

MANAGEMENT DIRECTIVE

Commonwealth of Pennsylvania
Governor's Office

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| Subject: Absences for Military Duty | Number: 530.26 Amended |
| Date: November 2, 2017 | By Direction of:  Sharon P. Minnich, Secretary of Administration |
| Contact Agency: Office of Administration, HR Service Center, Absence Services Division, Telephone 717.346.4667 | |

This directive establishes policy, responsibilities, and procedures for absences for military duty and associated benefits. Marginal dots are excluded due to major changes.

- 1. PURPOSE.** To establish policy, responsibilities, and procedures regarding absences for military duty and associated benefits.
- 2. SCOPE.** This directive applies to employees in all agencies under the Governor's jurisdiction.
- 3. OBJECTIVE.** To ensure absences for military duty are administered consistently and in accordance with policies and applicable laws.
- 4. DEFINITIONS.** The following definitions pertain to this directive. For purposes other than this directive, these words and terms may have different meanings.
 - a. Eligibility Points.** Points which are accrued by an active member or a multiple-service member who is an active member in the Public School Employees' Retirement System for credited service or a member who has been reemployed from USERRA absence or a member who dies while on USERRA-covered absence and are used in the determination of eligibility for benefits.
 - b. Leave Calendar Year.** The year begins with the first full pay period in January and continuing through the end of the pay period in which December 31 falls.
 - c. Military Duty.** Active duty, including active duty for training and/or inactive duty training in the Uniformed Services on dates ordered or authorized by the Uniformed Service.

- d. **Military Leave of Absence.** An absence from work, with or without pay, to perform military duty. The term "absence for military duty" is used interchangeably with "military leave of absence".
 - e. **Patient Protection and Affordable Care Act (PPACA)**, also known as the **Affordable Care Act or ACA**, 42 U.S.C. §§ 18001 *et seq.* The federal healthcare reform law enacted in 2010.
 - f. **Pennsylvania National Guard.** Includes the Pennsylvania Army National Guard and Pennsylvania Air National Guard. It does not include National Guard units from other states.
 - g. **Uniformed Services.** Consists of the following groups:
 - (1) Armed Forces:
 - (a) Army, Navy, Marine Corps, Air Force, or Coast Guard;
 - (b) Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve or Coast Guard Reserve;
 - (c) Army National Guard or Air National Guard when engaged in active duty for training or inactive duty training or full time national guard duty;
 - (2) Commissioned Corps of the Public Health Service;
 - (3) National Disaster Medical System when federally activated or attending authorized training in support of their federal mission;
 - (4) Any other category of persons designated by the President of the United States in time of war or emergency.
 - h. **Uniformed Services Employment and Reemployment Rights Act (USERRA)** 38 U.S.C. §§ 4301-4335. The federal law that establishes employment and reemployment rights and responsibilities for Uniformed Service members and their civilian employers.
 - i. **USERRA-Covered Absences.** Absences for military duty for which employees have reemployment rights.
5. **POLICY.** The commonwealth's policy for military leaves of absence is derived from the following: collective bargaining agreements and memoranda of understanding; *Management Directive 505.7, Personnel Rules; USERRA*; Section 4102 of Pennsylvania's Military and Veterans Code, 51 Pa. C.S. § 4102 (relating to leaves of absence for certain government employees); Sections 7301 through 7309 of Pennsylvania's Military and Veterans Code, 51 Pa. C.S. §§ 7301-7309 (relating to military leaves of absence); and the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act). When policies, collective bargaining agreements or laws conflict, the policy, collective bargaining agreement or law which is most generous applies.

a. General.

- (1) Employees on an absence for military duty will have their duties performed either by remaining employees (and their positions kept vacant) or by temporary employees.
- (2) Some of the benefits provided in this directive are not available to all employees; exceptions are referenced within the applicable section. Additionally, uniformed service as a federal technician under 32 U.S.C. § 709 or 5 U.S.C. § 3101 is **not** eligible for military leaves of absence outlined in this directive.

b. Paid Military Leave. The following paid military leave benefits, as summarized in Enclosure 1, only apply to members of Reserve components of the Uniformed Services and the Pennsylvania National Guard: Paid military leave may not be used during an extended absence for military duty as described in section 5.i.(4). **Exception:** Retired Uniformed Services members, civilians and other Uniformed Service members are not eligible for paid military leave.

