military active duty/inactive duty training and the employee remains out on military training leave with pay for 15 or more consecutive calendar days, the employee shall be placed on Leave of Absence (LOA) for Military Training. After all applicable leave benefits have been exhausted for military active duty/inactive duty training and the employee remains out on military training leave without pay for 15 consecutive calendar days or greater, the employee shall be placed on Leave of Absence (LOA) for Extended Military. Please see the Leave of Absence (LOA) procedures section in this policy for processing instructions.

### 3. Retention of Benefits – Active Duty Training and Inactive Duty Training

Leave of Absence (LOA) retention of benefits for this section are the same as those under the Extended Active Duty and Other Military Leave Without Pay section in these procedures.

#### B. Physical Examination

1. Employees shall be granted leave with pay for a required physical examination relating to membership in the uniformed services.
2. This additional period of military leave with pay shall not be deducted from the 120 hours of military leave with pay for active/inactive duty training and is for actual time away from the regular work schedule including reasonable travel time not to exceed the employee's standard hours of work (i.e., 8 hours or 12.25 hours).
3. It is recorded in the BEACON/SAP system with the Attendance/Absence (A/A) code 9630 for Military Active Duty. Comments must be entered in the BEACON/SAP system indicating "this period of military leave with pay for physical examination is not deducted from the 120 hours."

## C. Reserve Active Duty

### 1. Entitlement

- a) Leave with full pay, up to the maximum of 30 calendar days (prorated for part-time employees), shall be granted during each period of involuntary service when ordered to State or Federal active duty or as an intermittent disaster-response appointee upon activation of the National Disaster Medical System. This includes special activities of the National Guard, usually not exceeding one day, when authorized by the Governor or his authorized representative.
- b) This leave does not accrue as a quota bucket in the BEACON/SAP system and is not subject to leave offsetting.

### 2. Leave Options

- a) Employees projected to be out of work for 15 consecutive calendar days or greater from the first day the employee is absent on his/her standard work schedule shall be placed on a standard Monday-Friday, forty hour work schedule (D01N08GN).
- b) Prior to the 30 calendar days of full pay, the employee may choose:
  - i. To have accumulated vacation/bonus leave paid in a lump sum (maximum of 240 hours of vacation leave)
  - ii. To have vacation/bonus leave exhausted or retained (part or all) until return
  - iii. FLSA non-exempt employees may exhaust any compensatory time prior to exhausting leave or it may be paid in a lump sum
  - iv. The employee shall retain any unused sick leave.
- c) Employees must make their election of vacation/bonus and compensatory leave in writing.
- d) If an employee has holiday comp, overtime, gap hours, on-call or travel compensatory time, it shall be taken before vacation/bonus leave.
- e) The applicable 30 calendar days of full pay shall be documented in the BEACON/SAP system with the Attendance/Absence (A/A) code 9630 for Military Active Duty.
- f) Eligible holidays that occur during the 30 calendar days of full pay shall be paid out separately upon processing of the Leave of Absence (LOA) action for military duty.
- g) While exhausting applicable leave benefits for military reserve active duty and the employee remains out on military duty with pay for 15 or more consecutive calendar days, the employee shall be placed on Leave of Absence (LOA) as follows:
  - i. LOA-Reserve Active Duty (Leave): For employees choosing to exhaust accrued leave prior to reserve active duty leave,
  - ii. LOA-Reserve Active Duty (30 Calendar Days): For employees exhausting the 30 calendar days of Reserve Active Duty military leave,
  - iii. LOA-Reserve Active Duty: For employees who have exhausted all applicable leave benefits (accrued leave and the 30 calendar day benefit) and remains out on military reserve active duty

iv. Please see the Leave of Absence (LOA) procedures section in this policy for processing instructions.

3. Retention Of Benefits - Reserve Active Duty

a) Differential Pay

- i. Employees shall receive differential pay for any period of involuntary service following the 30 calendar days of full pay. This pay shall be the difference between military basic pay and the employee's annual State salary, if military pay is the lesser. Effective July 1, 2009, differential pay meets the statutory definition of 'compensation' for retirement purposes. Thus, retirement contributions should be reported to the Retirement System on differential pay.
- ii. The employee is required to provide a copy of the employees' Military Leave and Earnings Statement or similar document to their work unit or DPS Payroll Office covering the period eligible for differential pay.

