

**The State Contract Series**

For use in understanding the state employees' contract



**Article 30.02 & 31.01E - MILITARY LEAVE**

**ACTIVATION**

There are essentially two types of military leave:

- Federal Duty pursuant to Executive Order by the President because of an Act of Congress or Governor's Order pursuant to ORC Section 5919.29 – employees serving in the uniformed services, called to federal duty because of an Executive Order of the President, because of an Act of Congress, or because of a Governor's directive pursuant to ORC Section 5919.29. Employees on this type of leave are paid by the federal government. This duty includes, but is not limited to the following: annual training, weekend drills, schools or other training, and most recently, Ohio National Guard members on airport security duty or reservists called to active duty.
- State Active Duty pursuant to Governor's Proclamation – employees serving in the Ohio National Guard, called to state active duty by the Governor. This occurs infrequently and is most often in response to disasters or civil unrest. See, ORC Section 5923.21. Employees on this type of leave are paid by warrant of the Auditor of State.

**Q: I have been called to report to my unit. What do I need to do to request leave?**

**A:** To process the leave request, please submit a copy of your orders to your human resources office. A letter on military unit letterhead, signed by your military commander, may be submitted as a **temporary** document in lieu of the orders. Once you have your official

orders, it is your responsibility to provide a copy of the orders to your human resources office.

If you are unable to provide a copy of your orders or a letter from your commander, you must use your available leave or be placed on a leave of absence.

**Q: Will I be taken off payroll once I am activated?**

**A:** No.

**Q: I am a temporary employee. Am I entitled to military leave?**

**A:** No, only permanent employees are eligible for military leave.

**MILITARY LEAVE HOURS**

**Q: How many hours of military leave is a state employee entitled to receive each year?**

**A:** Permanent public employees are entitled to a leave of absence from their respective positions without loss of pay for periods up to one month for each calendar year in which they are performing service in the uniformed services. A month means 22 eight-hour workdays or 176 hours within one calendar year.

**Q: What happens when I have exhausted this calendar year's 22 work days or 176 hours?**

**A:** Once you have exhausted all 22 work days or 176 hours in a calendar year, you may be placed on a leave of absence or

use your available vacation, personal or comp time balances. After exhaustion of all balances you will be placed on a leave of absence without pay and a pay differential as set forth in Ohio Revised Code 5923.05(B).

**Q: I have a balance of military leave hours. Can I carry forward those hours to the next calendar year's allotment of 176 hours?**

**A:** No, unused hours are lost.

## **INSURANCE COVERAGE**

**Q: Will I continue to have benefits for myself and my family?**

**A:** Dental, vision and life insurance premiums will be paid by the agency as long as you remain on the payroll. You will continue with your existing family or single coverage for dental vision and life insurance.

Amended Substitute Senate Bill 164 provides for employees called to Federal Duty, that the State of Ohio will continue to pay the employer's share of health insurance and the employee will still be responsible for his/her share of insurance.

Employees on State Active Duty will be responsible for both the employee and employer's share of the insurance. See, ORC Section 5923.051.

Employees who choose to carry a State of Ohio sponsored health plan may pay for their share using the following options:

1. Make a direct pay to their employer
2. Payment will be automatically deducted from earnings that the employee receives during the payroll period, by
  - a. From usage of military leave (176 hours per year).
  - b. From his/her military leave differential as provided in SB 164.

c. From available leave balances: vacation, personal and comp time, until exhausted.

An employee will not be permitted to use 8 hours of paid leave per pay period or alternate between paid and unpaid status. Once an employee has depleted all the paid leave that he or she has elected to utilize, he or she will be placed on unpaid status.

3. Receive an advancement of money (up to \$1500 per calendar year) to cover the employee's share of health care. Agencies will track the amount of money advanced, then recoup this money once the employee receives a payment from the agency.

**Q: Can I use my available leave balances while I am activated to make my health insurance premium payment?**

**A:** Vacation, personal and comp time balances may be used. Employees will not be permitted to use 8 hours of paid leave per pay period or allowed to jump back and forth from paid leave to "no pay" status. Example: An employee may not use eight hours of vacation for the first payroll the next month. An employee may not spread out a remaining balance of 40 hours of vacation leave by taking 8 hours over 5 pay periods. If the employee has elected to take those 40 hours of vacation, it will be used in a lump. Sick leave may not be used.