- (1) **Basic Entitlement.** Under commonwealth policy and 51 Pa. C.S. § 4102(a)(1)(i)(B), eligible permanent and non-permanent employees may use up to 15 work days during each leave calendar year to cover an absence for military duty. Fifteen (15) days is 112.5 hours for a 7.5 hour work schedule or 120 hours for an 8.0 hour work schedule. **Note:** Paid military leave is not prorated for part-time employees; part-time employees may use up to the full-time hourly equivalent of 15 work days (112.5 or 120 hours).
- (2) **Additional PA Law Entitlement.** Under 51 Pa. C.S. § 4102(a)(1)(ii), eligible permanent and non-permanent employees may use up to 15 work days (112.5 or 120 hours) in addition to the basic entitlement provided in section 5.b.(1) above during each leave calendar year when ordered to active military duty that is:
 - (a) involuntary; or performed in a combat zone; or in response to a domestic emergency or pursuant to a contingency operations service agreement; and
 - (b) ordered for a period of at least 30 consecutive days; and
 - (c) performed while the employee is deployed at least 50 miles away from both the employee's home duty station and place of residence; and
 - (d) ordered under 10 U.S.C. §§ 12301 (relating to Reserve components generally), 12302 (relating to Ready Reserve) or 12304 (relating to Selected Reserve and certain Individual Ready Reserve members; ordered to active duty other than war or national emergency) or 32 U.S.C. § 502(f) (relating to required drills and field exercises); and
 - (e) not for training.

- (3) **Executive Board Resolution Entitlement.** Under Executive Board Resolution LE-07-340, permanent employees may use a one-time entitlement of up to 15 days (112.5/120 hours) at any time during the employee's career in addition to the entitlements under sections 5.b.(1) and (2) above.
- (4) **Active State Guard Duty Entitlement.** Under 51 Pa. C.S. § 4102(a)(1)(i)(A), permanent and non-permanent employees who are Pennsylvania National Guard members and are ordered to state active duty receive paid military leave on all scheduled work days during the entire period of military duty. **Exception:** If the duty is in another state, employees will not be eligible for this entitlement unless the service is under the Emergency Management Assistance Compact as determined by the Governor.
- (5) Employees whose absence for military duty spans two (2) or more leave calendar years will receive applicable paid military leave at the beginning of each leave calendar year, unless employees request to save the paid leave for military leaves of absences related to another period of military duty expected to occur later in that leave calendar year.
- (6) Nonpermanent employees may use paid leave only on days they would have been scheduled to work if they were not on military duty. **Note:** Non-permanent employees include all employees coded Employment Group "N" in SAP.

c. **Other Paid Leave.**

- (1) During absences for military duty, employees may use annual/combined, personal (where applicable), compensatory or holiday leave that was accrued before the absence for military duty began.
- (2) Employees who are beginning active military duty and using military leave without pay may request, in writing, payment for all or a portion of accumulated annual, personal (where applicable), compensatory, and holiday leave. An additional payment for accumulated leave may be made at the beginning of each leave calendar year for as long as the absence for military duty continues. Employees may not later "buy back" leave that is paid. **Note:** Lump sum leave payouts do not count toward retirement credit with the State Employees Retirement System.
 - (a) If not elected to be paid, earned holiday and compensatory leave will be paid in accordance with applicable rules.
 - (b) If not elected to be paid, excess personal leave quota (where applicable) that was carried over from a prior leave calendar year and not used before the end of the seven (7) pay period extension, due to the absence for military duty, will be paid automatically at the end of the extension period.
- (3) Sick leave is only available as a result of injuries incurred during military duty. Sick leave will be carried over until return from an absence for military duty, subject to applicable maximum accumulation limits.

d. Military Leave Without Pay.

- (1) Employees performing military duty in any of the Uniformed Services, shall be granted military leave without pay, as summarized in Enclosure 1.
- (2) Military leave without pay is available for five (5) years. The five (5) years is cumulative throughout employment with the commonwealth, but some military duty is not counted against the five (5) years. Enclosure 2 summarizes the types of military duty that are excluded from the five (5)-year maximum entitlement.

e. Benefits.

