

PERSONNEL

Military Leave

Military leave shall be granted in accordance with law to employees performing military duties on a voluntary or involuntary basis in a uniformed service, including active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, examination to determine fitness for duty, and performance of funeral honors duty. (Education Code 44800; Military and Veterans Code 395, 395.01, 395.02, 395.05, 395.1, 395.2, 395.9; 38 USC 4301, 4303, 4316)

*(cf. 4161/4261 - Leaves)*

*(cf. 4361 - Leaves)*

An employee who needs to be absent from the district to fulfill military service shall provide advance written or verbal notice to the Superintendent or designee, unless the giving of such notice is precluded by military necessity or is otherwise impossible or unreasonable. (38 USC 4312)

An employee's cumulative length of absence and length of all previous military leave shall not exceed five years, excluding those training and service obligations specified in 38 USC 4312(c). (38 USC 4312)

Compensation

An employee shall receive his/her salary or compensation for the first 30 days of an absence for military leave if he/she:

1. Is granted a temporary military leave of absence to engage in ordered military duty for purposes of active military training, encampment, naval cruises, special exercises or like activity as a member of the reserve corps or force of the United States Armed Forces, National Guard or Naval Militia, provided that: (Military and Veterans Code 389, 395, 395.01)
  - a. The ordered duty does not exceed 180 days, including time involved in going to and returning from such duty.
  - b. He/she has been employed by the district for at least one year immediately prior to the day the military leave begins.
2. Has served with the district for at least one year and is ordered, on other than a temporary basis, into active military duty as a member of the reserve corps of the United States Armed Forces, National Guard or Naval Militia or otherwise is inducted, enlisted, entered, ordered or called into active duty as a member of the Armed Forces (Military and Veterans Code 389, 395.02)

3. Is a member of the National Guard, however long employed by the district, who is engaged in military or naval duty during a state of extreme emergency as declared by the Governor, or during such time as the National Guard may be on active duty in situations described in Military and Veterans Code 146, including travel time to and from such duty (Military and Veterans Code 395.05)
4. Is a member of the reserve corps or force of the United States Armed Forces, National Guard or Naval Militia who is engaged in temporary inactive duty training, provided that he/she has been employed by the district for at least one year immediately prior to the day the military leave begins

In determining length of district employment when necessary to determine eligibility for compensation for military leave, all recognized military service performed during and prior to district employment shall be counted.

For classified employees, 30 days' compensation shall be one month's salary. For certificated employees, 30 days' compensation shall be one-tenth of the employee's annual salary. (Education Code 45059)

Certificated employees shall not be entitled to compensation during non-teaching, non-paying months of the year.

The 30-day pay entitlement is the maximum allowance which shall be paid for any one military leave or during any one fiscal year, unless otherwise authorized by the Governing Board pursuant to Military and Veterans Code 395.03 or Education Code 44018.

During the period of military leave, an employee may, but is not required to, use any vacation or similar paid leave accrued before the commencement of the military leave. (38 USC 4316)

#### Benefits

An employee may elect to continue his/her health coverage during the leave. For employees making this election after December 10, 2004, the maximum period of coverage for the employee and his/her dependents shall be either 24 months from the beginning of the leave or until the day after the employee fails to apply for or return to employment, whichever is less. (38 USC 4317)

An employee on military leave may be required to pay the employee cost, if any, of any funded benefit to the extent that other employees on leave are so required. (38 USC 4316)

An employee absent for 30 days or fewer shall not be required to pay more than the employee share for such coverage. An employee absent for 31 days or more may be required to pay not more than 102 percent of the full premium under the plan. (38 USC 4317)

Upon approval by the Board, any employee called into active military duty as a member of the California National Guard or a United States Military Reserve organization may receive, for up to 180 days, all benefits that the employee would have received if he/she had not been called to

active military duty, unless the benefits are prohibited or limited by vendor contracts. (Education Code 44018)

#### Vacation and Sick Leave Accrual

An employee on temporary military leave for the purposes described in item #1 in the section entitled "Compensation" above shall continue to accrue the same vacation, sick leave or holiday privileges for up to a maximum period of 180 days, provided he/she has been employed by the district for at least one year immediately prior to beginning the leave. (Military and Veterans Code 395)

An employee on military leave who is serving in active duty in time of war, national emergency or United Nations military or police operation shall not accrue sick leave or vacation leave during the period of such leave. (Military and Veterans Code 395.1)

However, an employee who is a National Guard member on active duty for the purposes described in item #3 in the section entitled "Compensation" above shall not suffer any loss or diminution of vacation or holiday privileges because of his/her leave of absence. (Military and Veterans Code 395.05)

*(cf. 4161.1/4361.1 - Personal Illness/Injury Leave)*

*(cf. 4261.1 - Personal Illness/Injury Leave)*

#### Employment Status

Absence for military leave shall not affect the classification of any certificated employee. In the case of a certificated probationary employee, the period of such absence shall not count as part of the service required to obtain permanent status, but shall not be construed as a break in the continuity of service for any purpose. (Education Code 44800)

*(cf. 4116 - Probationary/Permanent Status)*

#### Pension Plan Service Credit

Pension plan service credit and vesting shall continue during an employee's military leave as though no break in service had occurred. Payment of employer and employee contributions shall be made in accordance with law for members of the State Teachers' Retirement System or Public Employees' Retirement System. (Education Code 22850-22856; Government Code 20990-21013)