Note: It is assumed that an employee had at least satisfactory performance when placed on military leave; therefore, any cost-of-living adjustment should be included in the differential pay. The addition of career growth adjustments or performance bonuses is determined in the same manner as any employee on leave without pay.

- b) Service Credit: During the period of reserve active duty, whether receiving full State pay, differential pay, or no pay, the employee shall not incur any loss of total State service.
- c) Longevity Pay: If eligible, the employee shall continue to be paid longevity payments during the period of reserve active duty. The Human Resources Office will maintain appropriate records to ensure proper payment.
- d) Leave: The employee shall continue to accumulate sick and vacation leave. The Human Resources Office will calculate leave earnings and credit to the employee's leave quotas in BEACON/SAP upon the employee's reinstatement. If the employee does not return to State employment, vacation leave earned while on reserve active duty will be paid in accordance with the Vacation Leave Policy.

Note: Vacation leave in excess of 240 hours as of December 31st is converted to sick leave.

- e) Holidays: Any holidays that were advanced prior to the employee going on military leave without pay shall be deducted from the pay due. Upon reinstatement, the employee shall be entitled to holidays occurring after the reinstatement.
- f) Legislative Increases: Employees will be eligible for the Legislative Increases provided all legislated eligibility provisions are met.
- g) Retirement: The employee shall receive retirement service credit for periods of service up to the time the employee was first eligible for discharge if the employee returned to State employment within two years; or any time after discharge if they had completed at least ten years of membership service in the Retirement System. To receive this credit upon reinstatement, employees

- should submit a Form 462 to the Retirement System along with the DD214 military discharge form. (See Retirement System Handbook for details.)
- h) Death Benefit: After one year as a contributing member in the Retirement System, a Death Benefit will be paid in lump sum to the beneficiary if death occurs within 180 days of the last day worked. The payment will equal the highest 12 months salary in a row during the 24 months before death, but no less than \$25,000 and no more than \$50,000.
  - i) Insurance Elections
    - i. National Guard: When on State reserve active duty, the State shall maintain coverage for the employee under the State's group health plan.
    - ii. Federal Active Duty: When on Federal reserve active duty, the State will pay for employee coverage in the State's group health plan for at least 30 days from the date of active service pursuant to the orders. After that, the employee may choose to continue coverage under the State's group health plan by paying the full premium.
    - iii. Employees will be responsible for any premium payments not previously paid by the State, specifically, additional premium coverage for dependents, and any cost above the amount paid by the State for personal coverage regardless of the type of duty call up. Partial premiums are not accepted.
    - iv. For any other Insurance elections (NC Flex benefits, Agency Specific plans, etc.), it is the employee's election whether or not to continue these benefits during the Leave of Absence (LOA) without pay period and to submit timely payments directly to the Insurance vendor if continuing any elections.

## Extended Active Duty and Other Military Leave Without Pay

### A. Entitlement

Leave without pay shall be granted for the following uniformed service duty that is not covered by military leave with pay. Among the reasons are:

1. Initial active duty for training (voluntary initial enlistment);
2. Extended active duty (voluntary) for a period not to exceed 5 years plus any additional service imposed by law;
3. Full time National Guard duty (usually a voluntary 3-year contract);
4. While awaiting entry into active duty, such period as may be reasonable to enable the employee to address personal matters prior to such extended active duty.
5. The period immediately following eligible period(s) as defined under "Reinstatement" of this policy, while reinstatement with State government is pending, provided the

employee applies for such reinstatement within the time limits defined. (Note: It is the employee's responsibility to apply for reinstatement within the time limits defined.)

6. Employees hospitalized for, or convalescing from, an injury or illness incurred in, or aggravated during the performance of extended active duty, except that such period shall not exceed two years beyond their release from extended active duty under honorable conditions. Also the employee shall be entitled to leave without pay for the period from the time of release by the physician until actually reinstated in State employment, provided the employee applies for such reinstatement within the time limits defined.
7. Duties resulting from disciplinary action imposed by military authorities;
8. Inactive duty training (drills) performed for the convenience of the member, such as equivalent training, split unit assemblies, make-up drills, etc. Agencies are not required to excuse an employee for incidental military activities such as volunteer work at military facilities (not in duty status), unofficial military activities, etc.  
Advisory Note: The following types do not count toward the cumulative 5-year limit of military service a person can perform while retaining reemployment rights:
  - a) Unable (through no fault of the individual) to obtain release from service or service in excess of 5 years to fulfill an initial period of obligated service;
  - b) Required drills and annual training and other training duty certified by the military to be necessary for professional development or skill training/retraining, or
  - c) Service performed during time of war or national emergency or for other critical missions/contingencies/military requirements.

