



LEAVE SUMMARY AND REFERENCE GUIDE - Statewide

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Preface and Disclaimer

The Leave Summary and Reference Guide is designed to provide a summary and reference information on leaves available to eligible employees of the Executive Branch and serve as a resource as questions arise. Generally, these leaves apply to full-time employees and part-time employees on a prorated basis. Eligible part-time employees are those who have been hired to regularly work 30 hours or more per week and are eligible for state benefits unless otherwise specified. Full-time employees are employees who have been hired to work a standard 37.5-hour or 40.0-hour work week and are eligible for state benefits. Employees hired under Del. C. § 5903(17)a. are excluded.

This document does not confer rights or privileges upon employees. It is not designed to be all-encompassing, nor does it provide procedures or practices on how to apply for leave. Delaware Code, Merit Rules, Executive Orders, and Statewide Policies and Procedures shall be controlling regarding the eligibility for employee leave benefits. In the case of any discrepancy between this guide and any State law, regulation, policy, rule, order, directive, or collective bargaining agreement, the prevailing authority will govern.

Elected Agencies and Judiciary Members may elect to adopt and reference this document with their employees.

**STATE AGENCY EMPLOYEE LEAVE
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Employee Leave Benefits With Pay

Holidays

[1 Del. C. § 501](#); MR 5.1

Eligibility: Upon employment on the observed date.

Benefit: 11 paid legal holidays per year plus Election Day and Return Day during an election year.

Special Rules:

- The Governor may designate any other day as a holiday.
- An employee must be in a paid status the scheduled day prior and the scheduled day following the holiday to qualify for the holiday pay.
- Return Day is the 2nd day after the general election and shall begin at noon and end at midnight. Eligible employees who live or work in Sussex County shall receive 3.75 hours for a 37.5-hour work week schedule or 4 hours for a 40-hour work week schedule. No employee may receive more than 3.75 or 4.0 hours of holiday for Return Day.
- The list of Statewide Holidays is found [here](#).

Floating Holidays

[1 Del. C. § 501](#); [Floating Holiday Policy](#)

Eligibility:

- New employees hired between January through April receive two (2) Floating Holidays for the current calendar year.
- New employees hired between May through August receive one (1) Floating Holiday for the current calendar year.
- New employees hired between September through December receive no Floating Holiday for the current calendar year.
- Upon the start of a new calendar year, each employee receives two (2) floating holidays.

Benefit: Two (2) floating holidays to be taken during each calendar year at the employee's request.

Special Rules:

- Floating holidays must be requested in advance using the same procedures as annual leave and require supervisory approval.
- Partial day usage is at the agency's discretion.
- Floating holidays do not accrue and must be taken prior to the end of the calendar year.
- Floating holidays will not be carried over from year to year.
- Unused floating holidays are forfeited upon separation from employment.
- Unused floating holidays are transferable from merit agency to merit agency.

Annual Leave

[29 Del. C. § 5905](#); [FY 2023 Operating Budget Act \(SB 250\)](#); [MR 5.2](#)

Eligibility: Accrued at the end of each month of service. Generally, the use of accrued annual leave is not granted before six (6) months of service. Not eligible for use until the 1st day of the following month for which annual leave was accrued.

Benefit:

Paid Annual Leave accrues as follows:

<i>Intentionally Left Blank</i>	Full-time employees hired to work 37.5 hours standard work week	Full-time employees hired to work 40 hours standard work week
Merit and Merit-Comparable¹		
Less than 10 years:	9.5 hours per month	10.0 hours per month
At least 10 > 15 years:	11.25 hours per month	12 hours per month
At least 15 years:	13.25 hours per month	14 hours per month
Exempt² and Agency Aides		
No service year requirement	13.25 hours per month	14.0 hours per month

Special Rules:

- For the first month of employment, the accrual is prorated as appropriate.
- The maximum carryover amount into a new calendar year for merit and merit-comparable employees is 318 hours (for a 37.5-hour standard work week) or 336 hours (for a 40-hour standard work week). Refer to the [Annual Leave Carryover Operating Procedures](#) for further guidance.
- Annual leave will not accrue during Leave Without Pay of greater than 30 days.
- Accrual rate and maximum carryover amount into the new calendar year are prorated for part-time merit employees.
- Grandfathered employees may have varying accrual rates and the maximum carryover amount into a new calendar year compared to those employees mentioned above. Grandfathered employees must check with their agency's Human Resources office.