#### Reinstatement Rights

At the conclusion of the military duty, an employee shall be entitled to be promptly reinstated in the position held at the beginning of the military leave, at the salary to which he/she would otherwise have been entitled, provided that the employee was not separated from military service with a disqualifying discharge or under other than honorable conditions. (Education Code 44800; Military and Veterans Code 395, 395.2; 38 USC 4304, 4313)

*(cf. 4030 - Nondiscrimination in Employment)*

*(cf. 4031 - Complaints Concerning Discrimination in Employment)*

An employee who performs active military duty in time of war, national emergency or United Nations military or police operation has a right to return to his/her position within six months of an honorable discharge or placement in inactive duty. Reemployment rights shall not be extended to any such employee who fails to return within 12 months after the first date upon which he/she could terminate or could cause to be terminated his/her active service. (Education Code 44800; Military and Veterans Code 395.1)

When an employee has been on military leave for reasons other than war or national emergency, the time frame for reinstatement shall depend on the length of military service as follows: (38 USC 4312)

1. For a leave of 30 days or fewer, the employee shall report for duty no later than the beginning of the first full work day following the completion of military service.
2. For a leave of 31 to 180 days, the employee shall complete an application for reemployment not later than 14 days after the completion of military service.
3. For a leave of more than 180 days, the employee shall submit an application for reemployment within 90 days after the completion of military service.

An employee who is hospitalized for, or convalescing from, an illness or injury incurred in or aggravated during the performance of military service shall report for duty or submit an application for reemployment at the end of the period that is necessary to recover from such illness or injury but no more than two years after the completion of military service. (38 USC 4312)

*(cf. 4032 - Reasonable Accommodation)*

In cases where reporting within the periods specified in items #1 and 2 above is impossible or unreasonable through no fault of the employee, he/she shall report as soon as possible after the expiration of the period. (38 USC 4312)

An employee failing to apply for reemployment within the appropriate period does not automatically forfeit his/her rights, but shall be subject to the Board's rules governing unexcused absences. (38 USC 4312)

If the employee's previous position has been abolished, he/she shall be reinstated in a position of like seniority, status, and pay, if such position exists, or to a comparable vacant position for which he/she is qualified. (Military and Veterans Code 395, 395.1)

An employee may not be reemployed if the district's circumstances have so changed as to make such reemployment impossible or unreasonable; if the accommodation, training or effort described in 38 USC 4313(a)(3), (a)(4) or (b)(2)(B) would impose an undue hardship on the district; or if the employee's position was for a brief, non-recurrent period and there was no

reasonable expectation that such employment will continue indefinitely or for a significant period. (38 USC 4312)

## Notices

The Superintendent or designee shall provide employees a notice of the rights, benefits and obligations of employees granted military leave and of the district under the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 USC 4301-4334. This requirement may be met by posting the notice where the district customarily places notices for employees. (38 USC 4334)

(cf. 4112.9/4212.9/4312.9 - *Employee Notifications*)

### *Legal Reference:*

#### *EDUCATION CODE*

22850-22856 *Pension benefits, STRS members on military leave*

44018 *Compensation for employees on active military duty*

44800 *Effect of active military service on status of employees*

45059 *Employee ordered to military/naval duty - computation of salary*

#### *GOVERNMENT CODE*

18540 *Definition of armed forces*

18540.3 *Recognized military service*

20990-21013 *Pension benefits, PERS members on military leave*

#### *MILITARY AND VETERANS CODE*

146 *Events justifying calling of militia into active service*

389 *Definitions; temporary military leave*

395-395.9 *Military leave*

#### *UNITED STATES CODE, TITLE 38*

4301-4334 *Uniformed Services Employment and Reemployment Rights Act of 1994*

#### *COURT DECISIONS*

*Wright v. City of Santa Clara* (1989) 213 Cal. App.3d 1503

*Bowers v. San Buenaventura* (1977) 75 Cal. App.3d 65

#### *ATTORNEY GENERAL OPINIONS*

77 *Ops. Cal. Atty. Gen.* 209 (1994)

69 *Ops. Cal. Atty. Gen.* 185 (1986)

63 *Ops. Cal. Atty. Gen.* 924 (1978)

19 *Ops. Cal. Atty. Gen.* 132 (1952)

18 *Ops. Cal. Atty. Gen.* 178 (1951)

### *Management Resources:*

#### *U.S. DEPARTMENT OF LABOR PUBLICATIONS*

*A Non-Technical Resource Guide to the Uniformed Services Employment and Reemployment Rights Act (USERRA)*, rev. July 2004

#### *NATIONAL SCHOOL BOARDS ASSOCIATION PUBLICATIONS*

*The Uniformed Services Employment and Reemployment Rights Act (USERRA)*, NSBA Federal File: *Guidance on Federal School Law*, 2003

#### *WEB SITES*

*National Committee for Employer Support of the Guard and Reserve*: <http://www.esgr.org>

*National School Boards Association*: <http://www.nsba.org>

*U.S. Department of Labor, USERRA*: <http://www.dol.gov/vets/programs/userra/main.htm>

Regulation approved: 3/7/06