## B. Leave Options

1. Employees projected to be out of work for 15 consecutive calendar days or greater from the first day the employee is absent on his/her standard work schedule shall be placed on a standard Monday-Friday, forty hour work schedule rule (D01N08GN).
2. The employee may choose:
  - a) To have accumulated vacation/bonus leave paid in a lump sum (maximum of 240 hours of vacation leave)
  - b) To have vacation/bonus leave exhausted or retained (part or all) until return
  - c) FLSA non-exempt employees may exhaust any compensatory time prior to exhausting leave or it may be paid in a lump sum
  - d) The employee shall retain any unused sick leave.
3. For military extended active duty and other military leave without pay, if the employee remains out on military duty for 15 consecutive calendar days or greater from the first day the employee is absent on his/her standard work schedule, the employee shall be placed on Leave of Absence (LOA) for Extended Military. Please

see the Leave of Absence (LOA) procedures section in this policy for processing instructions.

**C. Retention of Benefits: Extended Active Duty, Other Military Leave Without Pay and Training**

1. **Service Credit:** During periods eligible for military leave without pay, the employee shall continue to earn time toward total State service if reinstated within the time limits outlined in the Reinstatement Section.
2. **Longevity:** If eligible, a longevity payment computed on a pro rata basis shall be paid. The balance will be paid when the employee returns and completes a full year. Then a full payment will be made on the employee's longevity date established prior to going on military leave without pay.
3. **Leave:** Employees do not earn vacation or sick leave while on leave without pay. Note: Vacation leave in excess of 240 hours as of December 31st is converted to sick leave.
4. **Holidays:** Any holidays that were advanced prior to the employee going on military leave without pay shall be deducted from the pay due. Upon reinstatement, the employee shall be entitled to holidays occurring after the reinstatement.
5. **Legislative Increases:** Employees will be eligible for the Legislative Increases provided all legislated eligibility provisions are met.
6. **Retirement Benefit:** The employee shall receive retirement service credit for periods of service up to the time the employee was first eligible for discharge if the employee returned to State employment within two years; or any time after discharge if they had completed at least ten years of membership service in the Retirement System. To receive this credit upon reinstatement, the employee must submit Form 462 to the Retirement System with the DD214 military discharge form (See Retirement System Handbook).
7. **Death Benefit:** After one year as a contributing member in the Retirement System, a Death Benefit will be paid in lump sum to the beneficiary if death occurs within 180 days of the last day worked. The payment will equal the highest 12 months salary in a row during the 24 months before death, but no less than \$25,000 and no more than \$50,000.
8. **Insurance Elections:**
  - a) The State will pay for employee coverage in the State's group health plan for at least 30 days from the date of active service pursuant to the orders. After that, the employee may choose to continue coverage under the State's group health plan by paying the full premium.

- b) Employees will be responsible for any premium payments not previously paid by the State, specifically, additional premium coverage for dependents, and any cost above the amount paid by the State for personal coverage regardless of the type of duty call up. Partial premiums are not accepted.
- c) For other Insurance elections (NC Flex benefits, DPS specific plans, etc.), it is the employee's election whether or not to continue these benefits during the Leave of Absence (LOA) without pay period and to submit timely payments directly to the Insurance vendor if continuing any elections.

## Procedures –Military Leave of Absence (LOA)

If an employee will be out on military leave for an extended absence (with or without pay), a Leave of Absence (LOA) personnel action will be required. And extended absence is defined as 15 consecutive calendar days or greater from the first day the employee is absent on his/her standard work schedule.