¹ **§ 5901. Definitions.** (a)(5) "Merit comparable positions" means those positions which for salary determination purposes, are assigned, pursuant to the State Budget Act, classification titles and/or pay grades that are comparable to the titles and/or pay grades of similar positions in the classified service.

² Exempt employees as defined in 29 Del. C. § 5903

Sick Leave[29 Del. C. § 5905](#); MR 5.3

Eligibility: Accrued at the end of each month of service and may be used upon accrual.

Benefit: Upon supervisory approval, employees may utilize paid sick leave in accordance with the reasons listed under Merit Rule 5.3.6.

Special Rules:

- Eligible employees accrue sick leave at the rate of 9.5 hours per month for a 37.5-hour standard work week or 10.0 hours per month for a 40-hour standard work week.
- Sick leave must be requested in advance whenever possible.
- Employees may carry over all earned sick leave hours into a new calendar year. There is no maximum accrual.
- Sick leave will not accrue during Leave Without Pay of greater than 30 days.
- Upon retirement, the start of Long-Term Disability (LTD), or when laid off, sick leave shall be paid out at the rate of one (1) hour for every two (2) hours accrued with a maximum payout of 337.5 hours for a 37.5-hour standard work week or 360 hours for a 40-hour standard work week.
- Upon death, sick leave shall be paid out at the rate of one (1) hour for every hour accrued with a maximum payout of 675 hours for a 37.5-hour standard work week or 720 hours for a 40-hour standard work week.
- Refer to MR 5.3.7 for provisions on Borrow Ahead of Sick Leave.
- Sick leave may be used for blood bank donations.

Paid Parental Leave

[29 Del. C. § 5120](#); [Paid Parental Leave Policy and Procedures](#); [Disability Insurance Program Rules and Regulations](#)

Eligibility: Full-time employees who are hired for standard work weeks and have been employed with the State full-time for at least 12 continuous months as of the date of the birth of their child, the lawful adoption placement, or adoption of a child six (6) years of age or younger.

Benefit: 12 calendar weeks of paid parental leave for the purposes of caring for or bonding with a newborn or caring for or bonding with a newly adopted child or new lawful placement for adoption of a child six (6) years of age or younger.

Special Rules:

- Paid parental leave shall run concurrent with FMLA and STD, if applicable.
- Paid parental leave shall be charged as a full day regardless of the daily number of hours used, worked, or necessary to supplement STD benefits.
- Multiple births or adoptions do not increase the length of parental leave.
- Parental leave expires 12 months from the date of the birth or adoption.
- Notwithstanding the exhaustion of any benefits provided under the Family and Medical Leave Act (FMLA), in the event that a mother, who is a full-time employee has a pregnancy complication that warrants a prolonged or extended hospitalization of the mother or the infant in the antepartum or immediate postpartum period, including giving birth to monoamniotic twins, or multiples of 3 or more, the mother shall be entitled to unpaid leave for at least six (6) weeks following the discharge of the newborn or newborns from the hospital or other medical facility.

Adoption Travel Leave[29 Del. C. § 5116 \(b\)](#); MR 5.3.6.6

Eligibility: Continuously employed on a full-time basis for at least one (1) year at the time of application for leave.

Benefit: An employee may use accumulated paid sick leave to travel outside the United States for the purpose of adopting a child from a foreign country. The employee shall be returned to the same position held at the time the leave was granted.

Special Rules:

- Prior to granting the leave, the employee must provide documentation that: 1) they have applied for adoption; and 2) travel is required for the adoption to be approved.
- Regardless of the employee's pay status, no sick or annual leave will accrue during this leave.
- Upon approval of the adoption (i.e., placement of the child), the employee's leave will be pursuant to applicable state or federal laws around this type of leave.

