

AR 4561.2 Military Leave

Compliance with State and Federal Statutes

The Board of Trustees hereby recognizes and affirms its determination to comply with the provisions of the Federal Uniformed Services Employment and Reemployment Rights Act of 1994 (“USERRA”) as set forth at Title 38 U.S. Code, Chapter 43, sections 4301-4333, as well as the applicable provisions of the Military and Veterans Code of the state of California, as set forth in sections 389 et seq., and the Education Code.

Prohibition of Discrimination and/or Retaliation

In accordance with USERRA, the , Military and Veterans Code, and the Education Code of the state of California, the Board of Trustees hereby recognizes and affirms that discrimination and/or retaliation based on the past, current or future military obligations of any district employee is strictly prohibited.

Eligibility for Military Leave

Pursuant to this policy, USERRA, the Military and Veterans Code and the Education Code of the state of California, permanent and probationary district employees who are absent from their positions because of “service in the uniformed services” will be granted military leave.

1. The term “service in the uniformed services” means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty, and a period for which a person is absent from employment for the purpose of performing funeral honors duty. (38 U.S.C. section 4303(13))
2. The term “uniformed services” means the armed forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or national emergency. (38 U.S.C. section 4303(16).) In addition to the above, the district expressly recognizes service in the Red Cross, the Merchant Marine and any uniformed auxiliary as being included in the definition of “uniformed services.” (Military and Veterans Code section 395.2)
3. Except as otherwise provided by USERRA or other applicable law, the cumulative length of the absence and of all previous absences from district employment due to an employee’s service in the uniformed services (i.e., military leave) may not exceed five years. (38 U.S.C. section 4312(c).)
4. District employees are required to provide as much advance notice as possible of the need to be absent due to service in the uniformed services. (38 U.S.C. section 4312(a) (1).)

Reemployment upon Return from Military Leave

Upon returning from service in the uniformed services, a probationary or permanent district employee will be promptly reemployed in accordance with applicable state and federal laws. (38 U.S.C. section 4313(a); Military and Veterans Code section 395.1(a); Education Code section 44800.)

1. A district employee returning from military service will be reemployed in the position that person held or would have held if he/she had remained continuously employed with the district, provided that the employee is qualified for the position or can become qualified after reasonable efforts by

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the district. In the event that, for reasons other than disability incurred or aggravated during military service, the employee cannot become qualified for either position after reasonable efforts by the district, the person will be reemployed in a position that is the nearest approximation to such position which the employee is able to perform. (38 U.S.C. section 4313(a).)

2. Reasonable effort will be made to accommodate a person's disabilities which were incurred and/or aggravated during military service to enable that person to perform the position that he/she would have held if the person had remained continuously employed in his/her position with the district. If, despite the district's reasonable accommodation efforts, the person is not qualified for his/her position due to disability incurred or aggravated during military service, the person shall be employed in a position of equivalent seniority, status and pay so long as the employee is qualified to perform the duties of that position or could become qualified to perform them with reasonable efforts by the district. If the person does not become qualified for either of the above-described positions, the person shall be employed in a position that, consistent with the circumstances of that person's case, most nearly approximates a position of equivalent seniority, status and pay, the duties of which the employee is qualified to perform. (38 U.S.C. section 4313(a) (3).)

In accordance with California law, where the employee's position has been abolished or otherwise has ceased to exist, the employee will be reinstated to a position of like seniority, status and pay if a position exists. (Military and Veterans Code sections 395 and 395.1(c).) If no such position exists, a Reservist or National Guard member on temporary military leave has the same rights and privileges that he or she would have had if he or she had occupied the position when it ceased to exist. (Military and Veterans Code section 395.) An employee who left his or her position to serve in the military in time of war or national emergency, or when any of the armed forces of the United States are serving outside of the United States or their territories pursuant to order or request of the United Nations, or while any national conscription act is in effect is entitled to a comparable vacant position for which he or she is qualified. (Military and Veterans Code section 395.1(a) and (b).)

