



Overview

The following information and guidelines apply to members of the Reserve Component of the Armed Forces of the United States and to members of the National Guard who are called upon for military purposes. This information is not intended to be all-inclusive; rather, this information is intended to be supplemented by Civil Service Rules, applicable federal and state laws, regulations and interpretive guidance.

Required Notice

Ideally, one being called to military service should give advance notice, but the law does not strictly require it. Notice is excused if either “military necessity” determines it is not appropriate to give such notice or where the giving of such notice is impossible or unreasonable. The notice may be either verbal or written. Further, at the time of giving notice, there is no requirement that the employee give notice of an intent to return. There is no problem in asking if someone intends to return, but the employee may not know.

Some employees may volunteer for active military service for training over and over. An employee does not lose the protection of state law or federal law even where it might be rationally concluded the employee is abusing the right to volunteer for military service. Agencies should attempt open and candid communication with the employee and his military authority if problems arise in this area.

An employer may not rearrange the work schedule of an employee so that the employee is required to work on what would normally be a day off, unless this is done to other employees who are involuntarily away from their normally scheduled work.

Leave and Benefit Issues

- An employee who is a member of the National Guard and is called to active duty through Title 32 orders in response to a declared emergency by the Governor is entitled to receive paid leave for up to 22 working days per calendar year in accordance with SCS Rule 11.26(a)4.
- An employee who is a member of the National Guard and is ordered to state active duty by the Governor in response to a declared emergency is entitled to receive paid special leave in accordance with SCS Rule 11.23(j). This leave is unlimited and does not count against the employee’s military leave balances.
- An employee who is called to federal active duty under Title 10 orders or for the purpose of military training is entitled to receive paid leave for up to 15 working days per calendar year in accordance with SCS Rule 11.26(a) 3.

Employees who are on Leave Without Pay by choice or because all annual and/or compensatory leave has been exhausted shall continue to accrue sick and annual leave as if they were at work, but such leave is to be credited only when the employee returns to work.

The absent employee is entitled to maintain insurance coverage and to make retirement contributions as if they were at work. If the employee elects to do this, the appointing authority must pay the employer's portion. This obviously requires coordination between the employer and the employee. If arrangements have not been made with the employee before the beginning of the absence, the appointing authority should send to the employee's last known address an explanation of these rights and notification of what the employee must do to maintain them. If the employee elects not to maintain insurance coverage, when the employee returns to work and elects to reinstate that coverage, the coverage must be reinstated without regard to any pre-existing conditions, except possibly conditions deemed by the federal government to be service-related. Be sure to contact the appropriate insurance agency for more information on this topic.

If the employee on leave for military duty elects not to make retirement contributions, at any time within five years from being re-employed, the employee may pay the amount the employee would have paid had the employee been at work, i.e. with no interest, and the employer must pay the portion demanded of it by the retirement system. Be sure to contact the appropriate retirement system for more information on this topic.

Military Pay Differential

Classified employees called to active duty under Title 10 or Title 32 orders and whose military pay is less than their gross state pay are eligible for differential pay in accordance with SCS Rule 11.26 (g)1. Service members involved in routine military training or who are attending military schools are not entitled to this differential pay. Employees will be paid the difference between the military base pay and the state base pay. Employees who are receiving this pay differential shall provide documentation to ensure correct calculation of the pay difference. An employee using annual leave is not eligible for pay differential.

Time to Report Following Service

If service is less than 31 days, such as for weekend training, then the employee is to report on the first full calendar day following completion of service, after allowing time for travel and an eight-hour rest period. For military service that is more than 30 days but less than 180 days, the period of time to apply for re-employment is 14 days. If military service is more than 180 days, the period of time is 90 days to apply for re-employment. There is no requirement that the employee report as soon as possible, and the employee may use all of the time allowed whether they are back home and fit to return to work, or not. The regulations go so far as to recognize that the employee may even be working elsewhere while this period of time runs. See the Code of Federal Regulations, [20 CFR 1002.120](#). An employee returning from military duty has a right to "prompt re-employment".

An additional two years to report after completion of service is given to a person recovering from illness or injury incurred or aggravated during service. This recovery is described in the law as "hospitalized or convalescing because of an injury or illness incurred or aggravated during the performance of military service." Employers are required to make reasonable effort to accommodate returning service members disabled or suffering an aggravation of a pre-existing condition during the performance of military duty. See [20 CFR 1002.225](#).

If the employee does not report within the allotted time period, in cases where such is neither impossible nor unreasonable, the employee does not lose the right to be reinstated, but is subject to conduct rules, established policy and general practices of the employer pertaining to an absence from scheduled work.

Agencies should be aware of the impact that federal legislation, including the Uniformed Services Employment and Reemployment Rights Act (USERRA), may have on the employment rights of active and returning uniformed servicemen. More information can be found on the U.S. Department of Labor's web site at <https://www.dol.gov/agencies/vets/programs/userra>.

Decisions Based Upon Military Service

USERRA prohibits discrimination based on past, present and future military service. No decision by a manager can be based upon the military service, or prospective military service, of either an employee or a prospective employee.