

## **Guidelines for Military Active Duty**

### **General Information**

- Most of the information presented below is derived from the Uniform Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301 – 4335, as currently amended (USERRA). Where the requirement is the result of a State of Ohio statute, a citation for the applicable state statute is provided.
- Prior to the employee's deployment it is highly recommended that the appointing authority discuss with and document in writing the employee's desires regarding the use of any military leave with pay, the employee's desires regarding the use of any accrued leave or compensatory time, and the maintenance or cancellation of health care benefits while the employee is on an active duty call-up. It is especially helpful to work out the payment details when health care benefits will be maintained.
- Proper military orders are required for an employee to request and use military leave with pay or military leave without pay. In most cases these orders are printed and distributed prior to the start of the employee's active duty. In those cases where orders are not available prior to the start of the employee's active duty, a letter (on military unit letterhead) signed by the military commander is acceptable as a temporary document, but needs to be replaced by a copy of the actual orders when they become available.
- Appropriate travel time to and from the military duty station must be included in the total leave time requested. Generally, one day for travel to and one day for travel from the duty station would address most situations. In some situations, it may be necessary to allow two or more days travel in each direction. There is no standard rule, the U.S. Supreme Court decisions require that the time allowed be "reasonable."

### **Military Leave with Pay**

- Each **federal fiscal year** (October 1 thru September 30) an employee has 176 hours of military leave with pay to use for any active duty call-up.
- While on military leave with pay, an employee accrues all forms of leave – sick, vacation, and personal.
- An employee is not required to use military leave with pay to cover any particular active duty call-up. Even if military leave with pay is available to an employee, the employee may choose to take military leave without pay, other forms of accrued leave, or compensatory time that the employee has earned prior to the deployment. Use of accrued leave would need to meet the normal requirements for the type of leave used. For example, an employee who has all 176 hours of military leave with pay who is called up for a short 10 day deployment in January may choose to take that 10 days

as military leave without pay and retain the entire 176 hours of military leave with pay for use later in the **federal fiscal year**.

### Military Leave without Pay

- If the employee has exhausted the **federal fiscal year** allowance of 176 hours of military leave with pay or chooses not to use such leave for an active duty call-up, the employee is entitled to take military leave without pay.
- **Exempt employees and bargaining unit employees under the SCOPE contract** on military leave without pay do **not** accrue any form of leave – sick, vacation, or personal. **Bargaining unit employees under the OCSEA, OSTA, 1199, or FOP contracts** will only accrue sick leave while on military leave without pay. For bargaining unit employees that earn sick leave while on military leave without pay, such time is not credited to the employee until they return to work.
- For the employee that has accrued leave or compensatory time prior to deployment, the employee may choose to use personal leave, vacation leave, or compensatory leave to cover all or part of an active duty call-up in lieu of taking military leave without pay.

### Right of Reinstatement

- An employee has the right to be reinstated to the same or similar position if the employee meets the following criteria:
  - Has been honorably discharged or released from active duty in an honorable status; and
  - Timely makes a written request for reinstatement to the appointing authority. The timeliness of the request is dependent on the length of the active duty call-up:
    - Active duty service of less than 30 days – the request for reinstatement must be made immediately upon the employee's release from active duty;
    - Active duty service of 31 to 180 days – the request for reinstatement must be made within 14 days of the employee's release from active duty; or
    - Active duty service in excess of 180 days – the request for reinstatement must be made within 90 days of the employee's release from active duty.

### Health Care Benefits

- Even though the employee will be covered by TRICARE while on a federal active duty call-up, ORC 5923.051 allows the employee, the employee's spouse, or the employee's dependent(s) to maintain or reinstate health care benefits as if the employee was still at work.

- If health care benefits are maintained or reinstated under this provision, the employee remains responsible for the employee's share of such benefits and the appointing authority remains responsible for the state's share of such benefits.

### Pay Supplements

- ORC 5923.05 allows an employee to receive a pay supplement from the appointing authority while on a federal active duty call-up under certain limited conditions. This statute does **not** apply to a state duty call-up.
- The criteria for an employee to be eligible to receive a pay supplement are as follows:
  - The employee must be eligible to receive and use military leave with pay [ORC 5923.05(A)(1) & (C)] ;
  - The employee must be called-up or ordered to active duty for longer than **one month**. The term "**month**" means twenty-two eight-hour work days or one hundred seventy-six hours, or for a public safety employee, seventeen twenty-four-hour days or four hundred eight hours, within one calendar year. [ORC 5923.05(A)(2)(b)];
  - The employee's gross monthly wage or salary as a state employee must be more than the employee's gross uniformed pay and allowances for the particular month [ORC 5923.05(C)].
- The pay supplement for any month will be the difference between the employee's gross monthly wage or salary as a state employee and the employee's gross uniformed pay and allowances for the particular month [ORC 5923.05(C)].
- An employee is not entitled to a pay supplement for any monthly pay period where the employee receives military leave with pay or the employee's gross uniformed pay and allowances exceed the employee's gross monthly wage or salary [ORC 5923.05(D)].
- Military pay statements can be very difficult to understand; please contact HRD/OCB Policy if you are unfamiliar with them and need assistance.

***Note: The information provided above is intentionally brief and is not intended to be a detailed explanation of any of the topics discussed. Military leave issues are very fact specific and complex in both analysis and application. If you have any questions regarding any of the topics discussed above or any other military leave related issue, please contact HRD/OCB Policy at (614) 752-5393 or [DASHRD.HRPolicy@das.ohio.gov](mailto:DASHRD.HRPolicy@das.ohio.gov) for more detailed information and assistance.***