

Number 14.7 - MILITARY LEAVE

Effective Date: March 1, 1996

Revised Date: March 23, 2006

Applicable To: All classified, exempt and temporary employees with the Executive Branch of the State of Vermont

Issued By: Department of Human Resources

Approved By: Michael K. Smith, Secretary of Administration

PURPOSE AND POLICY STATEMENT

The State of Vermont is committed to protecting the job rights and benefits of employees who are absent on military leave. This policy provides permanent employees with the opportunity to fulfill their military obligations without penalty.

In accordance with federal and state law, it is the State of Vermont's policy that no employee will be subjected to any form of discrimination on the basis of that person's membership in or obligation to perform service for any of the Uniformed Services of the United States. Specifically, no person will be denied employment, reemployment, retention in employment, promotion or other benefit of employment on the basis of such membership or service. Furthermore, no person will be subjected to retaliation or adverse employment action because such person has exercised his or her rights under this policy.

The Military Leave article of the current Agreements between the State of Vermont and the Vermont State Employee's Association, Inc., as applicable, must be observed in administering this policy. The contract provision does not apply to temporary employees.

If any employee believes that he or she has been subjected to discrimination in violation of this policy, the employee should immediately contact his or her Personnel Officer, or the Labor Relations Division of the Department of Human Resources. In addition, the U.S. Department of Labor, Veterans' Employment and Training Service (VETS) is authorized to investigate and resolve complaints of USERRA violations. VETS can be reached at 1-866-4-USA-DOL or at <http://www.dol.gov/vets>.

DEFINITIONS

Federal Fiscal Year: October 1 to September 30.

Reasonable Effort: means actions, including training provided by an employer, that do not place an undue hardship on the employer.

Service in the Uniformed Services: means the performance of duty of a voluntary or involuntary basis in a uniformed service including: active duty; active and inactive duty for training; National Guard service under federal authority; initial active duty for training; examination to determine fitness for duty; funeral honors duty by National Guard or Reserve members; and certain duties performed by National Disaster Medical System employees.

Uniformed Services: consists of the Army, Navy, Marine Corps, Air Force, or Coast Guard; Army, Naval, Air Force or Coast Guard Reserves; Army or Air National Guard; Commissioned Corps of the Public Health Service; and any other category of persons designated by the President in time of war or national emergency.

USERRA: Uniformed Services Employment and Reemployment Rights Act. USERRA protects the job rights of individuals who voluntarily or involuntarily leave employment positions to undertake military service or certain types of service in the National Disaster Medical System. USERRA also prohibits employers from discriminating against past and present members of the uniformed services, and applicants to the uniformed services.

TYPES OF LEAVE

Inactive Duty Leave: Employees who are members of the Reserves or National Guard shall be granted leave without pay for scheduled inactive duty training or service (IDT), or equivalent, unless they elect to use accrued annual, personal or compensatory time off to cover such absences from work.

Short Term Military Leave: Eligible employees who are members of the Reserves or National Guard shall be allowed military leave with pay, at their regular base salary (prorated as appropriate), for up to a maximum of eleven (11) work days, scheduled by military authority, in any Federal Fiscal Year, for any authorized active duty training or service. All benefits will continue during an employee's temporary military leave.

Extended Military Leave: Eligible employees who are members of the Reserves or National Guard shall be granted a military leave of absence without pay for any authorized active duty, or active duty for training or other similar military service in excess of eleven (11) work days in any Federal Fiscal Year, for a period of up to five (5) years. Employees who are inducted into the Armed Forces by draft or voluntary enlistment for active service shall also be granted a military leave of absence without pay for a period of up to five (5) years. In accordance with USERRA, periods of service for certain types of military duty may be excluded from counting toward the five (5) year period.

PROCEDURES FOR USE OF MILITARY LEAVE

1. The employee will provide his or her immediate supervisor with notice that the employee will be engaging in military service, including, where feasible, a copy of the

orders directing the military duty, unless the employee is prevented from doing so by military necessity. Employees are requested to provide such notice within thirty (30) days of active military service. Failure to provide adequate notice may render the employee ineligible for the rights and benefits described in this policy, unless the employee can show it would have been precluded by military necessity, or otherwise impossible or unreasonable.

2. To request a temporary or extended military leave of absence, the employee should, unless prevented from doing so by military necessity, submit an Employee's Active Duty Leave Notification Letter (see Attachment A) to his or her Personnel Officer.

3. The Personnel Officer will review and sign the *Employee's Active Duty Leave Notification Letter*, provide necessary information regarding the continuation of health insurance coverage, generate other applicable documents, and process necessary personnel actions.

4. Employees on temporary or extended military leave may, at their option, use any or all accrued paid vacation, compensatory time or personal leave during their absence.

5. When the employee intends to return to work, he or she must make application for reemployment to the Personnel Officer as outlined in the Reporting Back to Work section below.

6. If the employee does not return to work, the supervisor must notify the Personnel Officer so that appropriate action may be taken.

BENEFITS

If an employee is absent from work due to military service, benefits will continue as follows:

1. An employee on extended unpaid military leave may elect to continue group health insurance coverage for the employee and covered dependents. Continuation of coverage shall be at the normal 80/20% premium share rate and may continue until the employee's return from active duty.