- (1) **Leave Benefits.** Annual and sick leave will continue to accrue when using paid leave during a military absence. Holidays will be earned provided the employee is in an active pay status the last half of the employee's scheduled work day immediately prior and the first half of the employee's scheduled work day immediately after the holiday. Personal leave (where applicable) will be earned provided 20 days are paid within the earning period in accordance with applicable rules.
- (2) **Health insurance and group life insurance.** Health insurance and group life insurance benefits continue during paid and unpaid absences for military duty for eligible employees who are enrolled in coverage. Enclosure 1 summarizes the types of military duty and the length of time benefits are continued.
 - (a) Employees who exhaust their benefits entitlement will have the option to continue health insurance and group life insurance benefits by paying for the coverage. The insurance plan administrators will send notices explaining the benefit continuation options, including the cost of coverage and length of time coverage is available.
 - (b) Employees may decline health benefits while on leave without pay with benefits. **Note:** Unless employees provide written notification to decline benefits, benefits will continue.
 - (c) The continuation of benefits is contingent upon the deduction of the employee's cost of coverage, which may include the employee contribution and/or applicable buy-ups, or direct payment of the costs to the insurance plan administrator.
 - (d) For PPACA purposes, employees on unpaid military leaves of absence will continue to be eligible for benefits for 91 days, regardless of whether the absence is covered by USERRA. The employee will be placed on leave without pay without benefits effective the 92nd day of absence. **Exception:** Employees who enlist in the regular branches of the U.S. Armed Forces.

(3) State Employees Retirement System (SERS) Benefits.

- (a)** Contributions to SERS do **not** continue during unpaid absences for military duty and are **not** withheld from any paid leave used for an absence for military duty. This includes, but is not limited to, annual/combined, personal (where applicable), holiday, compensatory, or sick leave.
 - (b)** Upon return to work, employees may opt to have the military service time credited by submitting a request to SERS to purchase the service and paying contributions that would have been paid if they were not on military duty. These payments must be made within prescribed timelines, which is three (3) times the length of military leave or five (5) years, whichever is less. If the purchase of service is not completed timely, contributions may not be made later nor can the time be bought back later. Payment options include lump sum or payroll deductions. **Note:** Actuarial debt is no longer an option after December 31, 2012.
 - (c)** Eligibility points for the period of military duty will accrue, except for certain National Guard service and when the time exceeds five (5) years, as described above in section 5.d. However, the time may be purchased as non-intervening military service time.
 - (d)** Employees who die while performing military duty that was reported to SERS as USERRA-covered absence will receive eligibility points for the period of military duty up to the date of their death. The purchase of service credit is not allowed.
- f. Stipend Payments.** Permanent employees are eligible to receive up to \$520 per month in stipend payments during periods of unpaid absence for active military duty. Stipend payments are processed as described in section 7.b. below and are prorated at a weekly amount of \$130 for partial months of military leave without pay. Enclosure 1 summarizes the types of military duty for which the monthly stipend is paid. **Exceptions:** Employees who delay their return to work as described in section 5.i.(4) below and non-permanent employees are not eligible for stipends.
- g. Medical Status as a Result of Injury During Military Duty.** Employees who are injured and incapacitated while performing military duty, on "patient" or "medical" status with the military and no longer under active duty military orders, have the following options:
- (1)** use paid sick, annual/combined or personal leave (where applicable); or use unpaid sick leave under FMLA/SPF Absence in accordance with established rules for these leave types; or
 - (2)** use military leave without pay; or
 - (3)** return to work.

h. Required Documentation. Documentation is required to determine eligibility for the following: the use of paid leave; benefits; stipends; and the right to return to work.

- (1) Documentation may be provided in the form of military orders, written communication from the employee's military unit or Form DD-214.
- (2) Documentation should be received before placing employees on paid leave or when continuing benefits and paying stipends. However, when employees are activated with minimal notice, military orders might not be issued until after the activation. Under these circumstances, paid leave and stipend payments ordinarily should not be withheld while waiting for the military orders to be received, unless there are questions about the type of military duty and leave available for such military duty. If military orders are not ultimately provided, overpayments of paid leave, benefits and stipends, will be recovered.
- (3) Documentation is required upon release after periods of duty for more than 30 calendar days to establish that: applications for reemployment are timely; employees have not exceeded the cumulative five-year limit; and the character of the service was honorable. A copy of Form DD-214 is to be provided if issued.
- (4) Documentation supporting an absence for military duty is maintained permanently in the employee's Official Personnel Folder consistent with *Management Directive 505.18, Maintenance, Access, and Release of Employee Information*.

i. Return to work.

