

**DEPARTMENT OF ADMINISTRATION AND FINANCIAL SERVICES
BUREAU OF HUMAN RESOURCES
JUNE 12, 2006**

CIVIL SERVICE BULLETIN 11.16C

**TO: Agency Heads, Service Center Directors, Service Center HR Directors,
Agency HR Representatives**

SUBJECT: POLICY AND PROCEDURES GOVERNING MILITARY LEAVE

The purpose of this bulletin is to reflect recent changes in Maine law regarding time frames for State employee members of the National Guard or Reserve components of the United States Armed Forces to report back to work after military service (effective 08/23/06), to clarify that paid military leave also applies to active State service ordered by the Governor, to describe the procedures governing military leaves of absence, and to outline the reemployment rights of State employees who are on military leave. Civil Service Bulletin 11.16C supersedes Civil Service Bulletin 11.16B (07/07/04), Civil Service Bulletin 11.16A (08/26/02) and Civil Service Bulletin 11.16 (10/13/99).

The provisions of this bulletin apply to those employees who perform military service voluntarily or involuntarily, in peacetime or in wartime. An employee must be granted military leave of absence when ordered to military training or service.¹ Employees who enter active military service retain reemployment rights under Maine law and federal law.

When the circumstances of a military leave permit, agencies shall advise the employee of his or her reemployment rights prior to his or her entry into military service. Providing a copy of this Civil Service Bulletin is considered sufficient to meet this requirement.

1. MILITARY LEAVE OF ABSENCE WITH PAY: This category of military leave of absence applies to those State employees who are members of the National Guard or any of the Reserve components of the United States Armed Forces when performing military duty. State employees who are members of the National Guard or the Reserves of the United States Armed Forces must be granted a paid leave of absence, not to exceed 17 workdays each calendar year, for performing military duty.²

Weekend drills are considered military training for purposes of paid military leave. Consequently, if weekend drill activities occur on an employee's scheduled workday, it may be counted as one of the 17 paid workdays authorized by law.

This category of military leave extends to all types of State employment, including various non-status appointments such as acting capacity, project, etc.³

Leave of absence in this category shall be without loss of pay or benefits.⁴

Employees requesting this category of military leave of absence are required to furnish advance written or verbal notice to their appointing authority.⁵ Unless individual circumstances dictate otherwise, the advance notice requirement shall be accomplished by providing military orders.

With respect to health and dental insurance, while the employee remains on paid military leave there is no change in health insurance coverage.

2. MILITARY LEAVE OF ABSENCE WITHOUT PAY: Military leave other than that provided in (1.) above, is without pay.

Employees requesting this category of military leave of absence are required to furnish advance written or verbal notice to their appointing authority.

Employees may use, but are not required to use, accrued vacation, personal leave, or compensatory time while they are engaged in military service.⁶

With respect to unpaid military leave, health insurance, dental insurance, and life insurance benefits shall continue, at no additional expense to the employee, for the first 30 days of military duty pursuant to State or Federal military orders. After the expiration of the first 30 days, the employee has the option of continuing health insurance, dental insurance, and life insurance benefits at his or her own expense by paying the insurance premium at the same rate as paid by the employer. Otherwise, employees on unpaid military leave retain the option to suspend health and dental coverage. If coverage is suspended, pre-existing conditions will not be excluded from coverage when coverage is reinstated after return. **Since transition provisions may vary on a case-by-case basis, employees who are ordered to military duty should contact the Office of Employee Health and Benefits as soon as possible when ordered to military service, and prior to returning from military service, to determine appropriate transition arrangements.**

3. ACTIVE STATE SERVICE: Active State duty ordered by the Governor is considered "performing military duty" for which paid military leave provision described in (1.) above is authorized. If the 17 workdays of paid military leave are exhausted while on active State service, the employee is placed on unpaid military leave. The employee may also utilize accrued vacation, personal leave, or compensatory time as outlined above.⁷

State employees who are called to active State duty continue health and dental insurance.⁸

4. RE-EMPLOYMENT / RETURN PROVISIONS: This section governs the application of reemployment rights under Maine law and the *Uniformed Services Employment and Reemployment Rights Act*.