If a personnel action is required to place an employee on Leave of Absence for Military, the procedures governing Leave of Absence with or without pay shall be followed:

- A. Management or the designee shall place the employee on a Monday-Friday 8 hour work schedule rule and continue to enter approved paid leave in the BEACON/SAP system for the duration of the paid military leave of absence.
- B. Work unit management or designee shall complete and submit a signed and dated Personnel Action Request (PAR) form to the Central Human Resources LOA/Separations Section along with any required documentation to place the employee on a Leave of Absence (LOA) action.
- C. A copy of the applicable Military Orders shall be attached to the PAR form.
- D. If the employee elects to be paid vacation/bonus leave in a lump sum, indicate the total number of hours of vacation/bonus leave to be paid along with the leave balances the employee will retain on the PAR form.
- E. Attach a copy of the employee's written election of vacation/bonus benefits.
- F. Submit the employee's Military Leave and Earnings Statement or similar document to the DPS Payroll Office if the employee has submitted it to the work location. This is an on-going process until the employee has returned to work. The DPS Payroll Office will pay differential pay, if applicable, upon receiving this document each month.
- G. While on LOA, the Attendance/Absence code (A/A) 9400 shall not be entered into the employee's time record in the BEACON/SAP system for any leave of absence without pay. This will ensure the continued accrual of aggregate service and longevity eligibility.

Therefore, no leave entries are needed in CAT2 once the employee has been placed on an LOA action and reaches non pay status.

- H. Work units are responsible for notifying the employee of their rights and responsibilities concerning their military leave of absence, how their military benefits have been applied and monitoring the employee's absence for their return to work. When a Military LOA PAR form is submitted to the Central Human Resources LOA/Separations section, the military orders shall be reviewed by the Central Human Resources Benefits Section. This section shall confirm the type of military leave of absence and how the LOA should be coded in the BEACON/SAP system to ensure the appropriate benefits are retained as applicable and will inform LOA/Separations Section of the determination. The Central Human Resources Benefits Section shall provide the employee's work unit a form letter to be sent to the employee by the work unit designee explaining the employee's responsibilities while out on LOA and how their benefits have been applied and retained. Work unit management shall continue to monitor records for employees placed out on LOA for military duty to determine a potential return to work date.

## Reinstatement from Military Leave of Absence (LOA)

- A. The agency is required to provide the same treatment that would have been afforded had the employee not left to perform uniformed service. (This includes temporary and intermittent employees.)
1. Reinstatement shall be made if the employee reports to work or applied for reinstatement within the established time limits, unless the service was terminated by the occurrence of either of the following:
    - a) A separation with a dishonorable or bad conduct discharge.
    - b) A separation under other than honorable conditions, as characterized pursuant to regulations prescribed by the Secretary of the applicable military branch.
  2. Employees who resign to enter military service without knowledge of their eligibility for leave of absence and reinstatement benefits, but who are otherwise eligible, shall be reinstated as if they had applied for benefit.

### B. Time Limits

The employee shall be responsible for returning, or making application for reinstatement within the time limits defined below.

The time limit for submitting an application for reemployment or reporting back to work depends upon the length of uniformed service. If reporting back or submitting an application for reemployment within the specified periods is impossible or unreasonable through no fault of the employee, the employee must report back or submit the application as soon as possible. The service duration and periods for returning or applying for reemployment are as follows:

1. 30 days or less, must return at the beginning of the next regularly scheduled work period on the first full day after release from service, taking into account safe travel home plus an 8 hour rest period;
2. 31 days or more, but less than 181 days, must submit a written or verbal application for reemployment with the agency no later than 14 days after the completion of the period of service; or
3. 181 days or more, must submit an application with the agency no later than 90 days after the completion of the period of service.

#### C. Reinstatement Position

1. Reinstatement shall be to the position they would likely have achieved had they remained continuously employed (escalator position); or, if the period of uniformed service was in excess of 90 days, their escalator position, or one of like seniority, status, and pay with the same agency or with another State agency. In the case of reemployment, such reemployment is to be promptly effective.
2. If during military service, the employee suffers a disability incurred in, or aggravated during, uniformed service, to the extent that the duties of the escalator position cannot be performed, the employee shall be reinstated to a position most nearly comparable to the escalator position, with duties compatible with the disability and without loss of seniority.

#### D. Reinstatement Salary

1. The employee's salary upon reinstatement shall be based on the salary rate applicable to the proper escalator position.
2. In no case will the reinstated employee's salary be less than when placed in a military leave status.
3. If the employee was in trainee status at the time of military leave, the addition of trainee adjustments may be considered, at the discretion of the Human Resources Director, if it can be determined that military experience was directly related to development in the area of work to be performed in the State position. The addition of trainee adjustments must be made if it can be shown that progression within or through such status is based merely upon the passage of time with satisfactory performance.

