



OFFICE OF THE ILLINOIS ATTORNEY GENERAL

Military and Veterans Rights Bureau

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Disclaimer: The Office of the Illinois Attorney General has crafted this model policy as an expression of the minimum rights and benefits Illinois public employers must offer their service member employees under the Illinois Service Members Employment and Reemployment Rights Act (ISERRA). This model policy does not constitute individual legal advice to any party and is not tailored to the specific needs of any particular employer. Each employer has a body of additional obligations arising out of their contracts, policies, and practices which may result in obligations greater than the rights and duties described in this model policy. Each employer is strongly encouraged to consult their legal counsel prior to adopting or implementing the policy below. This policy does not represent legal advice.

MILITARY LEAVE POLICY

It is the intent of this employer to comply with State and federal laws governing military leave including the Uniform Services Employment & Reemployment Rights Act (38 USC 4301 et al) and the Illinois Service Members Employment & Reemployment Rights Act (330 ILCS 61 et al). Should applicable laws be changed in a manner that brings this policy out of compliance, the applicable law will be followed. The employer retains the sole authority to make exceptions to policy that provide benefits greater than those required by law. Such exceptions are granted on a case-by-case basis and are not to be interpreted as changes in policy or practice except where the employer has expressly agreed to such changes in a written employment contract or other formal written policy memorialization.

Military Leave. Military leave is a legal entitlement, not a benefit of employment. Military leave will be granted when an employee provides advance notice of pending service. When providing advance notice is impossible or unreasonable because of military necessity, employees shall provide documentation from an appropriate military authority as soon as possible. Upon receipt of such documentation, military leave shall be granted. Supervisors will not impose restrictions for military leave not otherwise imposed by law. Military leave is authorized for the following;

1. Service in the Armed Forces of the United States, the National Guard of any state or territory regardless of status, and the State Guard.
2. Members of a federally recognized auxiliary of the United States Armed Forces when performing official duties in support of military or civilian authorities as a result of an emergency.
3. Employees absent from employment for medical care provided by the Department of Defense (DoD) for any condition, illness, or injury sustained in service.

Reemployment. Employees on military leave are entitled to reemployment as long as the following five criteria are met:

1. The employee was absent on account of military service.
2. The employee gave advance notice of their military obligation or demonstrated a military necessity which prevented advance notice.
3. During their employment with this employer the employee's cumulative period of time absent from work while performing qualifying active military service does not exceed five years. Note: "Qualifying Active Military Service" means periods of military service not excluded by 38 USC 4312(c).
4. The employee was not released from military service under dishonorable or other punitive conditions.
5. The employee reported back to this employer in a timely manner or submitted a timely application for reemployment. Note: "timely application for reemployment" means within the timelines established by 38 USC 4312(e)(1).

Absent on account of military service. Military service does not have to be the sole reason for absence. Employees will be released from work with enough time to travel safely to their duty location and arrive fit for duty. The release times may vary depending on factors such as duration of service, amount of notice received, duty location, time to rest, time to arrange affairs, and time to report to duty. When such periods of military leave are not covered by paid military orders, this employer will characterize the absence as unpaid military leave. Employees may elect to utilize their benefit time during such periods of unpaid military leave, but shall not be required to do so.

Advance notice. Notice can be provided either by an employee or by an appropriate military authority. While verbal notice is acceptable, employees are strongly encouraged to provide written notice in the form of an e-mail to both their immediate supervisor and a designated human resources representative. While no particular format is required, employees are asked to use the designated military leave request form. Notice should be provided as far in advance as possible. When an employee unjustifiably waits to provide notice, this employer may coordinate with that employee's military leadership to obtain timely notice in the future.

The five-year service limit. Employees whose cumulative years of military service with this employer exceed five years are not entitled to reemployment. However, it is the policy of this office to provide written notice to employees once the office determines that an employee has reached four years and six months of cumulative qualifying military service. This advance notice is a courtesy, and the failure of this employer to forward such advance notice does not create any additional rights or benefits for the military employee. This courtesy notice is intended to allow the employee to attempt to make alternate accommodations with their military leadership prior to a determination that reemployment will be denied pursuant to the five-year rule. The five-year period begins at the start of the latest employment relationship with the office. For verification purposes, employees are required to produce requested documentation, such as copies of their military orders and/or Certificate of Release from Active Duty (DD Form 214) upon request. The employer may contact the employee's military leadership to verify reemployment eligibility pursuant to the five-year service limit. Periods of absence under the following circumstances are not counted as qualifying time for the purposes of the five-year rule.