3. Pursuant to USERRA, the district requires that employees returning from absences of 31 days or more provide documentation showing that the request for reemployment is timely, that the five-year service limitation has not been exceeded (see eligibility for Military Leave above), and that separation from service was not for a disqualifying reason. (38 U.S.C. section 4312(f).)
 - a. The district may refuse to offer reemployment to a person who separated from the uniformed services under other than honorable conditions, such as a separation involving court martial or a dishonorable or bad conduct discharge. (38 U.S.C. section 4304; 10 U.S.C. section 1161; Military and Veterans Code section 395.1(a).)
 - b. The district may refuse to offer reemployment where the district employment from which the person left was for a brief, nonrecurrent period and there was no reasonable expectation that such employment would continue indefinitely or for a significant period of time. (38 U.S.C. section 4312(d)(1)(C).) Accordingly, these reemployment provisions do not apply to temporary or substitute employees.

Salary/Compensation for Absence Due to Uniformed Service

In accordance with California law, a district employee who is absent due to service in the uniformed services is entitled to receive his/her salary or compensation from the district for the first 30 calendar days of such absence, regardless of payment from the uniformed forces. Such pay may not exceed 30 days in any one fiscal year. To qualify for such pay, the employee must have been employed with the district for not less

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than one year immediately prior to the day on which the absence began. In determining the one year of district service, previous service in the uniformed services during district employment shall be counted as district service. (Military and Veterans Code sections 395.01, 395.02 and 395.03.)

For classified employees, 30 days' compensation shall be one month's salary. For certificated employees other than 12-month employees, 30 days' compensation shall be one-tenth of the employee's annual salary. (Education Code section 45059.)

Notwithstanding any other provision of this policy, an employee who is absent for 180 days or less due to service in the uniformed services during his or her first year of employment, and who successfully completes one year of employment, including the temporary absence for military service, shall receive up to one month's compensation for the absence. The compensation shall be paid at the salary rate that would have been in effect for the employee during the temporary absence. An employee who uses vacation or paid personal leave during a temporary absence for military service during the first year of employment shall, upon successfully completing one year of employment, have his or her vacation or paid personal leave reinstated for the period of the absence. The value of the combined leave reinstatement and compensation shall not exceed one month's pay.

The above provision shall not apply to compensate employees for military absences during periods when the employee would not otherwise perform paid service for the District, such as seasonal recesses or off-track periods.

This regulation shall have no effect on the requirement that certificated employees serve two complete consecutive school years, and be reelected for a subsequent year, for purposes of attaining permanent status. (Education Code section 44929.21.)

Report to Work Following Termination of Uniformed Service

1. District employees are expected to report for work as soon as possible following the termination of uniformed service.
2. Except as provided in the paragraph that follows, an employee must report to the district for work within six months after the termination of his or her active service with the armed forces, but not later than six months after the end of the war or national emergency or military or police operations under the United Nations or after the governor finds and proclaims that, for the purposes of this section, the war, national emergency, or United Nations military or police operation no longer exists, or after the expiration of any national conscription act then in effect. (Military and Veterans Code sections 395.1(a) and 395.2; Education Code section 44800.)
3. In the case of a person who is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service in the uniformed services, the deadline for two years if necessary for the person to recover from such illness or injury. (38 U.S.C. section 4312(e) (2) (A).) This two-year period may be further extended by circumstances beyond the person's control that would make reporting back to work within the two (2)-year period impossible or unreasonable. (38 U.S.C. section 4312(e)(2) (B).)
4. Except as provided in the immediately preceding paragraph, any employee who fails to report for work or apply for reemployment within the time described above or who fails to return to his or her district position within 12 months after the first date upon which he or she could terminate or could cause to have terminated his or her active service with the armed forces of the United States or of the militia of California will be subject to the district's rule governing unexcused absences

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and/or abandonment of employment. (38 U.S.C. section 4312(e) (3); Military and Veterans Code sections 395.1(a) and 395.2.)

Rights / Benefits upon Reemployment

Upon reemployment, a district employee shall be entitled to the seniority and other rights and benefits determined by seniority the person had on the date of the commencement of service in the uniformed services plus the additional seniority and rights and benefits that such person would have attained if the person had remained continuously employed. (38 U.S.C. section 4316(a).) A district employee who is absent from his or her position of employment by reason of service in the uniformed services shall be:

1. Deemed to be on furlough or leave of absence while performing such service (38 U.S.C. section 4316(b) (1) (A)); and
2. Entitled to such other rights and benefits not determined by seniority as are generally provided by the district to employees having similar seniority, status, and pay who are on furlough or leave of absence under a contract, agreement, policy, practice, or plan in effect at the commencement of such service or established while such person performs such service. (38 U.S.C. section 4316(b) (1) (B).)