**Q: While on leave without pay, who pays for my health insurance?**

**A:** Amended Substitute Senate Bill 164 provides for employees called to Federal Duty, that the State of Ohio will continue to pay the employer's share of health insurance and the employee will still be responsible for their share of insurance. Employees on State Active Duty will be responsible for both the employee and employer's share of the insurance. See, ORC Section 5923.051.

Employees who choose to carry a State of Ohio sponsored health plan may pay for their share using the following options:

1. Make a direct pay to their employer
2. Payment will be automatically deducted from earnings that the employee receives during the payroll period, by
  - a. From usage of military leave (176 hours per year).
  - b. From his/her military leave differential as provided in SB 164.
  - c. Use of available vacation, personal or comp time balances.
3. Receive an advancement of money (up to \$1500 per calendar year) to cover the employee's share of health care. Agencies will track the amount of money advanced, then recoup this money once the employee receives a payment from the agency.

**Q: I have exhausted all 176 hours of military leave with pay and available leave balances. How can I continue my health coverage?**

- A:** Employees who choose to carry a State of Ohio sponsored health plan may pay for their share using the following options:
1. Make a direct pay to their employer
  2. Payment will be automatically deducted from earnings that the employee receives during the payroll period, by
    - a. From usage of military leave (176 hours per year).
    - b. From his/her military leave differential as provided in SB 164.
  3. Receive an advancement of money (up to \$1500 per calendar year) to cover the employee's share of health care. Agencies will track the amount of money advanced, then recoup this money once the employee receives a payment from the agency.

**Q: Do I have to enroll in the military's health plan?**

**A:** No. After 31 days of active military service, you are automatically enrolled in Tricare, the military health care plan.

**Q: Who pays for my claims if I continue my State of Ohio health coverage and I am automatically enrolled in the military plan?**

**A:** The state health plan pays first because it is the primary health care insurance plan.

**Q: What happens to my supplemental life insurance policy while I am on active duty?**

**A:** If you wish to continue your coverage, you must contact Prudential to make arrangements for direct payments. Your rate will not change unless you enter a new rate level based on your age. If you do not continue coverage, you may enroll again at any open enrollment period.

**Q: I am currently enrolled in Long Term Care. How can I continue coverage?**

**A:** You will need to contact Aetna to make arrangements for paying the premium directly to them. Aetna's number is 1-800-537-8521.

## **OTHER TYPES OF LEAVE**

**Q: I am currently on disability/workers' compensation/occupational injury leave and I have been called up. Will my benefits be stopped?**

**A:** Further clarification is being sought and the answer may be provided on a case-by-case basis. However, benefits will continue if military job duties are not in conflict with approved medical documentation on file. Continued medical documentation will be accepted from an authorized military physician.

**Q:** I am currently on an approved leave of absence and have been activated. Is my leave terminated?

**A:** Your approved leave is terminated when you report to duty. You must notify your agency's human resources office of this change in status.

## **REINSTATEMENT/RECALL RIGHTS**

**Q: What documents are required to be reinstated to my position?**

**A:** To be entitled to reinstatement/reemployment, you must receive a certificate of satisfactory service or general discharge (e.g., under honorable conditions).

**Q: When will I be reinstated upon completion of active duty?**

**A: You must apply for reinstatement** after you return from uniformed service leave to your agency, within the period set forth below:

For reinstatement from leaves of less than 30 days: Immediately upon release from duty, you will be returned to the same or similar position within your former classification. Your agency must allow for travel time and eight hours of rest;

Leaves of 31 to 180 days: Reinstatement within 14 days of completing uniformed service requirement;

Leaves of more than 180 days: Reinstatement within 90 days of completing uniformed service requirement.

**Q: Once I ask for reinstatement, do I get my old position back?**

**A:** Upon return from a period of duty in the uniformed services lasting 90 days or less, you will be returned to the same or similar position within your former classification. If the period of duty lasts more than 90 days, you may be placed in

any position of equivalent status, seniority and pay, regardless of the duration of duty. If the appointing authority demonstrates to the director of Administrative Services, that reinstatement is impossible or would impose undue hardship, you will be assigned to another position with like seniority, status and pay or the nearest approximation thereof consistent with the circumstances of the case.