1. Periods of absence before or after performing military service.
2. When an initial military obligation for active component is more than five years.
3. When an employee was unable to obtain orders releasing them from service before the expiration of the five-year limit when it was not the employee's fault.

4. Service performed to fulfill additional training requirements determined and certified by a proper military authority as necessary for the employee's professional development, or to complete skill training or retraining.
5. Active duty (other than training) performed because of war or national emergency declared by the President or Congress.
6. Active duty in support of a critical mission or requirement as determined by the Military Secretary concerned.
7. National Guard called in response to invasion, danger of invasion, rebellion, danger of rebellion, insurrection, or the inability of the President with regular forces to execute the laws of the United States.
8. Duty under the following authorities:
 - a. 10 USC 10147
 - b. 32 USC 502(a)
 - c. 32 USC 503
 - d. 10 USC 688
 - e. 10 USC 12301(a)
 - f. 10 USC 12301(g)
 - g. 10 USC 12302
 - h. 10 USC 12304
 - i. 10 USC 12304a
 - j. 10 USC 12304b
 - k. 10 USC 12305
 - l. 14 USC 331
 - m. 14 USC 332
 - n. 14 USC 359
 - o. 14 USC 360
 - p. 14 USC 367
 - q. 14 USC 712

Punitive release. Employees are not entitled to reemployment if they are released from service under any of the following conditions.

1. Dishonorable Discharge
2. Bad Conduct Discharge
3. Other than Honorable Conditions Discharge
4. Dismissal of an officer
5. Dropped from the roles in the case of
 - a. AWOL for more than three months
 - b. A sentence of confinement adjudged by a court-martial
 - c. Imprisoned by a civilian court

Timely return and reporting. The time afforded employees to report back to work or request reemployment depends on the length of their military duty. Employees are required to comply with the following timelines to report back to work.

1. Service 30 days or less. Report back to work on the next regularly scheduled work day after the last military duty day; provided the employee can travel home safely and complete eight hours of rest before work.
2. Service 31 days to 180 days. Apply for reemployment within 14 days after the last military duty day.

3. Service 181 days or more. Apply for reemployment within 90 days after the last military duty day.
4. When reporting or applying for reemployment within the prescribed period is impossible or unreasonable under the circumstances through no fault of the employee, they shall report back or apply for reemployment as soon as possible under the circumstances. The employee will provide documentation sufficient to validate the extenuating circumstances upon request.
5. Failing to timely return or report back to work does not result in an automatic denial of reemployment. In such circumstances, the employee is subject to rules, established policy, and general practices concerning absences from scheduled work.
6. Employees who apply for reemployment are entitled to prompt reemployment. Absent unusual circumstances, reemployment will occur within two weeks.

Paid military leave. Employees who qualify will be entitled to receive paid military leave in the form of either concurrent compensation, differential compensation, or the use of benefit time. Only full-time employees who are members of a reserve or National Guard component are entitled to concurrent and differential compensation. This benefit is not available to independent contractors. Concurrent compensation and differential compensation are not paid for periods of military leave where the employee is not subject to paid military orders. Such unpaid periods may include circumstances such as travel, rest, or “points only” military orders.

Concurrent Compensation. Employees on annual training duty under the authority of 10 USC 10147, 10 USC 12301(b), or 32 USC 502(a) are entitled to full pay as a public employee during the duration of their orders. Additionally, employees performing “orders in lieu of annual training” are entitled to concurrent compensation during appropriately designated paid military orders. The employer may request documentation from a service member’s military unit to confirm that periods of military service qualify as orders in lieu of annual training. Concurrent compensation is only authorized for up to 30 days in each calendar year and may be performed nonsynchronously. In the unlikely event that an employee performs more than 30 days of annual training or orders in lieu of annual training in a calendar year, the employee shall be entitled to differential compensation after their 30 days of concurrent compensation is exhausted subject to the differential compensation guidelines found below.

Differential Compensation. Employees are entitled to differential compensation for the complete duration of all involuntary orders.