- (1) Employees have the right to return to employment at the time of or prior to the expiration of an absence for military duty, upon reporting to work or notifying the agency head of the desire and availability to return to work, subject to the following:
 - (a) the employee is capable of performing the essential functions of the position; and
 - (b) for non-permanent employees, the position has not yet expired; and
 - (c) application for reemployment is made within the periods described in section 5.i.(2) below; and
 - (d) the employee has been honorably discharged. **Note:** Employees do not typically receive a discharge from short-term duty (30 days or less) or National Guard duty, unless such duty was authorized under 10 U.S.C.
- (2) Written application for reemployment must be provided after periods of service of more than 30 calendar days and for periods of hospitalization or convalescence from illness or injury incurred during a period of military duty.

- (3) Employees must be reemployed to a position based on the period of military duty as follows:
- (a) For duty of 1 to 90 calendar days:
- 1 In the job the employee would have held had the employee remained continuously employed, provided the employee is qualified for the job or can become qualified after reasonable efforts; or
 - 2 If the employee cannot become qualified, in the position the employee held on the date of the commencement of the military service.
- (b) For duty of 91 or more calendar days:
- 1 Same as for duty of 1 to 90 calendar days, or a position of like seniority, status and pay, provided the employee is qualified; or
 - 2 If the employee cannot become qualified, in the position the employee held on the date of the commencement of the military duty or a position which nearly approximates that position.
- (4) Absences for military duty expire at the conclusion of the duty. However, employees may extend their absence by providing a written request to delay their return to work as follows:
- (a) For military duty of more than 180 calendar days, no more than 90 calendar days after the completion of the duty;
 - (b) For military duty between 31 to 180 calendar days, no more than 14 calendar days after the completion of the duty;
 - (c) For military duty less than 31 calendar days, the first full regularly scheduled work day following the period of service or up to eight (8) hours after an opportunity to return from the place of duty to the employee's home;
 - (d) For periods of hospitalization or convalescence from illness or injury incurred during military duty, up to two years after the period of duty or when recovered, whichever occurs sooner; or
 - (e) For circumstances beyond an employee's control, the above periods may be extended upon demonstration of such circumstance.

6. RESPONSIBILITIES.

a. The Employee shall:

- (1) Provide verbal or written notice of military duty and military orders to the employee's supervisor and the HR Service Center as soon as possible prior to the duty or as soon as possible after duty commences.

- (2) For all periods of military duty, complete a [Request for Military Leave of Absence](#).
- (3) Report any change to or extension of military duty to the HR Service Center as soon as possible.
- (4) Provide required orders or other documentation to support eligibility for paid military leave, continued benefits and stipend payments to the HR Service Center.
- (5) For military duty of more than 30 calendar days, upon return to work or as soon as possible thereafter, provide to the HR Service Center Form DD-214 or other written documentation from the military unit that reflects the date of release from active duty.
- (6) Upon reemployment from an absence for military duty, initiate contact with SERS to purchase service for USERRA-covered and non-USERRA covered absences. If purchase of service is requested, ensure payment is made within the prescribed timeframe on the *Invoice of Amount Due* received from SERS.

b. **The Supervisor or designee** shall:

- (1) Notify the HR Service Center of employees' upcoming military duty and forward all forms and documentation to the HR Service Center.
- (2) Alert the HR Service Center of any notifications received from employees related to changes to or extensions of military orders.
- (3) Remind employees to notify the HR Service Center when they return to work.

c. **The OA, HR Service Center** shall:

- (1) Provide an informational letter, [Notice to Employees - Military Leave of Absence](#), and a [Request for Military Leave of Absence](#) to employees who request an absence for military duty.
- (2) Enter appropriate absence codes, PA40 actions for benefits, and PA30 actions for stipends based on the type of military duty, eligibility for benefits, and the employee's elections.
- (3) Set tasks to: monitor the duration of absences; monitor benefits entitlements; and verify that employees return to work at the end of the military duty or need to extend the absences as a result of further military duty or a delay as described in section 5.i. above.
- (4) Contact employees (or named contacts), when military duty has ended and employees have not returned to work, to obtain additional documentation to extend the absence, if necessary.