Compassionate Leave[29 Del. C. § 5126](#)

Eligibility: Immediately upon employment.

Benefit:

- Upon the death of an immediate family member, employees shall be granted 37.5 hours for a 37.5-hour schedule or 40 hours for a 40-hour schedule of compassionate leave, generally to be used on consecutive days.
- Upon the death of a near relative, employees shall be granted 7.5 hours for a 37.5-hour schedule or 8 hours of compassionate leave for a 40-hour schedule to attend memorial services or related activities.

Special Rules:

Immediate Family	Near Relative
Employee's spouse or domestic partner	Aunt, uncle, niece, or nephew of the employee
Parent or stepparent, child of the employee, spouse or domestic partner	Brother-/Sister-in-law and grandparent-in-law
Employee's grandparent, grandchild, or sibling	Any other relative or friend living in the employee's household
Spouse of the employee's child	<i>Intentionally left blank</i>
Any minor child for whom the employee has assumed and carried out parental responsibilities	<i>Intentionally left blank</i>

- Should more than one immediate family member die at the same time, the employee is entitled to 37.5 or 40 hours of compassionate leave per individual otherwise qualified.
- An employee may request approval for a person not specified as immediate family.
- An employee requesting compassionate leave must supply supporting documentation if requested.
- An employee may choose not to attend the memorial services or related activities for an immediate family member.
- Compassionate leave is to be used within one (1) year of the date of the death of the family member.

Bereavement Leave**29 Del. C. § 5125; [Bereavement Leave Policy and Procedures](#)****Eligibility:** Immediately upon employment.**Benefit:**

- An eligible state employee shall be entitled to a maximum of 5 workdays of paid bereavement leave for the miscarriage, stillbirth, or other loss suffered by the employee.

Special Rules:

- A workday is defined as 7.5 or 8.0 hours based on the eligible employee's standard work schedule of 37.5 hours or 40.0 hours or a prorated amount for eligible parttime employees.
- Leave cannot be taken in increments of less than one (1) hour and should generally be taken consecutively.
- Miscarriage means a loss of pregnancy prior to 20 weeks gestation.
- Other loss includes a diagnosis that negatively impacts pregnancy and loss of pregnancy including termination regardless if medically necessary.
- Stillbirth means a loss of pregnancy from 20 weeks gestation or more.
- Medical documentation may be requested if a supervisor has documented previous attendance issues with an employee requesting this leave.
- Bereavement Leave exhausts one (1) year following the date of the loss incident.

Military Leave**[29 Del. C. § 5933; 29 Del. C. § 5105; Military Leave Policy and Procedures](#)****Eligibility:** Employees who are members of the military reserves of the United States or the National Guard; Immediately upon employment.**Benefit:** Paid Military Leave to attend training camp or special duty on orders per calendar year for employees who are members of the military reserves of the United States or the National Guard not to exceed 225 hours for employees working a 37.5-hour schedule or 240 hours for employees working a 40-hour schedule.**Special Rules:**

- An employee whose active-duty spans two (2) or more calendar years is to receive 225 hours or 240 hours of paid military leave at the beginning of each calendar year without consideration of holidays and without consideration of leave accrual and if the employee has remained in contact with the agency HR office and has provided current military orders.
- An employee will be on Leave Without Pay for duty that exceeds the allotted 225 or 240 hours.
- When an employee's aggregate absence from work due to military service is nearing the exhaustion of five (5) years, the records must be reviewed by and submitted to the Department of Human Resources/Division of Talent Management Employee Engagement section prior to the payment of additional Military Leave and granting of reinstatement rights.
- 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.

Military Serious Illness/Injury Leave[29 Del. C. § 5933\(e\)](#); [FMLA Policy and Procedures](#); [MR 5.5.1.6](#); [Procedures for Military Serious Illness/Injury Leave](#)

Eligibility: Employees who suffer a serious illness or injury in the line of duty that is caused or contributed to by war or act of war (declared or not), who is a member of the United States Military or National Guard.

Benefit: An employee may be granted up to six (6) months of paid time off from work for medical procedures or operations required as a result of the serious illness or injury without using sick or annual leave.

