

QUESTIONS AND ANSWERS RELATING TO MILITARY LEAVE

The following information may be useful to agencies and institutions of higher education.

Question #1:

Does an employee called to military service have to quit their job with the state?

Answer:

No. Federal and state laws require employers to grant a military leave of absence to employees for active military service.

Question #2:

Is any of the military leave paid leave?

Answer:

Yes. The state law (RCW 38.40.060) allows an employee 15 days of paid leave for active duty or active training duty, beginning October 1st and ending the following September 30th. Employees may also use their accrued vacation leave and any accumulated compensatory time.

Question #3:

How long does an employer have to hold a job for an employee who is on military duty?

Answer:

Generally around five years but the specific answer differs in each situation and depends upon the type of military service performed. Please consult with your Labor & Personnel AAG.

Question #3A:

What job must be held for the employee?

Answer:

The answer varies depending on the length of the employee's absence. Some employees may be entitled to a different job. For example, the federal law states that employees on military leave for more than 90 days are to be reemployed "in the position...in which the person would have been employed if the continuous employment of such person...had not been interrupted..., or a position of like seniority, status, and pay, the duties of which the person is qualified to perform." If the person is not qualified to perform those duties, they are to be reemployed in the position they held on the date military leave began or a position of like seniority, status, and pay.

Question #3B:

How soon must an employee request to return to state employment upon completion of military duty?

Answer:

- If military leave was less than 31 days, then the employee must report to the employer on the beginning of the first full regularly scheduled work period on the first full calendar day following completion of the service plus the expiration of 8 hours.
- If military leave was between 30 and 181 days, then the employee must submit a request for reemployment no later than 14 calendar days following completion of service.
- If military leave was more than 180 days, then the employee must submit an application for reemployment no later than 90 days following completion of service.

However, these timelines are provided for general information purposes only. If you believe you have received an untimely application, please contact your Labor and Personnel AAG. In addition, different timelines apply if the employee has been injured during the course of military service.

Question #4:

What about salary while an employee is on active military service?

Answer:

The employee will be paid his/her salary through the last day he/she worked for the agency/higher education institution in paid status. Once the employee utilizes the 15 days of paid military leave (and any requested approved leave), the employee is on military leave without pay status with the agency/higher education institution.

Question #5:

Are the seniority, anniversary, or increment dates affected by being on military leave without pay status?

Answer:

Seniority will be credited as though the employee never left his/her state job. Upon return, the salary will be calculated as if the employee never left the job, including any periodic increments that the employee earned. The anniversary date is not adjusted for unpaid military leave. Credit shall be given toward the rate of vacation leave accrual.

Question #6:

What about health insurance?

Answer:

State and federal law provide that the employee will retain their state coverage. State statute requires that the employer provided health care coverage be continued for employees called to active duty military service for less than 31 days. The employee is required to pay their portion for the first 30 days of military leave. For example, if the employee was called to active military service on September 15th, employer health care coverage should be maintained until October 31st. After that date, the employee is responsible for the full premium. The employee may retain their state health care insurance by using at least eight hours per month of accrued vacation or unused paid military leave or by self-payment of health care coverage.

State employees called up to active duty may be entitled to health insurance coverage for themselves and their families by the Department of Defense (DOD). For more information on eligibility of coverage by the DOD, employees should contact their unit or <http://www.tricare.osd.mil/reserve/default.htm>

The Health Care Authority has placed some information on its Website.

Question #7:

What about service credit for retirement purposes?

Answer:

Federal law requires that a person reemployed after military service be treated as though no break in service has occurred. Employees should contact the Department of Retirement Systems for further information.

Question #8

Is the agency/institution obligated to bring back a temporary employee who has been called to active duty?

Answer:

State law does not currently apply to temporary employees. The federal law is silent on the issue of temporary employment. Most of the recent call-ups have been for federal duty covered by the federal law. Generally, it is advisable to treat the person as though they had not left. For example:

An agency hires an employee for a nine-month temporary appointment. Two months into their appointment they are called to active duty. They return five months later. The agency should bring the employee back for a two-month period (time remaining in the original nine months). In this same scenario if the employee returned one year later the agency would not be obligated to bring them back.

Question #9

Can an agency split the 15 days military leave into hours? For example can an employee use 4 hours of military leave each pay period?

Answer:

No, the law provides for 15 days, not a specific amount of hours.

Question #10

How should an agency/institution handle a RIF when the incumbent is on military leave?

Answer:

We are advising that you do not take any action to RIF an employee while he or she is on military leave. Rather, we suggest that the employee be left in the position and the RIF notice be issued when the employee returns to employment with the agency or institution. This course of action will avoid the difficulty of providing appropriate notice and options to the employee who is on military leave. However, this does not mean you should not consider the position a viable option for other employees. If another more senior employee chooses the position as their option, you may have to double fill the position until the employee returns from military leave. When they return you would enact their RIF process. At that point, it will be important that you can clearly demonstrate that the RIF action is defensible and is regardless of the fact that the employee was on military leave.

We hope this information is helpful. If you have questions regarding applicable statutes, please contact your Assistant Attorney General from the Labor and Personnel Division. If you have questions about applicable rules under Title 356 WAC or Title 251 WAC, or about this document, please contact Connie Goff at the Department of Personnel at (360) 664-6325 or e-mail connieg@dop.wa.gov.

Department of Personnel
March 24, 2003