

MEMORANDUM

State of Alaska

Department of Administration

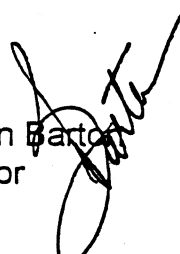
Division of Personnel

Labor Relations Section

To: All Human Resources Managers

Date: September 28, 2001

From: Sharon Barton
Director



File: Military Leave

Subject: Personnel Memorandum 02-03
Reemployment Rights for
Members of the Uniformed
Services
(Reissued for correct number)

Recent events and changes to the Uniformed Service Employment and Reemployment Act (USERRA) (38 U.S.C. §§ 4301 through 4333) require revision to Numbered Memorandum 90-5, Reemployment Rights for Reservists and Members of the National Guard. *This memorandum supercedes 90-5.*

There have been substantive changes in the legislation authorizing military leaves for personnel called to active service. This memorandum is intended as summary guidance. Detailed information can be found at <http://www.dol.gov/asp/programs/handbook/userra.htm>. For your convenience, this memorandum and hot link will be posted on the Division of Personnel web site.

The Uniformed Service Employment and Reemployment Act provides for periods of protected absence from employment by an employee if:

- S/he has been ordered to active duty;
- S/he has been expressly requested to volunteer for active duty by the Federal Government;
- S/he holds a civilian job;
- S/he has given notice that s/he is leaving the job for service in the uniformed services (unless such notice is unreasonable or impossible).

Members of the uniformed services who are called to active service must be granted a leave of absence from their position.

- "Service" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority.
- "Uniformed services" means the Armed Forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty

training or full-time National guard duty, the commissioned corps of the Public Health Service and ... other persons designated by the President.

USERRA provides for reemployment of individuals who are absent for protected periods if:

- S/he is absent from the job for a service period of five years or less (with some few exceptions);
- S/he has not been released from service under dishonorable or other punitive conditions; and
- S/he reported back to the job or applied for reemployment in a timely manner.

Periods of uniformed service taken for training or re-training and authorized by the appropriate Secretary may qualify for approved leave of absence, but do not qualify the employee for reemployment rights (38 USC 4312 (c)(3)).

Upon return to State service, an employee must be reemployed without loss of seniority, insurance, or other benefits. An employee who returns to service may not be discharged without cause for a period of one year following his or her return. While there are many individual situations, the essential right is to reemployment with the same status that the employee would have enjoyed had he or she been continuously employed during the time of uniformed service.

No memorandum such as this can cover all possible circumstances, but we believe that the following can be said with confidence:

1. An employee called to active duty in the uniformed services must be granted a leave of absence.
2. At the time an employee gives notice that a leave of absence is required, he or she must be given the option of choosing to use accrued annual or personal leave, cashing out accrued annual or personal leave, or being placed on leave of absence immediately and retaining accrued leave. The State cannot direct the employee to a particular choice. Employees may cash out all or part of their accrued leave with normal cash out rules applied. Restrictions may be waived by letter of agreement when circumstances warrant. The employee's protected leave of absence begins when accrued or requested paid leave is exhausted. Employees on leave of absence may not make intermittent use of paid leave for health insurance or other purposes once placed on leave of absence.
3. The employee's position may be filled with a non-permanent or permanent substitute employee.
4. The returning veteran's seniority in the State position will be calculated as if the veteran had been continuously employed during the time spent in the uniformed services.

5. A returning employee is entitled to seniority, promotions, changes in status, and raises in pay which he or she would have received automatically had the employee not been called into the uniformed services. This entitlement is limited to only those changes or increases that occur as the result of the passage of time, and not for those for which other criteria must be met. For example, in those instances where a merit step is awarded because the employee has demonstrated progressively greater value, an absent veteran has no entitlement because no service to the State has been performed. Please note that some agreements that have historically linked increases to progressively greater value have or soon will eliminate that requirement, e.g., APEA/SU and APEA/CEA. We can apply the following general rules:
- a. Pay increases: A returning employee's rate of pay will include all general increases that were conferred during the employee's absence.
 - b. Merit increases: Neither merit increases nor longevity increments that are dependent upon progressively greater or acceptable service will be conferred. Merit anniversary dates will be maintained as if the employee on leave of absence had remained in active employment. This will require manual tracking and adjustment.
 - c. Leave accrual rates: Time spent in the uniformed services will be considered time spent in State service for the purpose of determining leave accrual rates. An employee will not accrue leave while on leave of absence without pay for active duty in the uniformed services.
 - d. Layoff: Returning veterans will be credited for time spent in the uniformed services in determining order of layoff.

The State will continue to make a health insurance contribution on the employee's behalf for as long as the employee remains in pay status. Employees under state sponsored plans will continue with whatever level of coverage he or she has elected for so long as the employee remains in pay status. Upon entering leave of absence status, an employee under a State sponsored plan is eligible for COBRA coverage for eighteen months. There will be no waiting period for insurance coverage upon a veteran's return to State service. Employees subject to union sponsored health insurance plans should consult with their provider for information on their benefits and entitlements.

Time spent on active duty in the uniformed services will be considered time in State services for purposes of determining retirement credit, however no PERS or TRS contribution will be made for employees on leave of absence. Specific questions regarding retirement benefits should be directed to the Division of Retirement and Benefits at 465-4460.

The overarching guideline must be that the State wants to assist employees who are called to active duty and to confer all benefits and rights to which employees are entitled. This memorandum addresses the most common circumstances where the employee either has non-discretionary orders or a formal request from proper authority to report for active duty. Unique situations must be dealt with on a case-by-case basis. If you have any questions, please do not hesitate to contact me or a member of the Division of Personnel staff.

CC: Alison Elgee
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Administrative Services Directors
All Division of Personnel Staff