**Q: I am currently laid off and have been called to active duty. What are my rights?**

**A:** If you could have been recalled while on active duty, you are entitled to a working position upon release from active duty if you have applied for reinstatement.

**Q: If my agency has a layoff while I'm on active duty, can I be laid off?**

**A:** You cannot be laid off while you are on military leave. When you return to work, you may be subject to layoff.

## **PAY INCREASES**

**Q: Will I get may pay increases while on active duty?**

**A:** Yes, you will be entitled to receive any pay increase(s) while on active duty. For the Military Leave Differential calculation and for the payment of the 176 hours of military leave per calendar year, the agency will move the employee's step indicator and calculate service time each pay period. This will allow you to get step increases and longevity increases, plus receive the annual pay table increase and any other pay changes you would have received if you had been working.

**Q: If I am on active duty during the December conversions of leave balances, am I eligible to convert my leave balances to cash?**

**A:** Yes, as long as you are in active pay status.

## **WITHHOLDING**

**Q: Child support is being withheld from my pay. Will the state continue to withhold it?**

**A:** As long as you are in an active pay status, all of your attachments will be withheld.

**Q: What taxes are withheld?**

**A:** As long as you are in active pay status all taxes, including federal, state and local taxes will be withheld according to the law.

**Q: What is Military Differential Pay?**

**A:** Due to SB 164, the Ohio Revised Code authorizes the payment of a supplement to those employees who are called to Federal Duty as a result of (1) a Presidential Executive Order or (2) an Act of Congress for a period in excess of 31 days or (3) because of an order to perform duty issued by the governor. Each employee who qualifies pursuant to the above shall be paid the difference between the employee's gross monthly wage or salary as a State of Ohio employee and the sum of the employee's gross uniformed pay and allowances received that month. The supplement is calculated by determining the difference between your monthly gross state wage or salary and the sum of your monthly gross military pay and allowances. A worksheet has been provided by DAS to all agency payroll officers. You will need to supply this information to the agency payroll office to receive any differential pay.

Medicare, federal, state, municipal and school district income tax and attachments will be withheld as applicable. No deductions, however, will be made for retirement systems, union dues, fair share fees or voluntary deductions.

## **RETIREMENT SYSTEMS**

**Q: What is the status of my retirement system contributions?**

**A:** Up to 10 years of free service credit may be granted to a member who, after at least one year of contributing service, leave public employment for active duty in the armed forces and returns within two years after discharge to a position covered by Public Employees Retirement System (PERS), State Teachers Retirement System (STRS), School employees Retirement System (SERS), Ohio Police and Fire Pension Fund (OP&F), the Highway Patrol Retirement System (HPRS) or Cincinnati Retirement System (CRS).

A member must establish one year of service credit upon returning to public employment and must furnish a copy of the discharge or separation from the armed forces.

For more information, please contact your agency's Human Resources Office.

## **LEAVE ACCRUAL**

**Q: What types of leave accrue during the 176 hours of paid military leave?**

**A:** Both exempt and bargaining unit employees accrue all forms of leave – sick, vacation, and personal until their 176 hours of paid military leave expires.

**Q: After the initial 176 hours of paid military leave does any type of leave accrue?**

**A:** Exempt employees do not accrue sick, vacation, or personal leave.

Employees covered under the OCSEA, OSTA, 1199, and FOP contracts only accrue sick leave while on unpaid military leave. These employees do not accrue any other forms of leave.

Employees covered under the SCOPE contract do not accrue any form of leave while on unpaid military leave.

## FMLA ELIGIBILITY

**Q: Does my time on military leave count toward my eligibility for Family Medical leave?**

**A:** Yes, time on military leave (paid and unpaid) is included in calculating both the 12 month service requirement and the 1,250-hour work requirement for purposes of the Family Medical Leave Act

## REFERENCES

ORC 5919.29; 5923.21  
Arbitration #763  
Article 30.02; 31.01E  
Amended Substitute Senate Bill 164  
OAC 123:1-34-05  
Federal Law-USERRA 38USC 4301-4333  
[Http://das.ohio.gov.hrd.military.leave/index.htm](http://das.ohio.gov.hrd.military.leave/index.htm)

## For Additional Information:

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