Special Rules:

- The employee must return to active State employment for a period of not less than 30 calendar days.
- Time must be taken within the first year of active State employment following the return from active military service.
- Maximum time allowed is six (6) months or 182 calendar days and must be used consecutively. In extraordinary circumstances, approval may be sought from the DHR Secretary to use said consecutive leave on an intermittent basis.
- FMLA is to run concurrently.
- Line of duty does not include training or educational periods. Training and educational periods include but are not limited to the weekend National Guard training and two-week training period.
- Regardless of the employee's pay status, no sick or annual leave will accrue during this type of leave.
- Necessary certifications must be completed and updated as appropriate.

Veteran Funeral Detail[29 Del. C. § 5121](#); [MR 5.5.1.5](#)

Eligibility: Immediately upon employment.

Benefit: Paid leave to serve on one (1) Veteran Funeral detail per calendar year.

Special Rules:

- Employee must be a Veteran or a National Guard Reserve Member.

U.S. Olympic Team Competition[29 Del. C. § 5113](#); [MR 5.5.1.2](#)

Eligibility: Immediately upon employment.

Benefit: To train and participate as a member of the United States team in any competition sanctioned by the United States Olympic Committee, in the capacity of coach, athlete, official, trainer, or group leader, not to exceed 90 working days.

Special Rules:

- The State shall compensate the employee at the employee's regular rate of pay during any leave granted for participation in such an Olympic competition. Pay for each day of leave shall not exceed the amount the employee would receive for a standard workday and the employee shall not be paid for any day spent on such leave for which the employee would not ordinarily receive

pay as part of the employee's regular employment.

- Employee is required to return to work within a reasonable period of time following the conclusion of their participation in the approved capacity they were participating in the US Olympic Team Competition.

Subpoena To Testify**MR 5.5.2.1**

Eligibility: Immediately upon employment.

Benefit: To appear under subpoena to testify unless they are one of the parties in the proceeding or the subpoena arises from other employment or volunteer activity.

Special Rules:

- Employees are required to return to work within a reasonable period of time following the conclusion of their obligation.
- Shift changes are to be made, if possible, to accommodate non-day shift employees for their involvement.
- When a minor child is a party in the proceeding the parent is considered a party in the proceeding.

Jury Duty**MR 5.5.2.2**

Eligibility: Immediately upon employment.

Benefit: Paid leave to report to serve on a jury.

Special Rules:

- Employees are required to return to work within a reasonable period of time following the conclusion of their obligation.
- Shift changes are to be made, if possible, to accommodate non-day shift employees for their involvement.

Merit Employee Relations Board (MERB) Hearing**MR 5.5.2.3**

Eligibility: Immediately upon employment.

Benefit: Paid leave to appear on the employee's own behalf before a hearing officer or the Merit Employee Relations Board in a Merit system grievance.

Special Rules:

- Employees are required to return to work within a reasonable period of time following the conclusion of their participation in the hearing.
- Excusal from work with pay is not authorized for the preparation of a grievance or consultation with employee representatives.
- Shift changes are to be made, if possible, to accommodate non-day shift employees.
- If the employee is a witness the agency should be flexible for the purpose of industrial justice.

Exam & Interview for a Classified Position with the State**MR 5.5.2.4**

Eligibility: Immediately upon employment.

Benefit: Paid leave to attend an interview or take an exam for a classified position within the State.

Special Rules:

- Employees are required to return to work within a reasonable period of time following the conclusion of the interview or completion of the exam.
- Shift changes are to be made, if possible, to accommodate non-day shift employees for their involvement.

Donated Leave	29 Del. C. § 5956 ; Donated Leave Policy and Procedures
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Eligibility: Upon completion of six (6) months of aggregate service.

Benefit: Direct donation and leave bank for catastrophic illness of self or employee's immediate family member.