Both Maine law and the USERRA provide certain reemployment rights and benefits to State employees who leave their positions, voluntarily or involuntarily, to enter military service. Generally, employees will be entitled to reemployment with the same seniority, status, pay, and other benefits that would have been realized had they remained in the employ of the State.

In order to establish his or her right to reemployment, the employee shall provide the appointing authority and the Director, Bureau of Human Resources, appropriate documentation as to character of service.⁹

The criteria for reemployment includes that the service member be employed in a position that was not temporary, that the employee must have provided notice to the employer of his or her absence for military duty, that he or she is still qualified to perform the duties of the position.¹⁰

Leaves of absence for military training or service will be counted as time worked for purposes of the vacation accrual *rate* (e.g.: adjustment from 1 to 1.25 days per month upon completion of five years; from 1.25 to 1.5 days upon completion of ten years, and so forth). Total service time

during periods of unpaid military leave will not be considered as time worked for purposes of accruing vacation *credits*.

The time spent on unpaid military leave will not be considered as time worked for completing a probationary period.

Salary and performance review dates will not be advanced as the result of unpaid military leave. Annual performance reviews for merit increases will be conducted on the basis of the anniversary date in effect prior to the military leave.

5. TIME PERMITTED FOR RETURN TO WORK: Under the USERRA, employees have certain rights with respect to the length of time allowed to return to work or to apply for reemployment. PL 2005, Chapter 524 increases the time permitted for an employee to return to work after a period of military service beyond that provided in the USERRA.¹¹ The minimum interim periods, which include travel and rest, are based upon the period of military service. The time permitted between the conclusion of military service, safe travel time, and returning to work also governs when an employee may be scheduled to return to work. [Note: The employee may choose to return to work earlier, but the employee may not be required to return to work earlier than specified below.]

3 days or less of military service (including weekend drills): The completion of the period of service and the expiration of 24 hours after a period allowing for the safe transportation to the employee's residence. In other words, 24 hours **after** the service member is released from duty and returns to his/her residence.

4 -15 days of military service – The completion of the period of service and the expiration of 48 hours after a period allowing for the safe transportation to the employee's residence. In other words, 48 hours **after** the service member is released from duty and returns to his/her residence.

16 - 30 days of military service – The completion of the period of service and the expiration of 72 hours after a period allowing for the safe transportation to the employee's residence. In other words, 72 hours **after** the service member is released from duty and returns to his/her residence.

31 - 180 days of military service – The completion of the period of service and the expiration of 14 days after a period allowing for the safe transportation to the employee's residence. In other words, 14 days **after** the service member is released from duty and returns to his/her residence.

181 or more days of military service – The completion of the period of service and the expiration of 90 days after a period allowing for the safe transportation from the place of service to the employee's residence. In other words, 90 days **after** the service member is released from duty and returns to his/her residence.

Employees retain additional rights with respect to the timeliness of their return to work in cases where the established time frames are impossible or unreasonable through no fault of the employee or if the employee suffers from illness or injury incurred or aggravated while in military service.¹²

6. POSITIONS VACATED BY MILITARY LEAVE OF ABSENCE: This section provides guidance as to how positions may be filled when an employee vacates a position due to military leave.

Generally, if the absence is for a period of 90 days or less, the employee must be returned to the position that he or she left. Hence, an appointing authority generally may fill a position vacated as a result of a short-term (less than 91 days) military leave with an acting capacity appointment or by temporary compensation.

An appointing authority may fill a position vacated as a result of a long-term military leave on a permanent basis with the understanding that upon the completion of a period of military service, an employee must be promptly reemployed in the position that he or she left - or - in a position of like seniority, status, and pay which he or she is qualified to perform.