- (5) Monitor unpaid absences for military duty to determine when employees are nearing the five (5)-year limit. Send letters explaining options approximately six (6) weeks before the five (5)-year maximum is reached.

d. **The OA, Absence Administrator**, shall:

- (1) As requested, review military orders to assist in the determination of employees' eligibility for leave, benefits and stipends and calculation of the five (5)-year military leave maximum entitlement.
- (2) Randomly review/audit absence records, leave without pay actions, stipend actions, and supporting military orders/documentation and ensure corrections are made as necessary.

e. **The Office of the Budget, Bureau of Commonwealth Payroll Operations** shall:

- (1) Review military entitlements, including paid and unpaid absences and stipend processing.
- (2) Analyze tax ramifications regarding taxable and nontaxable income and process any required adjustments.
- (3) Answer year-end tax questions.
- (4) Process refunds of retirement contributions when member contributions are made in error.

f. **The State Employees' Retirement System** shall:

- (1) Provide guidance to employees about their retirement contributions and benefits.
- (2) Upon request, calculate and provide employees with timely invoices to purchase service for USERRA-covered and non-USERRA absences for military duty.
- (3) Update employees' retirement accounts as appropriate for purchased military service.

7. PROCEDURES. The HR Service Center will process absences and stipends, and SERS will process purchase of service requests, as follows:

a. **Processing Absences.** Enclosure 1 lists available military absence types. All absences are processed in SAP as follows:

- (1) Enter the appropriate absence code(s) and dates of the absence for military duty using PA61, Infotype 2001. **Note:** When other paid leave types such as annual/combined, personal (where applicable), holiday, compensatory, etc. are used for an absence for military duty, enter the appropriate absence code(s) to ensure SERS contributions are not withheld. **Note:** Even when employees are eligible for, but decline benefits coverage, the absence is charged to an appropriate "with benefits" absence code when benefits are eligible to be received.
- (2) Unpaid absences for military duty greater than one full pay period require the entry of a PA40 leave without pay action. Refer to the Business Process Procedures Begin & Return LWOP w/Benefits, PA40 and Begin & Return LWOP without Benefits, PA40.
- (3) If employees are not already in "declined benefits" status and are electing to decline, use HRBEN0001 to make the change.
- (4) When employees delay their return to work as outlined in section 5.i.(4), annual/combined, personal leave (where applicable), sick leave (if applicable), or military leave without pay may be used. If the period of military leave without pay is greater than one (1) full pay period, a PA40 Action is required.

b. Processing Stipends.

- (1) Stipends are processed for permanent employees on active military duty on an ongoing monthly basis to be paid on the last pay date for the month following the effective month of the stipend. Therefore, the PA30 Action must be processed by the first regular pay processing date of the following month. Refer to Business Process Procedure Supplemental Recurring Payments.
- (2) For an unpaid military leave of absence of less than a full month, the stipend should be prorated as follows.
 - (a) Divide the total number of full scheduled work days on military leave without pay by five (5) and round up to the nearest whole number. Multiply the result by \$130. The maximum amount payable for one (1) month is \$520. **Example:** If the military leave of absence was 16 days during the month ($16 \text{ days} / 5 \text{ days in a week} = 3.2 \text{ weeks}$), since the weeks are rounded up, the employee is entitled to four (4) weeks ($4 \times \$130$) which is \$520.
 - (b) To process a prorated stipend payment, refer to Business Process Procedure Supplemental One-Time Payment.

c. SERS Processing of Purchase of Service Requests.

- (1)** Employees must initiate contact with SERS to purchase service for USERRA-covered and non-USERRA covered absences. SERS will mail to employees a detailed *Invoice of Amount Due* once a purchase of service request is received following reemployment from a USERRA-covered absence for military duty. **Note:** Non-USERRA military duty may be purchased at any time an employee is an active contributing member of SERS.
- (2)** SERS will offer at least 30 days from the date of return to pay the retirement contributions due for the USERRA-covered absence for military duty that is of a short duration.
- (3)** When the invoice is paid in full, SERS will update the employee's retirement account to reflect the additional service credit.

This directive replaces, in its entirety, *Management Directive 530.26*, dated September 3, 2008.