2. Any group term life/AD&D insurance provided by the State of Vermont will continue for twelve (12) months from the beginning of military leave of absence with premiums fully paid by the State.

3. Any group long-term disability insurance provided by the State of Vermont will continue for ninety (90) days from the beginning of military leave of absence with premiums fully paid by the State.

4. Employees do not accrue annual, personal, or sick leave while on unpaid military leave of absence status. However, employees on extended military leave who elect to

use accrued leave balances such that they qualify for leave accruals in accordance with the collective bargaining agreements, and/or leave accrual policies, will accrue leave as appropriate.

5. With respect to the State of Vermont's retirement plan, upon reemployment, employees who have taken military leave will be credited for purposes of vesting with the time spent in military service and will be treated as not having incurred a break in service. Since the employer must report all unpaid leaves of absence to the Retirement Office, upon return from military leave, the employee must contact the Retirement Office to ensure that the employee's retirement account receives credit for the time spent in military service. Immediately upon reemployment, the employee may elect to make any or all employee contributions that the employee would have been eligible to make had the employee's employment not been interrupted by military service. Such contributions must be made within a period that begins with the employee's reemployment and that is not greater in duration than three times the length of the employee's military service, with the payment period not to exceed five years. The State will make any required contributions should the employee elect to exercise this option.

REEMPLOYMENT

Upon an employee's prompt application for reemployment (as defined below), an employee will be reinstated to employment in the following manner depending upon the length of the employee's military service:

Military Service of 1 to 90 days – • In a position the employee would have held had his or her employment not been interrupted by military service, provided the employee is qualified for the position, or can become qualified after reasonable effort by the State of Vermont; or

- If found not qualified for such position after reasonable effort by the State of Vermont to qualify the employee, in the position in which the employee had been employed prior to military service.
- In a position that is the nearest approximation to the positions described above (in that order) which the person is able to perform, with full seniority, if the employee cannot become qualified for either position described above even after reasonable effort by the State of Vermont.

Military Service of 91 days or more –

- In a position that the employee would have attained if employment had not been interrupted by military service or a position of like seniority, status, and pay, the duties of which the employee is qualified to perform; or
- If proved not qualified after reasonable effort by the State of Vermont, in the position the employee left, or a position of like seniority, status and pay, the duties of which the employee is qualified to perform.
- In a position that is the nearest approximation to the positions described above (in that order) which the person is able to perform, with full seniority, if the employee cannot

become qualified for either position described above even after reasonable effort by the State of Vermont.

Employee with a service-connected disability – If after reasonable accommodation efforts by the employer, an employee with a service-connected disability is not qualified for employment in the position he or she would have attained or in the position that he or she left, the employee will be employed in

- any other position of equivalent seniority, status and pay for which the employee is qualified or could become qualified with reasonable effort by the State of Vermont; or
- If no such position exists, in the nearest approximation consistent with the circumstances of the employee's situation.

REPORTING BACK TO WORK

An employee who has engaged in military service must, in order to be entitled to the reemployment rights set forth above, request reemployment according to the following schedule. The employee's request may be written or verbal.

1. If service is for 1 to 30 days (or for the purpose of taking an examination to determine fitness for service) – the employee must report for work at the beginning of the first full regularly scheduled working period on the first calendar day following completion of service and the expiration of eight hours after a time for safe transportation back to the employee's residence.
2. If service is for 31 days to 180 days – the employee should submit an *Employee's Return from Active Duty Notification Letter* for reemployment (see Attachment B for sample letter) to his or her Personnel Officer no later than 14 days following the completion of service.
3. If service for 181 or more days – the employee should submit an *Employee's Return from Active Duty Notification Letter* for reemployment to his or her Personnel Officer no later than ninety (90) days following the completion of service.
4. If the employee is hospitalized or convalescing from a service-connected injury – the employee should submit an *Employee's Return from Active Duty Notification Letter* for reemployment to his or her Personnel Officer no later than two (2) years following completion of service.

EXCEPTIONS TO REEMPLOYMENT

An employee is not entitled to reinstatement as described above if any of the following conditions exist:

1. The employee fails to apply for reemployment in a timely manner.

2. The State of Vermont's circumstances have so changed as to make reemployment impossible or unreasonable.
3. The employee's employment prior to the military service was merely for a brief, non-recurrent period and there was no reasonable expectation that the employment would have continued indefinitely or for a significant period.
4. The employee did not receive an honorable discharge from military service.

GENERAL BENEFITS UPON REEMPLOYMENT

Employees who are reemployed following military leave will receive seniority and other benefits determined by seniority that the employee had at the beginning of the military leave, plus any additional seniority and benefits the employee would have attained with reasonable certainty had the individual remained continuously employed. However, employees will not accrue leave benefits while on an unpaid leave of absence. In addition, an employee's time spent on active military duty will be counted toward his or her eligibility for Family and Medical Leave Act leave once he or she returns to his or her job with the State of Vermont.

DOCUMENTATION

An employee's manager will, upon the employee's reapplication for employment, request that the employee provide the State of Vermont with military discharge documentation that establishes the timeliness of the application for reemployment and length and character of the employee's military service.