

# State Human Resources Policy #E24-104.07

## Military Leave

**THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.**

### **DEFINITIONS**

Agency – The South Carolina Military Department/Office of the Adjutant General

One Year – Either a Calendar Year or, in the case of members required to perform active duty for training or other duties within or on a Fiscal Year basis, the Fiscal Year of the National Guard or Reserve component issuing the orders.

### **POLICY**

1. The South Carolina Military Department will support requests for Military Leave in accordance with the provisions of The Servicemember's Civil Relief Act (SCRA) of 2003 and the South Carolina Human Resources Regulations.
2. The Chief of Staff for State Operations or his designee is the approval authority for Military Leave requests.
3. Agency employees in FTE, temporary grant, or time-limited positions with official military orders are eligible for paid military leave to engage in training or any other duties to which they are lawfully ordered. Temporary employees are not eligible for paid military leave.
4. The Agency cannot refuse military leave to an employee who has official oral or written military orders.
5. Short Term Military Leave
  - a. Annual Military Leave.

(1) Employees of the South Carolina Military Department in FTE, temporary grant, or time-limited positions who are members of the National Guard or Reserve are entitled to leaves of absence for one or more periods not exceeding an aggregate of 15 regularly scheduled average workdays in any one (1) year without loss of pay, time, or efficiency rating during which they may be engaged in training or any other duties ordered by the Governor, the Department of Defense, or any other department or agency of the government of the United States having authority to issue lawful orders requiring military service.

(2) Saturdays, Sundays, and State holidays may not be included in the 15-day aggregate unless the particular Saturday, Sunday, or holiday to be included is a regularly scheduled workday for the employee involved.

b. In the event an Agency employee who is a member of the National Guard or Reserve (any component) is called upon to serve during an emergency, they are entitled to such leave of absence for a period not exceeding thirty (30) additional work days of Military Leave in any one (1) year.

c. An Agency employee who serves on active duty in a combat zone and who has exhausted all available leave for military purposes is entitled to such leave of absence for a period not exceeding thirty (30) additional work days of Military Leave in any one (1) year.

## 6. Long Term Military Leave

a. Employees of this South Carolina Military Department in FTE, temporary grant, or time-limited positions who are on military orders which prevents their return to their Agency employment for a minimum of 90 consecutive days are entitled to leave of absence from their duties as an employee of the Agency, without loss of seniority or efficiency or register ratings

b. Agency employees are not authorized Long Term Military Leave for a period longer than five (5) years from the date of entry into the Armed Forces of the United States.

c. Agency employees with an approved Long Term Military Leave are may also elect to utilize the following leaves:

- Annual Military Leave not to exceed an aggregate of 15 regularly scheduled average workdays in any one (1) year
- Up to thirty (30) additional work days of Military Leave in any one (1) year for an Agency employee who serves during a declared emergency
- Up to thirty (30) additional work days of Military Leave in any one (1) year for an Agency employee who serves on active duty in a combat zone and who has exhausted all available leave for military purposes
- Use of up to 45 days of the employee's accrued Annual Leave not to exceed a total of 45 days per calendar year to serve on active duty as a result of an emergency or conflict declared by the President of the United States
- Use of up to 90 days of the employee's accrued Sick Leave not to exceed a total of 90 days per calendar year to serve on active duty as a result of an emergency or conflict declared by the President of the United States
- Use of the employee's accrued Compensatory Time
- Use of Leave Without Pay (LWOP)

d. Prior to starting any Long Term Military Leave, the requesting employee should meet with the State Human Resources Office (State HRO) Leave Coordinator and Benefits Coordinator to review their Leave and Benefits options.

## 7. Leave Without Pay for Military Service

a. Employee who are planning to utilize LWOP for military duty must submit a Leave Without Pay Request in accordance with the Agency's LWOP Policy (see <https://sctag.org/policies> - State Human Resources Policy E24-104.05 (Leave Without Pay)).

b. An employee will not be eligible for leave accrual and merit increases while in LWOP.

c. The State service date, continuous service date and leave accrual date will not be adjusted during periods of LWOP for military service.

d. An employee who returns to work within 5 years will be entitled to any general increase(s) that occurs while on active service.