NOTE: It is assumed that an employee had at least satisfactory performance when placed on military leave; therefore, any cost of living adjustments should be included in the reinstatement pay. The addition of career growth adjustments or performance bonuses is determined in the same manner as any other employee on leave without pay.

#### E. Procedures - Reinstatement From Military Leave Of Absence (LOA)

1. Upon the employee's return to work from a LOA-Military, a Reinstatement Action shall be submitted to the DPS Central Human Resources (HR) Office or Regional Employment Office, whichever applies, by work unit management using the Personnel Action Request (PAR) form indicating the following:
  - a) The action is a reinstatement from military leave of absence;
  - b) The salary shall be the same as prior to going on military leave of absence, plus any general salary increases due while on leave (i.e., legislative salary increases, etc.)
  - c) The effective date/date of return to work.
2. If a probationary certified employee has not completed basic training and has therefore not obtained General Certification, attach a copy of the service record (DD-214) showing dates of entrance into the military and discharge date for Criminal Justice purposes.
3. The employee's Monday-Friday, forty hour work schedule rule (D01N08GN) changed for LOA purposes shall be delimited in the BEACON/SAP system and the employee's regular work schedule rule reactivated. The delimited record shall be with an effective date prior to the date of return to work.
4. To receive retirement service credit, employees will be responsible for submitting a copy of the service record (DD-214) to the Retirement System along with a Form 462. Employee work locations will be provided monthly reports by Central Human Resources Benefits Section listing employees reinstated from LOA military leave to help work locations remind employees to submit the applicable documentation.

## Volunteer Work

Employees are not excused for incidental military activities such as volunteer work at military facilities (not in duty status), unofficial military activities, etc.

## Recoup Time

When a military obligation is less than 31 days an employee is authorized eight (8) hours recoup time before and after performance of military duties or military training. This time may also be charged to the 120 hours military leave with pay, military leave without pay or vacation/bonus leave.

## Additional Military Benefits under Family Medical Leave (FMLA)

Eligible military employees or family members of a military employee may be eligible for additional leave benefits under the Family and Medical Leave Act and the National Defense Authorization Act signed into law on January 28, 2008.

### A. New Qualifying Reason for Leave

Eligible employees are entitled up to 12 weeks of leave under the Family Medical Leave Act because of “any qualifying exigency” as defined in the State Personnel Family/Medical Leave Policy arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty status, in support of a contingency operation.

### B. New Leave Entitlement

Eligible employees who are the spouse, son, daughter, parent, or next of kin of a covered service member who is recovering from a serious illness or injury sustained in the line of duty on active duty is entitled to up to 26 weeks of leave in a single 12 month period to care for the service member.

Please refer to the Office of State Personnel Family Medical Leave Policy for additional information on the benefits available.

## Civil Air Patrol

The Civil Air Patrol is an auxiliary to the Air Force. It is not a reserve component. Its members are not subject to obligatory service. When performing missions or encampments authorized and requested by the US Air Force or emergency missions for the State at the request of the Governor or the Secretary of the Department of Public Safety (DPS), its members are entitled to military leave with pay not to exceed 120 hours (prorated for part-time employees) in any calendar year. Exceptions may be granted by the Governor. Such service may be verified by the DPS Secretary upon request by the employing agency. Regularly scheduled unit training assemblies, usually occurring on weekends are not acceptable for military leave, however, employing agencies are encouraged to arrange work schedules to allow employees to attend this training.

## State Defense Militia

The State Defense Militia is considered a reserve of the National Guard, however, it is not a reserve component of the US Armed Forces. Its members are not subject to obligatory service unless they are assigned to a unit that is ordered or called out by the Governor.

Only under the following conditions are State employees entitled to military leave with pay:

1. Infrequent special activities in the interest of the state, usually not exceeding one day, when ordered by the Governor or his authorized representative
2. State duty for missions related to disasters, search and rescue, etc., only when ordered by the Governor or his/her authorized representative.

Under these conditions, an employee may be granted military leave not to exceed 120 hours (prorated for part-time employees) during any calendar year.

State employees who are members of the State Defense Militia are not entitled to military leave with pay when volunteering for support of functions or events sponsored by civic or social organizations even though such support has been “authorized.”

Regularly scheduled unit training assemblies, usually occurring on weekends, are not acceptable for military leave; however, employing agencies are encouraged to arrange work schedules to allow the employee to attending this training.