Special Rules:

- Requires a certificate of disability exceeding five (5) weeks. (Separate periods of disability lasting seven (7) calendar days or more each, resulting from the same or a related medical condition and occurring within any 12-consecutive-month period, shall be considered the same period of disability.)
- An employee may request donated leave as soon as the physician completes the appropriate form and certifies that it will be medically necessary for the employee to be absent for greater than five (5) weeks.
- Immediate family – Employee's spouse, son, daughter, or parent who resides with the employee.
- Prior to receipt of the time donated, the employee must have used all of their sick days and half of their annual leave.
- When the donated leave time is for the catastrophic illness of a family member, the employee must have used all of their sick days and annual leave.
- Must establish medical justification and renew medical justification every 30 days.

Bone Marrow Donation	29 Del. C. § 5122 ; MR 5.5.1.3
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Eligibility: Immediately upon employment.

Benefit: Maximum of seven (7) days paid leave per calendar year to serve as a donor.

Special Rules: N/A

Organ Donation	29 Del. C. § 5122 ; MR 5.5.1.4
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Eligibility: Immediately upon employment

Benefit: Maximum of 30 days paid leave per calendar year to serve as a donor.

Special Rules: N/A

Paid Volunteer Leave**MR 5.5.3.2;** [Paid Volunteer Leave Policy and Procedures](#)

Eligibility: Employed with the State for at least six (6) months with a performance plan with no documented performance and/or attendance issues or has received a Meets Expectations or above in their latest performance review.

Benefit: Eligible employees may take 15 hours (for a 37.5-hour work schedule) or 16 hours (for a 40-hour work schedule) of Paid Volunteer Leave per calendar year to volunteer as an approved mentor at a State of Delaware public school or at an SECC-participating charitable organization.

Special Rules:

- Eligible part-time employees may take Paid Volunteer Leave per calendar year at a pro-rated schedule if their regularly scheduled hours are 30 or more per week.
- To be eligible to volunteer as a mentor at a State of Delaware public school, an eligible employee must receive approval from the State of Delaware Student Mentoring Program.
- To be eligible to volunteer at an SECC-participating organization, the organization must be participating with SECC during the time the employee volunteers.
- Paid Volunteer Leave may be taken in increments of one (1) hour at agency discretion.
- Paid Volunteer Leave is available at the beginning of each calendar year and cannot be accrued or carried over into the next calendar year. The leave may not be donated from one employee to another.
- Unused Paid Volunteer Leave will not be paid out at the time of separation from employment with the State.

Granting Of Leave At Agency Discretion, With Pay

Union Conventions/Employee Organizations/Job-Related Activities Leave**MR 5.5.3.1**

Eligibility: Immediately upon employment.

Benefit: Paid leave up to 37.5 hours for a 37.5-hour schedule or 40 hours for a 40-hour schedule per calendar year to serve as a delegate to union conventions, serve as a delegate to employee organizations, or engage in similar job-related activities.

Special Rules:

- Paid leave is not to exceed 37.5 hours (37.5-hour weekly schedule) or 40 hours (40-hour weekly schedule) on a pro-rata basis in any calendar year.
- Granting of time off with pay is at the agency's discretion.

Volunteer Emergency Fire Duty**[29 Del. C. § 5119](#); [19 Del. C. § 18](#); MR 5.5.3.3**

Eligibility: Immediately upon employment.

Benefit: Paid leave to respond to emergency fire, rescue, ambulance, or other emergency calls during regular hours of employment.

Special Rules:

- The employee must be an active volunteer firefighter or active volunteer auxiliary member and is not receiving pay for the emergency duty from any source.
- Granting of time off with pay is at the agency's discretion.

Disaster Relief[29 Del. C. § 6003](#); MR 5.5.3.4**Eligibility:** Immediately upon employment.**Benefit:** Up to 15 days of paid leave per calendar year to respond to disaster relief.**Special Rules:**

- The employee must be a Certified Disaster Service Volunteer of the American Red Cross.
- Granting of time off is at the agency's discretion.

Employee Recognition Leave

MR 5.5.3.5;

Eligibility: Upon employment and as part of a recognition program approved by the DHR Secretary.**Benefit:** Paid leave not to exceed 7.5 hours (37.5-hour weekly schedule) or 8 hours (40-hour weekly schedule) per award.**Special Rules:**

- Leave with pay may be awarded for high-level recognition including Department Employee of the Quarter or Employee of the Year.
- Such leave must be used within 1 year of being awarded and is not subject to cash payments.
- Leave with pay may be requested and approved in accordance with an agency or statewide leave policies and procedures.