An acting capacity appointment may also be considered to fill a position vacated by a long-term military leave. Although acting capacity appointments generally do not exceed one year, an exception to the one-year provision will be considered, on a case-by-case basis, based on the circumstances associated with the reemployment rights of a service member.¹³

Should the employee granted military leave fail to exercise his or her reemployment rights, the vacancy may be filled in accordance with the appropriate collective bargaining agreement and *Civil Service Rules*.


Alicia Kellogg, Director
Bureau of Human Resources

¹Whether or not an employee volunteered for military duty does not diminish the employer's obligation to provide military leave. The employer's operational needs are *not* criteria to deny military leave.

²The paid leave provision should not be construed to limit, in any way, an employee's right to military leave. It means that the service member will be in pay status for up to 17 workdays of leave for performing military duty. The 17-day paid leave provision may be utilized within each calendar year.

³Extending military leave with pay to various types of non-status employment derives from MRSA, Title 37-B, Sec. 342. It is *not* a requirement of the USERRA.

⁴This provision of *Civil Service Rules* and Maine law is interpreted to mean that *all* benefits remain intact, customarily referred to as being "in pay status." With respect to salary, an employee in this category will receive *both* their State salary *and* military salary for up to 17 workdays of military duty.

⁵Such notice may be given by an appropriate officer of the uniformed service in which the service is performed. Notice is not required if such notice is precluded by military necessity or is otherwise impossible or unreasonable. Advance notification for weekend drills will generally be satisfied by the employee furnishing a copy of the weekend drill schedule to his or her supervisor.

⁶When employees are ordered to State or Federal service, particularly in cases of emergency, the identification of those employees for payroll purposes is crucial. Consequently, it is important that human resource representatives utilize proper leave codes for payroll tracking purposes.

⁷Military pay is determined by military rank of the employee or the State minimum wage times 12 hours, whichever is greater. Payment is made from a State company number that is established for this purpose. The USERRA does not apply in this situation. Nevertheless, Maine law provides that service members must be reinstated. Any employee who held a position that was not temporary, who gives notice of their absence for military duty, and who is still qualified to perform the duties of such position must be reinstated without loss of pay, seniority, benefits, status, and any other incidences of advantages of employment as if he or she had remained continuously employed.

⁸Questions regarding the continuation of health and dental coverage for State employees called to active state duty should be directed to the Office of Employee Health and Benefits.

⁹Appropriate documentation would generally include discharge papers, military leave and earnings statements, military schooling completion certificates, endorsed military orders, a letter from a proper military authority, or DD Form 214. Documentation should include dates of service. An appointing authority may *not* delay or attempt to thwart reemployment obligations by requiring documentation that does not exist or is not readily available to the employee. The employer may *not* establish prerequisites for reemployment in addition to those contained in the USERRA.

¹⁰Under Title 38, U.S. Code, if the state law is *more beneficial* to the service member, State law will prevail. Under this circumstance, reemployment rights for State employees are extensive. If the employee has incurred a service-connected disability, agency human resource representatives must be consulted. *Agency human resource representatives should be consulted if denial of reemployment for any reason, or other adverse action, is contemplated.*

¹¹PL 2005, Chapter 524 will be effective 08/23/06. Prior to that date the return provisions provided in the USERRA apply.

¹²When illness or injuries preclude reemployment or application for reemployment, the USERRA provides for extensions of up to two years or longer, depending on individual circumstances. **Agency human resource representatives should be consulted when any refusal of reemployment rights is contemplated.**

¹³As is indicated in the text, the USERRA makes distinctions with respect to reemployment rights based on the length of service. There are also other aspects (such as disability, qualifications to perform the work and training requirements) that will impact reemployment rights. *Employees, supervisors, and managers should consult agency human resource representatives if the appointing authority contemplates reemployment in a position other than that which the employee left.*