Enclosure 1 – Military Leave, Benefits and Stipend Entitlements

Enclosure 2 – Military Duty Excluded from the Five Year USERRA Maximum

MILITARY LEAVE, BENEFITS AND STIPEND ENTITLEMENTS

| Type of Duty | Typical Authorization | Paid Leave | | | | Unpaid Leave | | | Stipend Payment |
|--|--|--|---|--|--|---|---|---|-----------------|
| | | Basic Entitlement: 15 days per year | PA Law Entitlement: 15 days per year | Ex Board Resolution Entitlement: 15 days career one-time | Active State Guard Entitlement: Unlimited days | Unlimited days up to maximum entitlement; benefits continue | Unlimited days up to maximum entitlement; benefits continue | Unlimited days up to maximum entitlement; no benefits after 91 days | |
| | Absence Codes* | M2 M3 | MAC2 MAC3 | MEB2 MEB3 | MASG | MO MO4 | MO MO4 | MW MW4 | NA |
| | Eligible Employees (permanent=P, non-permanent=N) | P/N | P/N | P | P/N | P | P/N | P/N | P |
| PA National Guard | | | | | | | | | |
| Any type of active duty, including training and Active Guard Reserve (AGR) duty | 71 P.S. 391(e); 32 USC 502(f), 502(a); 32 USC Ch. 5; 10 USC 12301 | Yes | No | Yes | No | Yes | NA | NA | Yes |
| Active duty for at least 30 consecutive days; and at least 50 miles away from both the home duty station and place of residence; and involuntary or performed in a combat zone or in response to a domestic emergency or under a contingency operations service agreement. Periods of active duty training and full-time Active Guard Reserve (AGR) duty are excluded. | MUST BE UNDER 10 USC 12301, 12302, or 12304; 32 USC 502(f) | Yes | Yes | Yes | No | Yes | NA | NA | Yes |
| Inactive duty training | 32 USC 502(a) | Yes | No | No | No | No | Yes | Yes | No |
| Inactive duty (not training) | | Yes | No | No | No | No | No | Yes | No |
| Active state duty ordered by the Governor in response to an actual or threatened emergency | 51 Pa. C.S. 508 | No | No | No | Yes | NA | NA | NA | No |
| EMAC (Emergency Management Assistance Compact) | 51 Pa. C.S. 508; 71 P.S. 391(e); 32 USC | No | No | No | Yes | NA | NA | NA | No |
| Reservists | | | | | | | | | |
| Any type of active duty, including training and Active Guard Reserve (AGR) duty | 10 USC 12301, 12311; 10 USC 12301(d); 10 USC various | Yes | No | Yes | No | Yes | NA | NA | Yes |
| Active duty for at least 30 consecutive days; and at least 50 miles away from both the home duty station and place of residence; and involuntary or performed in a combat zone or in response to a domestic emergency or under a contingency operations service agreement. Periods of active duty training and full-time Active Guard Reserve (AGR) duty are excluded. | MUST BE UNDER 10 USC 12301, 12302, or 12304 | Yes | Yes | Yes | No | Yes | NA | NA | Yes |
| Inactive duty training | 10 USC | Yes | No | No | No | No | Yes | Yes | No |

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| | Absence Codes* | M2 M3 | MAC2 MAC3 | MEB2 MEB3 | MASG | MO MO4 | MO MO4 | MW MW4 | NA |
| | Eligible Employees (permanent=P, non-permanent=N) | P/N | P/N | P | P/N | P | P/N | P/N | P |
| Inactive duty (not training) | | No | No | No | No | No | No | Yes | No |
| Other States' National Guard | | | | | | | | | |
| Any type of active duty, including training, except when ordered to active state service by the Governor of another state for purposes other than in direct response to the events of September 11, 2001, or in support of homeland security. | 32 USC 502(f), 502(a); 32 USC Ch. 5; 10 USC 12301(d) | Yes | No | Yes | No | Yes | NA | NA | Yes |
| Active duty for at least 30 consecutive days; and at least 50 miles away from both the home duty station and place of residence; and involuntary or performed in a combat zone or in response to a domestic emergency or under a contingency operations service agreement. Periods of active duty training and full-time Active Guard Reserve (AGR) duty are excluded. | MUST BE UNDER 10 USC 12301, 12302, or 12304; 32 USC 502(f) | Yes | Yes | Yes | No | Yes | NA | NA | Yes |
| Inactive duty training | 32 USC 502(a) | Yes | No | No | No | No | Yes | Yes | No |
| Inactive duty (not training) | | No | No | No | No | No | No | Yes | No |
| Regular Branches of the US Armed Forces, Commissioned Corps of the Public Health Service, and Other Military Service | | | | | | | | | |
| Any type of service | | No | No | No | No | No | Yes | Yes | No |