1. *Duration:* Employees are entitled to differential compensation for 60 work days of voluntary orders per calendar year. After differential compensation has been paid for 60 work days, employees on voluntary orders will be placed in an unpaid leave status. The following types of military duty are considered voluntary for purposes of entitlement to differential.
 - a. 32 USC 502(f)(1)(B)
 - b. 10 USC 12301(d)
 - c. 10 USC 12503 or 32 USC 115
 - d. 10 USC 12402
 - e. 10 USC 10148 or 10 USC 12303
 - f. 10 USC 802(d)
 - g. 10 USC 12311
 - h. 10 USC 10211

2. *Work Days:* For the purpose of differential calculation, “work days” are the actual number of shifts the employee would have worked during the period of military leave but for the service member’s military obligation. “Work days” are tabulated up to 24 continuous hours in a shift, regardless if the shift extends into the next calendar day. A shift that extends beyond 24 continuous hours will be calculated as an additional work day.
3. *Voluntary or Involuntary:* Whether a particular duty is voluntary is determined based on the authority code listed on the orders. If the authority code listed is not complete (for example 32 USC 502(f)(1)), the employer will refer to other language in the orders to help reach a determination. If an employee disagrees with a decision that orders are voluntary, they may provide written supplemental documentation from an appropriate military authority clarifying the authority code. Such supplemental documentation will be appropriately considered by the employer.
4. *Voluntary Orders Lasting More than 3 Years:* After a public employee is absent from his or her employment for a consecutive 3-year period while performing voluntary active service, the employee’s entitlement to differential compensation shall be terminated. Upon return to work with his or her employer for more than 90 calendar days, the public employee’s right to differential pay shall be reinstated.
5. *Calculation:* Differential will be calculated on a daily rate basis in accordance with Section 1-15(b) of ISERRA.

Seniority. Benefits of employment based on the duration of employment, such as seniority benefits and promotion eligibility will include periods of military service.

Benefit time. Employees may elect to use earned benefit time in lieu of concurrent, differential, or unpaid military leave at their sole discretion. Employees do not earn benefit time during military leave; however, they shall continue to accrue seniority for the purposes of earning benefit time upon their return as if they were never absent due to military leave.

Performance reviews. Except in the case of probationary periods, employees shall receive a performance review for periods of military leave. Minimally, reviews will be equivalent to the average review of the three-year period prior to the military leave but not less than the review received for the rating period immediately prior to military leave.

Retirement credit. Employees returning from military leave shall have the option to receive the full benefit of their retirement plan as if they had never left for military service. To be eligible for this benefit the employee must pay their employee contribution. Starting on the date of their return from military service, employees shall have a period of three times the duration of their orders to tender their portion of the retirement contribution. However, no employee’s retirement contribution repayment period shall exceed five years from the date of their return. Once the employee has tendered their retirement contribution the employer will contribute the employer share of the retirement contribution. Employees are strongly encouraged to coordinate with Human Resources prior to beginning orders which have implications for retirement benefits. Whenever possible, the employer will coordinate with employees to facilitate “pay as you go” retirement contributions which will prevent the necessity for contribution repayments upon the employee’s return.

Health plan duration. Employees enrolled in a healthcare plan through the office may elect to continue or terminate their healthcare benefits during periods of military leave. Employees who elect to continue their coverage are entitled to continuous coverage for up to 24 months starting on the date on which their absence begins. Employees who elect to continue their coverage are required to continue paying their share of the health plan premiums for the lesser of the following;

1. A 24-month period beginning on the date on which the employee's absence for the purpose of performing military service begins.
2. A period beginning on the date on which the employee's absence for the purpose of performing military service began and ending on the day after the employee fails to timely apply for or return to a position of employment.

Health coverage election. Employees are encouraged to coordinate their healthcare election with Human Resources by utilizing the request for military leave form provided by the employer. Employees are responsible for communicating whether they wish to maintain or terminate their health plan coverage during their military absence. When no preference is communicated by the employee to the employer, health plan coverage will be maintained at the beginning of a military leave unless the employee requests termination of their coverage. Failure to pay premiums may result in the cancellation of health care coverage or in the generation of a debt owed by the employee. In cases of paid military leave, premiums will be deducted from the employee's compensation. If the military member is on an unpaid leave, or if the amount of differential compensation does not cover the cost of the employee's health care premiums, employees are responsible for making timely monthly payments to the employer.

Health coverage upon reemployment. Upon reemployment, health insurance will be reinstated without any waiting period or exclusions for preexisting conditions unless a waiting period or exclusion would have otherwise applied if the service member had not taken military leave. An exclusion or waiting period may be imposed for illnesses or injuries determined by the US Department of Veterans Affairs to have been incurred or aggravated during military duty. Employer provided coverage for employees and dependents must be reinstated if coverage would have continued but for military leave. Reemployment does not authorize the initiation of a new health plan coverage except as authorized by the employee's plan. Requests to delay reinstatement after reemployment will be considered upon request.

Should any party have questions about the law surrounding military leave, the ISERRA Advocate is available at 1-800-382-3000. Individuals with hearing or speech disabilities can reach us by using the 7-1-1 relay service.