



**MILITARY LEAVE POLICY FREQUENTLY ASKED QUESTIONS (FAQs)- Statewide**

<b>DHR-Q #: DHR-STW-405.1-Q</b>	<b>Authority: Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA); 29 Del. C. c. 5105; M.R. 5.5.1.6, 5.6.1</b>
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<b>Supersedes: November 20, 2019; Military Leave FAQs (HRM/OMB website 10/16/2014)</b>	

The content in these Frequently Asked Questions (FAQs) applies to State of Delaware (State) Executive Branch cabinet agency employees. Other employers of State personnel may choose to adopt the [Military Leave Policy and Procedure](#) as well as the provisions in this FAQs. Non-cabinet agency personnel should contact their supervisor to determine whether their employer has adopted these provisions. Employees should direct questions or concerns to their supervisor or Human Resources representative.

**1. Under what circumstances are employees eligible for military leave?**

An employee of the State who is called to the service of or voluntarily enters the Armed Forces of the United States or the National Guard of the State shall be granted military leave of absence that covers the employee’s service, not to exceed five (5) years<sup>1</sup> or until the term of service to which the employee has been called or volunteered has been terminated. Upon completion of the military leave of absence and service, the eligible employee shall be reinstated into the position held at the time of such leave and shall continue employment under the same terms and conditions prior to the leave of absence<sup>2</sup>.

**2. Under what circumstances are employees eligible for PAID military leave?**

An eligible employee shall be paid military leave to attend training camp or special duty on orders as a member of the military reserves of the United States or the National Guard, not to exceed 225 hours (37.5-hour weekly schedule) or 240 hours (40-hour weekly schedule), on a pro-rata basis, in any calendar year. For employees employed less than full-time, the maximum number of hours for which the employee is eligible to be paid shall be determined on a pro-rata basis. Such military or special duty leaves shall not be deducted from annual leave or in any other way result in loss of privileges or compensation to said employee. If the active-duty tour extends beyond the number of hours for which the employee is eligible to be paid, the portion of the leave beyond that time period shall be without pay or an employee may request to use accrued annual

<sup>1</sup> USERRA establishes the cumulative length of time that an individual may be absent from work for military duty and retain reemployment rights to five (5) years. There are important exceptions to the five-year limit, including initial enlistments lasting more than five (5) years, periodic National Guard and Reserve training duty, and involuntary active-duty extensions and recalls, especially during a time of national emergency.

<sup>2</sup> USERRA rights are not diminished because an employee holds a temporary, part-time, probationary, or seasonal employment position. However, an employer is not required to reemploy an employee if the employment he or she left to serve in the uniformed services was for a brief, non-recurrent period, and there is no reasonable expectation that the employment would have continued indefinitely or for a significant period. ([20 C.F.R. § 1002.41](#))

leave. Employees may not move on and off payroll at will throughout their leave of absence, using any available leave in minute amounts to sandwich in periods of otherwise unpaid leave for the purpose of accumulating and/or extending benefits (holiday pay, health insurance, etc.).

Copy(ies) of military orders must be provided, when practicable in advance of taking military leave, by the employee or certifying authority prior to receiving paid military leave. However, it may be provided at the end of such leave should circumstances prevent the employee from providing it in advance and the paid military leave shall be paid thereafter. Employees shall provide reasonable notice to their supervisor and agency HR on any change or extension of military duties and provide updated military orders.

**3. With the passing of HB 26 with HA 2 in the 152<sup>nd</sup> General Assembly, how will the paid military leave apply to eligible employees?**

For calendar year 2023, any paid military leave taken from January 1, 2023, through July 16, 2023, shall be deducted from the 225 hours (37.5-hour weekly schedule) or 240 hours (40-hour weekly schedule) of military leave. Unused paid military leave cannot be carried over to the next calendar year. Unused paid military leave shall not be paid out at the time of separation of employment from the State.

**4. What happens when I exhaust paid military leave?**

Employees may take unpaid leave of absence or request to use accrued annual leave. Holiday pay, annual leave, and sick leave do not accrue during leaves without pay greater than 30 days.

**5. Are employees entitled to both their military and State of Delaware (State) salary during periods of military leave?**

Employees called to active military service for any operational mission to augment active forces as ordered are eligible for a continuation of their State salary during the initial period of active duty prescribed by the military, less any military compensation received. The amount of salary continuation will include the amount of employees' salary funded by State appropriation, Special Funds, or Federal funds. State compensation is limited to base salary only and does not include hazardous duty pay, shift differential, or any other special pays.