## 8. Reemployment Rights

a. In accordance with the Uniformed Service Employment and Reemployment Rights Act (USERRA), the Agency will reemploy employees who occupy an FTE position (including those in a probationary or trial period) returning from military service as long as the length of military service does not exceed 5 years.

b. Under USERRA, "an employer is not required to reemploy a person under this chapter (38 USC § 4312) if the employment from which the person leaves to serve in the uniformed services is for a brief, non-recurrent period and there is no reasonable expectation that such employment will continue indefinitely or for a significant period."

c. An employee in a "Temporary" capacity does not have reemployment rights.

d. The reemployment rights a person receives upon return from military service depend on the duration of the time spent in military service.

- State employees who return to work after military service of one to 90 calendar days retain the same position.
- State employees who return to work after serving at least 91 calendar days but not more than five (5) years are entitled to a comparable position within the Agency (with the same band and pay rate) for which the employee is qualified.
- Agency employees are not entitled to Veteran Reemployment rights after an absence of five (5) years.

e. When an employee is released from military service, the employee must notify the Agency of the intent to return to work within the required time periods below in order to retain reemployment rights:

- Military service of 1 to 30 days - The employee must return to work at the beginning of the first regularly scheduled workday or eight (8) hours after the end of military service. A reasonable commuting time from a military service post to home must be taken into consideration by the Agency.
- Military service of 31 to 180 days - The employee must contact the agency no later than 14 days after completion of military service
- Military service of 181 or more days - The employee must contact the agency no later than 90 days after completion of military service.

9. Performance Review Date. Employees on approved military leave with or without pay for more than 30 consecutive workdays may have their performance review date advanced up to 90 calendar days.

#### 10. Insurance and Retirement Services

a. Employees should contact the State HRO Benefits Administrator, or the SC Public Employee Benefit Authority (PEBA) for questions on insurance or retirement.

b. Insurance.

(1) An employee on LWOP pay due to military service will be allowed to remain on the active group insurance programs (health and dental) and provide coverage for any dependents by paying the active employee share only for health and dental coverage.

(2) If the employee elects to cancel coverage during their active duty status, their coverage can be reinstated when they are discharged or released from active duty and resumes employment. The request must be made within 31 days of discharge.

c. Contributions to the State Retirement System. An employee on LWOP due to military service can:

- Continue to pay the contribution to the State Retirement System during the Leave of Absence by completing the SC Public Employee Benefit Authority Form 1224 (Supplemental Service Report) which can be found at <https://forms.retirement.sc.gov/formGenericGet.do?formNum=web1224.xdp>
- Arrange to contribute retroactively when they return from military service

For individual retirement account questions, the employee can contact the State HRO Benefits Administrator, or the employee may contact the State Retirement System directly using the numbers below:

- Employer Representative - 803-737-6903
- Customer Service - 803-737-6800

11. Any employee who uses Military Leave without proper approval and required documentation to support a Military Leave request, or misrepresents or falsifies information pertaining to Military Leave, may be subject to the Agency's Progressive Discipline Policy up to and including termination.

## **PROCEDURE**

1. Employees requesting Military Leave will submit a Request for Military Leave Form (see Request for Military Leave Form at <https://sctag.org/forms>) and a copy of their orders and/or supporting documentation to their supervisor.

a. The Supervisor will recommend approval or disapproval, and will forward the request through the Department Head/Program Manager for their recommendation to the Chief of Staff for State Operations for approval or disapproval.

b. Employees who are planning to use a combination of other leaves (e.g., Annual Leave, Sick Leave Compensatory Time, Leave Without Pay, etc.) in conjunction with Military Leave must coordinate directly with State HRO Leave and Benefits Coordinators to ensure the employee fully understands their options and authorizations, and to ensure the State HRO has the proper documentation to support the leaves.

2. The State HRO Leave Coordinator will enter the Military Leave (and all other types of Leave taken in conjunction with the approved Military Leave) into the SC Enterprise Information System (SCEIS) Time & Leave Accounting system.

3. An employee must have an approved Military Leave request prior to taking Military Leave unless an emergency situation occurs that prohibits the employee from doing so. In such a case, the employee will submit the Request for Military Leave along with the supporting documentation within 15 days calendar days of returning to work.

4. If the circumstances change during the course of the approved Military Leave, the employee is responsible for promptly notifying and providing updated documentation through their Department Head/Program Manger to the State HRO Leave Coordinator to have their Military Leave status reevaluated or adjusted.