Notes:

***Military Leave Entitlements** - Military leave has changed over the years. Absence codes listed above reflect leave entitlements granted under USERRA (unpaid), Pennsylvania Law and labor agreements (paid), and via Executive Board Resolution (paid). Employees may also use other absence types, i.e., annual/combined, personal (where applicable), compensatory, etc. for absences for military duty.

Involuntary – Military duty should be considered involuntary if it is pursuant to orders issued by competent authority where the orders were not issued upon the request or by application of the member. Although some forms of military duty require the consent of the member, the fact that the consent of the member is required does not necessarily make the duty voluntary. For purposes of 51 Pa. C.S. 4102(a)(ii) most, but not all, active duty (other than for training) for 30 or more consecutive days should be considered involuntary.

USERRA Maximum Leave Entitlement – Unpaid military leave is available up to a cumulative 5 years. See Enclosure 2 for periods of service that are excluded from counting toward the 5 year entitlement.

Military Duty Excluded from the Five Year Maximum Entitlement

The following types of service are not counted towards the five year maximum military leave entitlement. The exclusions are based on USERRA and its associated regulations.

NOTE: Active Guard Reserve (AGR), Active Duty Special Work (ADSW), and most other forms of active duty typically count towards the five year maximum entitlement unless the orders/documentation indicate the duty is excluded or is to fulfill additional training requirements as referenced in (3) below.

Military leave without pay used during the delay return to work period described in 5. i. (4) is excluded from the five year maximum entitlement.

| Excluded Service | Typical Authorization |
|--|---|
| (1) Service required beyond five years to complete an initial period of obligated service. Some military specialties require an individual to serve more than five years because of the amount of time or expense involved in training. If the employee works in one of those specialties, he or she has reemployment right when the initial period of obligated service is completed. | |
| (2) Service when unable to obtain orders to release him or her from service before the expiration of the five-year period, and the inability was not the employee's fault. | |
| (3) Service to fulfill periodic National Guard and Reserve training requirement (annual training, weekend drills). And, service to fulfill additional training requirements determined and certified by a proper military authority as necessary for the employee's professional development, or to complete skill training or retraining. | 10 USC 10147; 32 USC 502(a); 32 USC 503 |

| Excluded Service | Typical Authorization |
|--|---|
| (4) Service when ordered to or retained on active duty (other than for training). | <p>10 U.S.C. 688 (involuntary active duty by a military retiree); 10 U.S.C. 12301(a) (involuntary active duty in wartime); 10 U.S.C. 12301(g) (retention on active duty while in captive status); 10 U.S.C. 12302 (involuntary active duty during a national emergency up to 24 months); 10 U.S.C. 12304 (involuntary active duty for an operational mission for up to 270 days); 10 U.S.C. 12305 (involuntary retention on active duty of a critical person during time of crisis or other specific conditions); <u>Coast Guard authorizations:</u> 14 U.S.C. 331 (involuntary active duty by retired Coast Guard officer); 14 U.S.C. 332 (voluntary active duty by retired Coast Guard officer); 14 U.S.C. 359 (involuntary active duty by retired Coast Guard enlisted member); 14 U.S.C. 360 (voluntary active duty by retired Coast Guard enlisted member); 14 U.S.C. 367 (involuntary retention of Coast Guard enlisted member on active duty); 14 U.S.C. 712 (involuntary active duty by Coast Guard Reserve member for natural or man-made disasters)</p> |
| (5) Service if ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary concerned. | |
| (6) Service performed if ordered to active duty (other than for training) in support of an operational mission for which personnel have been ordered to active duty, as determined by a proper military authority. | 10 U.S.C. 12304 |
| (7) Service performed if ordered to active duty in support of a critical mission or requirement as determined by the Secretary concerned. | |
| (8) Service, as a member of the National Guard, if called to respond to an invasion, danger of invasion, rebellion, danger of rebellion, insurrection, or the inability of the President with regular forces to execute the laws of the United States. | |