

EUT POLICY ON MILITARY LEAVES OF ABSENCE

12.4 Military Leave

Reference *Civil Service Rules*, Ch. 11, Sec. 2, E. Employer requirements and employee rights associated with leave for military service are found in the federal *Uniformed Services Employment and Reemployment Rights Act of 1994* (U.S. Code Title 38, Ch. 43), and various Maine statutes. It is also important to consult the Military Leave articles of the collective bargaining agreements.

State employees must be granted military leave to enter military service or participate in training, whether voluntarily or involuntarily, in peacetime or in wartime. The type and duration of military duty will determine whether the employee remains in pay status.

Military Leave With Pay

Employees (including employees who hold acting capacity and project appointments) are allowed up to 17 workdays in each calendar year **without loss of pay or benefits** when engaged in **any form of military duty**.

Military Leave Without Pay

When military service exceeds the 17 workdays authorized for military leave with pay, the employee must be placed on unpaid military leave. Employees may use, but are not required to use, accrued vacation, compensatory, or personal leave when entering unpaid military service. Provisions for the optional use of accrued vacation, compensatory, or personal leave also apply to employees who are called to active state duty by the Governor.

Re-employment

The guiding principle of the USERRA and Maine law is that an employee performing military service is not to suffer any detriment in employment and should be treated as if he or she had not left employment. State employees who enter military service retain reemployment rights under both the *Uniformed Services Employment and Reemployment Rights Act of 1994* and Maine law. Exceptions are narrowly restricted to persons who hold temporary, non-recurrent employment. Although certain criteria are required for an employee to exercise his or her reemployment rights, denial of reemployment to a returning service member should be considered an extraordinary situation. Human resource professionals should be consulted if any adverse action is contemplated.

An employee who enters military service on a short-term basis would generally be returned to the position that he or she left. Employees who enter military service on a long-term basis would be returned to the position that he or she left or be returned to a position of like status and pay for which he or she is qualified. Agency human resource representatives should be consulted if denial of reemployment for any reason is contemplated.

Upon the completion of service (less than 31 days, including weekend drills) employees are also entitled to reasonable time for return travel, and an eight-hour period of rest, before returning to work. The allotted time to apply for reemployment increases incrementally, depending upon the length of service. Departmental human resource representatives should be consulted in unusual situations.

12.4.a Military Leave – Merit Increases

Under normal circumstances, when a permanent employee goes out on unpaid military leave, s/he will return at the salary step that would have been in place had s/he not been on military leave. In other words, if the employee would have received a merit increase while on military leave, s/he will return at the higher salary step. Similarly, there would be no change in the salary review (merit) date.

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12.4.b Military Leave – Probationary Periods

Time spent on unpaid military leave does *not* count as time worked toward completing a probationary period (either initial probation or promotional probation). In other words, if an employee who has served three months of a six-month probationary period goes out on unpaid military leave, s/he would have to complete the remaining three months of probation when s/he returns from military service.

Included in this discussion is the State law that prohibits an employee from receiving a merit increase while on probation [5 MRSA, § 7065, sub-§ 3] and the State law that requires a probationary period of at least six months upon probation. [5 MRSA, § 7051, sub-§ 5]

In this situation, the Civil Service Law, Civil Service Rules, and the federal Uniformed Services Employment and Reemployment Rights Act (USERRA) mesh quite well. The USERRA is designed to protect the employment rights of returning service members. Quoting from the U.S. DOL's *A Non-Technical Resource Guide to the Uniformed Services Employment and Reemployment Rights Act* [April 2005], the federal law provides that: “. . . each returning service member actually step back onto the seniority ‘escalator’ at the point the person would have occupied if the person had remained continuously employed.” (This is the long-standing "escalator" principle.)

It is equally important to note that the USERRA does *not* undermine the integrity of the employer's probationary period. In enforcing the USERRA, the U.S. DOL requires that it be a bona fide probationary period, involving “special observation” and a true “evaluation” of performance – that it be more than simply a “lapse of time” or “waiting period”.

The objective of the probationary period in the State Service clearly meets the U.S. DOL standard: “The probationary period shall be regarded as an integral part of the examination process, and shall be utilized for closely observing the employee's work, for securing the most effective adjustment of a new employee to his/her position, and for rejecting any employee whose performance does not meet the required work standards.” [CSR, Chapter 9, Section 1] The probationary period for most State employees is generally six months, which may be extended to twelve months. [CSR, Chapter 9, Section 2]

With respect to probation for returning veterans, the guiding principal is that the returning service member be made whole after satisfying the employer's probationary requirement. Hence, **when a probationary employee (either initial or promotional) returns from military leave, s/he should be placed at the salary step that was in place at the time the military leave started, and continue probation. Upon successful completion of the probationary period, the service member must be made whole.** That is, the service member must be placed at the step s/he would have been at had s/he not been on military leave – and – receive a retroactive salary adjustment to the date s/he

returned from military leave. Also, the end of probation date should be adjusted to reflect the date the employee would have come off probation had the employee not been on military leave.

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Source: State of Maine Bureau of Human Resources Practices & Policy Manual