

Military Leave

General Information

- Paid military leave may apply to employees in full-time equivalent (FTE), temporary grant (TGE), time-limited project (TLP) and state temporary positions.
- Contact your DSHR consultant for assistance coordinating military leave between multiple agencies when an employee is engaged in multiple employment or dual employment.
- An employee engaged in multiple employment or dual employment is not entitled to more paid military leave than state law provides.
- Employees with official military orders are eligible for paid military leave to engage in training or any other duties to which they are lawfully ordered.
- Employees may choose to take paid military leave, leave without pay or, if available, accrued annual leave, compensatory time or a combination of these leave types during their absence. Employees may also choose the order in which the leave is applied. Employees may use accrued sick leave if the absence qualifies as sick leave per State Human Resources Regulations.
- All written or oral orders are considered official military orders when issued by an official military authority. An employee is required to provide official written military orders at the agency's request; however, written military orders may not be available before the employee is required to leave for military service.
- An employee may use the 15 regularly scheduled workdays normally used annually for short-term military training to engage in training or any other duties to which he is lawfully ordered including active military service in response to an executive order for a declaration of an emergency.
- Employees who use the 15 regularly scheduled workdays of short-term military leave should make a one-time declaration of whether the year is a considered calendar or federal fiscal year. Typically, this determination is based on the year used by the employee's military unit.
- If an employee uses a portion of the 15 days of short-term military leave, an employee may use the remainder of the days for active military service if the unused portion of the 15 days is in the same year.
- The 15 workdays of short-term military leave are not required to be consecutive.
- The 15 days of short-term military leave are based on regularly scheduled workdays.
- An agency cannot refuse military leave to an employee who has official oral or written military orders.
- If an employee who is eligible for holiday leave is out on military leave and a holiday falls on a regularly scheduled workday, the employee should receive the holiday and the holiday would not count towards military leave.

Travel Time

- The 15 days of short-term military leave cannot be used for travel time outside of the dates on the orders. If available, an employee may request annual leave, compensatory time or leave without pay for travel time to get to the assignment outside of the dates on the order.

Additional Military Leave

- In accordance with **S.C. Code Section 8-7-90**, an employee who receives official military orders to serve during a declared emergency is entitled to 30 days of paid leave per declared emergency in addition to the 15 workdays of paid military leave granted each year.
- In accordance with **S.C. Code Section 8-7-90**, a full-time employee who serves on active duty in a combat zone and who has exhausted all available military leave is entitled to receive up to 30 additional days of military leave in any one year. Part-time employees are not eligible.
- The 15 days of short-term military leave and the 30 additional days of leave for a declared emergency are based on regularly scheduled average workdays.
- In addition, a permanent full-time state employee, who earns annual or sick leave, may use up to 45 days of annual leave and up to 90 days of sick leave in a calendar year to serve on active duty because of an emergency or conflict declared by the President of the United States.

Volunteers for Military Service Assignment

- An employee who volunteers for a military service assignment and an official military order is issued, is eligible to receive paid military leave.

Leave Without Pay for Military Service

- An employee in a leave-earning position who works or is on paid leave at least half of their scheduled workdays for the month is eligible to receive their monthly annual and sick leave accruals. In general, employees on extended periods of leave without pay for military service do not accrue annual or sick leave during the period of leave without pay. The state service date, continuous service date and leave accrual date must not be adjusted for an employee on a military tour of duty with reemployment rights protected under federal or state law.