Educational Leave (May Be With Or Without Pay)

MR 5.8

Eligibility: Upon completion of the initial probationary period or completion of one year.**Benefit:** Paid or unpaid leave to pursue special work or training directly related to State employment.**Special Rules:**

- At agency's discretion, an employee may be granted educational leave without pay. The purpose of such leave is to permit employees to pursue education or training directly related to State employment which is not available through in-service training.
- Upon agency request, the DHR Secretary may approve educational leave with pay. The employee shall reimburse the agency for paid education leave if they do not submit evidence of satisfactory course completion or if they leave State employment within six (6) months of course completion.

Employee Leave Benefits Without Pay

Tour Of Active Military Duty

[Uniformed Services Employment and Reemployment Rights Act of 1994 \(USERRA\)](#); MR 5.6.1; [Military Leave Policy and Procedures](#)

Eligibility: Immediately upon employment.

Benefit: Leave of absence without pay to serve a tour of active duty plus 90 calendar days beyond the completion of active duty.

Special Rules:

- Employees seeking reinstatement to State employment after a period of active duty of more than 180 calendar days must make their requests in accordance with USERRA.
- Will be returned to the position in the same or comparable class for which they qualify.

Personal Leave

MR 5.6.2

Eligibility: Upon completion of the probationary period.

Benefit: An agency may grant an employee a personal leave of absence without pay of up to one year.

Special Rules:

- Under exceptional circumstances, additional leave without pay may be granted in 6-month increments.
- A maximum of two years of continuous leave may be granted.
- Under exceptional circumstances, an agency may grant personal leave during the probationary period.

Family And Medical Leave Act (FMLA)

[The Family and Medical Leave Act of 1993, as amended Feb. 25, 2015](#); MR 5.7; [Family and Medical Leave Act \(FMLA\) Policy](#)

Eligibility: Employees who have one-year aggregate State employment and have been paid a minimum of 1250 hours during the 12 consecutive months preceding the qualifying event.

Benefit:

- Up to 12 weeks unpaid, job-protected leave to eligible employees for certain family and medical reasons and qualifying exigency leave.
- Up to 26 weeks of unpaid, job-protected leave to eligible employees to care for a qualified military member as immediate family or specified next of kin.

Medical Reasons

- To care for the employee's child after birth or placement for adoption or foster care.

Exigency Reasons

Non-medical activity directly related to the covered military member's active duty or call to active-duty status:

- Short-notice deployment.

<ul style="list-style-type: none"> • To care for the employee’s spouse, son or daughter, or parent who has a serious health condition. • Or for a serious health condition that makes the employee unable to perform the employee’s job. <p>A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either:</p> <ul style="list-style-type: none"> • An overnight stay in a medical care facility; or • Continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee’s job or prevents the qualified family member from participating in school or other daily activities. 	<ul style="list-style-type: none"> • Military events and related activities. • Certain childcare and related activities. • Certain activities related to the care of the military member’s parent. • Financial and legal arrangements. • Counselling by a non-medical counselor. • Rest and recuperation. • Post-deployment military activities.
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Special Rules:

- The FMLA allows employees to take leave on an intermittent basis or to work a reduced schedule under certain circumstances.
- The employee ordinarily must provide 30 days advance notice when the leave is foreseeable.
- A medical certification is required to support a request for leave because of a serious health condition.
- Coverage under the State of Delaware Group Health Insurance Program and “State Share” eligibility continues for employees on approved FMLA leave as long as the payment for “Employee Share” of premiums is made per the Group Health Insurance Plan’s Eligibility and Enrollment Rules.
- Employee must use annual and sick* leave concurrently with FMLA, with the exception of one work week each.
 - * Employees on Exigency Leave may only use annual leave as Exigency Leave is for non-medical reasons.
- Medical certificate for a serious health condition may be requested:
 - Every 6 months in all cases of absence for a medical condition;
 - If an extension of the leave is requested;
 - If circumstances in the last certification have changed; or
 - If the information has been received casting doubt on the stated reason or continued validity.

