

Davis School District Policy and Procedures

Subject: 2HR-203 Military Leave and Reemployment Rights

Index: Human Resources – Employee Legal Rights and Responsibilities

Revised~~DRAFT~~: ~~May 17, 2011~~October 7, 2019 (Five-year Review – no changes)

1. PURPOSE AND PHILOSOPHY

Any District employee whose absence from a position of employment is necessitated by reason of service in the uniformed services shall be entitled to reemployment rights and benefits in accordance with federal law, state law and this policy. Veterans or reservists shall not be discriminated against in hiring, retention in employment, or promotions, because of their military obligations.

2. MILITARY LEAVE AND REEMPLOYMENT RIGHTS

- 2.1. A full-time or part-time District employee who enters active service in any branch of the armed forces of this state or of the United States shall be granted a leave of absence during that service upon notification to the District by the employee
- 2.2. An employee entitled to a leave of absence under this policy shall be restored to the same position, or to a position equivalent to the same position, which the person held immediately prior to the commencement of active military service, subject to the following:
 - 2.2.1. Reemployment rights will continue only if the active duty military service does not exceed a period of five (5) years unless exemption to the five (5) year limit should be granted pursuant to federal law.
 - 2.2.2. The returning veterans and reservists shall have satisfactorily completed their military service to retain their reemployment rights.
 - 2.2.3. The returning veteran or reservist must be qualified to perform the duties of the pre-service position. If an individual is no longer qualified because of a disability that occurred, was aggravated, or became manifested during the period of military service, the individual is entitled to reemployment in another existing job that he or she can perform.
 - 2.2.4. Returning veterans and reservists must apply in writing for reemployment in a timely manner.
 - [a] If the individual **serves for a period of less than 31 days** the employee should report to the District by the beginning of the first scheduled work day that falls eight hours after the end of the last calendar day of military service.
 - [b] If the individual **serves between 31 and 180 days** the employee must submit an application for reemployment no later than 14 days after completion of military service.
 - [c] If the individual **serves more than 180 days** the employee must submit an application for reemployment no later than 90 days after completion of military service.
 - [d] An employee who is hospitalized or recovering from a disability that was incurred or aggravated during the period of military service leave has up to two years to submit an application for reemployment.
- 2.3. An employee returning from active military service may not, without cause, be discharged or subjected to reduction of compensation for a period of one year following a return to employment under this policy.
 - 2.3.1. These employees are not exempt from layoffs if economic reasons require a reduction in work force.
 - 2.3.2. When calculating a returning veteran's or reservist's seniority when determining who will be laid off, the period of the military service must be included.

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- 2.4. An employee returning to employment under this policy shall:
 - 2.4.1. retain all personal, sick, and other leave to which the person was entitled immediately prior to the commencement of active military service; and
 - 2.4.2. receive and earn benefits and compensation at a level not less than that to which the person would have been entitled had the employee not been absent due to active military service.
- 2.5. **Health Plans**
An employee taking leave under this policy who has coverage under the District's group health plan may elect to continue such coverage as provided for in 38 USCA § 4317 and the educators and classified negotiated agreements.
- 2.6. **Pension Benefit Plans**
An employee reemployed under this policy shall be treated as not having incurred a break in service with the State Retirement Plan by reason of such employee's period or periods of service in the uniformed services as provided for in 38 USCA § 4318.

3. **MILITARY TRAINING**

Leave for military training, not to exceed fifteen (15) working days per year, for mandatory annual encampment or training in connection with the reserve training requirements, is provided through the educator and classified negotiated agreements

4. **TEMPORARY ABSENCE OF BOARD MEMBER FOR MILITARY SERVICE**

- 4.1. A Board member may take military leave, as defined in Utah Code Ann. § 20A-1-513(c), if the Board member submits to the Board written notice of the intent to take military leave and the expected duration of the military leave, by the later of:
 - 4.1.1. twenty-one (21) days before the military leave begins; or
 - 4.1.2. the next business day after which the Board member receives an order from the armed forces calling him/her to active, full-time duty.
- 4.2. A Board member's military leave begins the day on which the member begins active, full-time duty in the armed forces, and ends the sooner of:
 - 4.2.1. the expiration of the Board member's term of office; or
 - 4.2.2. The day on which the member ends active, full-time duty in the armed forces.
- 4.3. A Board member may not exercise the powers and duties of the office while on military leave. A temporary replacement may fill the vacancy as outlined in state law and District policy 1B-020 Transfer, Resignation and Vacancies section 4.4.
- 4.4. The District shall distribute the emoluments of the office between the elected Board member and the temporary replacement.

DEFINITIONS

“**Emoluments**” means gain received from holding office, including salary, benefits, fees, and perquisites.

“**Temporary replacement**” means the person appointed by the political subdivision’s governing body, in accordance with Utah Code Ann. §20A-1-513, to exercise the powers and duties of the office of the elected official who takes military leave.

REFERENCES

38 U.S.C. Chapter 43 and 20 CFR §§1002.1 et seq. – The Uniformed Services Employment and Reemployment Rights Act

[Utah Code Ann. §20A-1-513](#) – Temporary absence in elected office of a political subdivision for military service.

[Utah Code Ann. §39-3-1](#) – Governmental employees in military service.

[8DA Educators’ Negotiated Agreement](#)

[9CA Classified Negotiated Agreement](#)

RELATED POLICY

[1B-020 Transfers, Resignation, and Vacancies](#)

DOCUMENT HISTORY:

Adopted: December 20, 1991

Revised: February 24, 2005 – Updated with changes in the Federal law for military leave and reemployment rights.

Revised: September 22, 2010 (by consent) - As part of a five-year review, including a reorganization of the Table of Contents, policy was renumbered from 2HR-010 to 2HR-203 and renamed Military Leave and Reemployment Rights (formerly Leaves of Absence). Eliminated General Leave Provisions as they are addressed in negotiated agreements and Administrator Contract policies. Updated military leave as required by Federal legislation.

Revised: May 17, 2011 (by consent) – Policy amended to reflect changes as a result of SB66. Provides language on military leave for an elected official of a political subdivision.

Revised: Five-year review. Continues to be necessary. No changes.