**6. How do I request State military salary continuation?**

Employees requesting continuation of their State salaries while on active military service for any operational mission to augment active forces as ordered, as stated above, must initiate the process by completing Sections B and C of the Request for Military Leave Employee Salary Continuation Form and submitting the form, along with a copy of their orders and military pay vouchers, to their agency Human Resources representative within 90 days of the release from active duty or while on active duty. Employees must submit a completed application including supporting documentation for each pay period for which they are requesting State military salary continuation.

**7. Will annual and sick leave accrue while I receive State military salary continuation?**

While receiving military salary continuation or taking an unpaid military leave of absence, State employees will not accumulate holidays, annual leave or sick leave, but will be credited with State Service time when s/he returns to active employment. Employees will resume accrual of annual and sick leave from the time s/he returns to work.

**8. What happens to my benefits while I am on active duty military leave?**

Employees may continue all their State benefits while on active duty military leave. For their group health benefits, the State share of medical benefits will continue for the first two years of active duty military absence as long as the employee submits a monthly payment for their employee share of the cost of elected coverage. All payments should be made payable to the State of Delaware and forwarded to the employee's agency Human Resources Office for processing. Dental insurance may be continued while on active military leave for two full years provided the total employee cost is paid each month by the first of the month. All payments should be made payable to the State of Delaware and forwarded to the employee's agency Human Resources Office for processing. For questions regarding your benefits, contact your agency Human Resources Office. If employees elect to discontinue coverage by not paying their cost, insurances will be canceled until employees return to work. Coverage may be resumed upon returning to active employment.

**9. What rights do I have under the Family and Medical Leave Act (FMLA) after I return from military leave?**

An employee who is absent from employment for an extended period of time on military leave, and who requests FMLA leave shortly after returning to work, may not have actually worked for the State for a total of 12 months or may not have performed 1,250 hours of actual work in the 12 months prior to the start of the FMLA leave, as required by the FMLA. In such circumstances, an employee returning from military leave will nonetheless be entitled to FMLA leave if the hours the employee would have worked during the period of military leave would have met the FMLA eligibility threshold. Therefore, in determining FMLA eligibility, the months employed and the hours that were actually worked for the State will be combined with the months and hours that would have been worked by the employee during the 12 months prior to the start of the FMLA leave but for the military service.

**10. Will my period of military leave be considered a break in service with the State and impact my eligibility to participate in the pension plan?**

No. An employee's period of military leave will be counted as covered service with the State for eligibility, vesting and benefit accrual purposes. Returning service members are treated as if they had been continuously employed.

**11. While I am on military leave, will the State continue to make employer contributions to my 457(b) plan?**

There is no requirement for the State to make contributions to your 457(b) plan while you are on military leave; however, once you return from military duty and are reemployed, the State will

make the employer contributions that would have been made if you had been employed during the period of military duty. If employee contributions are required or permitted under the plan, the employee has a period equal to three times the period of military duty or five years, whichever ends first, to make up the contributions. If the employee makes up the contributions, the State will make up any matching contributions.

**12. What if I am not currently in the National Guard or a member of the Reserves but I want to join the military now?**

The Uniformed Service Employment and Reemployment Rights Act (USERRA) of 1994 generally requires employers to grant up to five (5) years of unpaid leave to employees who are members of or join the military. At the expiration of such military leave of absence, employees may be returned to State employment upon informing the appointing authority of their willingness and ability to return to work.

**13. What happens to my 225 hours or 240 hours or pro-ration thereof for a part time employee of paid military leave benefit when my active duty spans two calendar years?**

Military Leave is an annual occurrence that does not hinge on hours worked (except as prorated for part-time employees). An employee whose active duty spans two or more calendar years is entitled to receive 225 hours or 240 hours of paid military leave at the start of each new calendar year without consideration of holidays and without consideration of leave accrual until such time as the individual's aggregate absence from work reaches five (5) years, at which time it will be determined whether or not the individual is still covered by relevant federal law.

**ADDITIONAL RESOURCES:**

- [Military Leave Policy and Procedure](#)
- [Military Leave: Employee Salary Continuation Operating Procedure](#)
- [Military Leave: Employee Salary Continuation Form](#)
- [Your Rights Under USERRA](#)