Leave Of Absence From Classified Service	<u>29 Del. C. § 5903</u> ; MR 5.9, 4.10
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Eligibility: Upon completion of the initial probationary period in a classified position.

Benefit: Leave of absence from a classified position to serve in any non-classified position described in 29 Del. C. § 5903(4), (5), (6), and (23).

Special Rules:

- The agency must submit a request for leave of absence from classified service for the DHR Secretary’s approval.

- Return to classified service must be done within 60 days upon the completion of the appointment to a position with a paygrade equal to or lower than the paygrade held at the time the leave was granted.
- An employee may also choose to return to classified service via the competitive process.

Associated Policy/Regulation/Information

Military Leave: Employee Salary Continuation

[29 Del. C. § 5105](#); [Military Leave: Employee Salary Continuation Operating Procedure](#)

Eligibility: Employees called to active military service for any operational mission to augment active forces as ordered.

Benefit: Employees may be eligible for continuation of their state salary during the initial period of active duty prescribed by the military less any military compensation.

Special Rules:

- State compensation shall be limited to the base salary.
- Military compensation shall include base salary, basic allowance for quarters (BAQ), basic allowance for subsistence (BAS), hazardous duty pay, and all other supplemental compensation.
- The request for Military Leave Employee Salary Continuation must be filed within 90 days of release from active duty.
- Employees are required to initiate the process.

Workers Compensation

[29 Del. C. § 5933](#); MR 5.3.6.4, MR 5.3.8

Eligibility: Immediately upon employment.

Benefit:

- Paid leave for the completion of the workday on the day of an on-the-job injury.
- Paid supplement of workers' comp payments to make the employee whole, not to exceed three (3) months for all employees with the exception of employees in positions receiving Hazardous Duty Pay who are not to exceed one (1) year.
- Paid supplement of workers' comp payments is a one-time supplement per injury and any recurrence or aggravation of that injury.
- Upon completion of the paid supplement of no longer than three (3) months or 12 months, the ability to supplement workers' comp payments with pro-rated sick and/or annual leave.

Special Rules:

- Must be approved for Workers' Compensation from the State's contracted Workers' Compensation vendor.
- Eligible employees approved for Workers' Compensation may request to use accrued annual leave or sick leave when they are less than fully paid under workers' compensation. Such leave shall be charged as the difference between workers' compensation pay and their regular pay.
- Paid supplement is the difference, if any, between the total of: (1) The amount of such compensation, (2) any disability benefits received under the Federal Social Security Act, and (3) any other employer-supported disability program, and the amount of wages to which the officer

or employee is entitled on the date such compensation begins.

- The supplement is paid provided the injury or disease for which such compensation is paid is not the direct result of such officer or employee's misconduct and occurs during a period of employment for which the employee is entitled to receive wages.
- Employees may be on a Workers' Compensation absence due to an on-the-job injury or illness, which also qualifies as a serious health condition under FMLA. The Workers' Compensation absence and FMLA leave do not run concurrently unless requested by the employee.
- If an employee does run FMLA concurrently with Workers' Compensation and the employee is offered a "light duty" assignment, the employee is permitted, but not required under FMLA, to accept the position. (However, the same is not true under Workers' Compensation when a refusal of light duty could result in the employee no longer qualifying for payments from the Workers' Compensation benefit plan.)
- Hazardous duty assignments shall include, but not be limited to:
 - Employees otherwise qualified who are employed by the Department of Correction;
 - Employees otherwise qualified who are employed by the Delaware Psychiatric Center who are assigned to programs for the criminally insane;
 - Employees otherwise qualified who are employed by the Division of Youth Rehabilitation;
 - State law-enforcement officers in the performance of their duties; provided, however, no law-enforcement officer shall be covered under this section while the said officer is performing a function or duty that is considered administrative in nature;
 - State employees serving in response to the imminent danger of hazardous waste material, including but not limited to the SERT Team.