For the purposes of this section, an employee who has been in the service of the district for a period of not less than one year immediately prior to the date upon which a temporary military leave of absence begins, shall receive the same vacation, sick leave, and holiday privileges and the same rights and privileges to promotion, continuance in office, employment, reappointment to office, or reemployment that the employee would have enjoyed had he or she not been absent therefrom; excepting that an uncompleted probationary period, if any, must be completed upon reinstatement as provided by law or rule of the district. (Military and Veterans Code section 395(c); Education Code section 44800.) For the purposes of this section, in determining the one year of service, all service of the employee in the recognized military service during district employment shall be counted as district service. (Military and Veterans Code section 395(d).) This provision shall apply to any district employee who, as a member of the Reserve Corps of the armed forces of the United States or of the National Guard or the Naval Militia is on temporary leave of absence for military duty ordered for purposes of active military training, inactive duty training, encampment, naval cruises, special exercises, or like activity. (Military and Veterans Code section 395(a).)

3. An employee who leaves a position with the district in time of war or national emergency as proclaimed by the President or Congress, or when any of the armed forces of the United States are serving outside of the United States or their territories pursuant to order or request of the United Nations, or while any national conscription act is in effect prior to the end of the war, or the termination of the national emergency or during the effective period of any order or request of this type of the United Nations or prior to the expiration of the National Conscription Act, to join the armed forces of the United States and who does or did without unreasonable and unnecessary delay join the armed forces or, being a member of any reserve force or corps of any of the armed forces of the United States or of the militia of this state, is or was ordered to duty therewith by competent military authority and served or serves in compliance with those orders shall not accrue sick leave, vacation or salary for the period during which he or she was on leave from the district and in the service of the armed forces of the United States. (Military and Veterans Code section 395.1(b).)
4. A district employee whose employment with the district is interrupted by a period of service in the uniformed services shall be permitted, upon request of that person, to use during such period of

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service any vacation, annual, or similar leave with pay accrued before the commencement of such service. Sick leave may not be used for this purpose unless the absence otherwise qualifies as a sick leave. (38 U.S.C. section 4316(d).)

Additional Leave for Disabled Military Veterans

In addition to any other entitlement for sick leave with pay, an employee who is a former active duty member of the U.S. Armed Forces or a former or current member of the California National Guard or a federal reserve component shall be entitled to sick leave with pay of up to 10 days for certificated employees or 12 days for classified employees for the purpose of undergoing medical treatment, including mental health treatment, for a military service-connected disability rated at 30 percent or more by the U.S. Department of Veterans Affairs. An eligible employee who works less than five days per week shall be entitled to such leave in proportion to the time he/she works. (Education Code sections 44978.2 & 45191.5.)

The amount of leave shall be credited to the employee either on the date the employee receives confirmation of the submission of his/her disability application to the U.S. Department of Veterans Affairs or on the first day the employee begins or returns to employment after active duty, whichever is later. When the employee receives his/her disability rating decision, he/she shall report that information to the Superintendent or designee. If the disability rating decision makes the employee eligible for the leave, the time used before the decision shall be counted toward the 10-day or 12-day maximum leave. If the disability rating decision makes the employee ineligible for the leave, the district may change the sick leave time used before the disability rating decision to an alternative leave balance.

The Superintendent or designee may require verification, in accordance with district leave policies and regulations, that the employee used the leave to obtain treatment of a military service connected disability.

Leave for military-service connected disability shall be available for 12 months following the first date that the leave was credited. Leave not used during the 12-month period shall not be carried over and shall be forfeited.

Civil Air Patrol Leave

An employee may take up to 10 days of unpaid leave per calendar year, beyond any leave otherwise available to employees, to respond to an emergency operational mission of the California Civil Air Patrol, provided that the employee has been employed by the district for at least a 90-day period immediately preceding the leave. Such leaves shall not exceed three days for a single emergency operational mission, unless an extension is granted by the governmental entity authorizing the mission and is approved by the Superintendent or designee. (Labor Code 1501, 1503.)

The employee shall give the district as much advance notice as possible of the intended dates of the leave. The Superintendent or designee may require certification from the proper Civil Air Patrol authority to verify the eligibility of the employee for the leave and may deny the leave if the employee fails to provide the required certification. (Labor Code 1503.)

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