Reemployment Rights

- In accordance with the Uniformed Service Employment and Reemployment Rights Act (USERRA), an agency must reemploy employees returning from military service as long as the length of military service does not exceed five years.
- USERRA provides that returning service members are to be reemployed in the job that they would have attained had they not been absent for military service (the "escalator" principle), with the same seniority, status and pay, as well as other rights and benefits determined by seniority. USERRA also requires that reasonable efforts (such as training or retraining) be made to enable returning service members to qualify for reemployment. If the service member cannot qualify for the "escalator" position, he or she must be reemployed, if qualified, in any other position that is the nearest approximation to the escalator position and then to the pre-service position. USERRA also provides that while an individual is performing military service, he or she is deemed to be on a furlough or leave of absence and is entitled to the non-seniority rights accorded other similarly situated individuals on non-military leaves of absence. The time

limits for returning to work are as follows:

- Less than 31 days service: By the beginning of the first regularly scheduled work period after the end of the calendar day of duty, plus time required to return home safely and an eight-hour rest period. If this is impossible or unreasonable, then as soon as possible.
- 31 to 180 days: The employee must apply for reemployment no later than 14 days after completion of military service. If this is impossible or unreasonable through no fault of the employee, then as soon as possible.
- 181 days or more: The employee must apply for reemployment no later than 90 days after completion of military service.
- Service-connected injury or illness: Reporting or application deadlines are extended for up to two years for persons who are hospitalized or convalescing.

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 after those first 30 workdays.

Insurance and Retirement Services

- Employees should contact their agency's benefits administrator or [South Carolina Public Employee Benefit Authority \(PEBA\)](#) for questions on insurance or retirement.
- An employee on leave without 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.
- 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.
- An employee on leave without pay due to military service can:
 - Continue to pay contribution to the State Retirement System during leave of absence by completing the Supplemental Service Report (Form 1224); or
 - Arrange to contribute retroactively when they return from military service.
- For individual account questions, the employee can contact PEBA's customer service department at 803-737-6800.

Employment Issues for State Employees Serving in the Military

State employees called to active military service have unique rights and benefits. For more information, please follow the links below.

- [U.S. Department of Labor - Veterans' Employment and Training Service \(VETS\)](#) — Provides access to technical information and other resources to help employers understand and implement the [Uniformed](#)

[Services Employment and Reemployment Rights Act \(USERRA\).](#)

- [Employer Support of the Guard and Reserve \(ESGR\)](#) — This organization provides information to support employers with employees in the National Guard or military Reserves.

U.S. Merchant Marines (USMM)

General Information

- Employees who volunteer for service under the US Department of Transportation's Maritime Administration (MARAD) are not eligible to receive paid military leave and are not covered under USERRA.
- Employees may choose to use accrued annual leave, compensatory time, leave without pay or a combination of these leave types during their absence. Employees may use accrued sick leave if the absence qualifies as sick leave per State Human Resources Regulations.
- Employees are eligible for reemployment rights under the federal Merchant Marines Act if:
 - They are employed in a shore-side position, volunteer to leave that position and intend to return to that position (or in a non-sea-based capacity) after serving in the USMM; and
 - Are employed in the USMM on a vessel supporting the sealift needs of the United States during a war, armed conflict, national emergency or maritime mobilization need.

The employee must also:

- Give advance written or verbal notice of service to their employer, unless giving notice is precluded by military necessity, under regulations prescribed by the Secretary of Defense or, under all relevant circumstances, is impossible or unreasonable; and
 - Submit an application for reemployment with the employer not later than 14 days after the completion of a period of service of less than 181 days or not later than 90 days after the completion of a period of service greater than 180 days or, if submitting such application within such period is impossible or unreasonable through no fault of the employee, the next first full calendar day when submission of such application becomes possible.
- A person who has not given notice, or who fails to report or apply for employment or reemployment within the appropriate period shall not automatically forfeit their entitlement to their rights and benefits, but shall be subject to the rules of conduct, established by policy and the general practices of the employer regarding absence from scheduled work.

Exception to Reemployment Rights

- An employer is not required to reemploy an individual if the employer satisfies the burden of proving:
 - The employer's circumstances have so changed as to make such reemployment impossible or unreasonable or such reemployment, if required, would impose an undue hardship on the employer; or
 - The employment that the individual left was for a brief, nonrecurrent period and prior to service as a mariner, there was no reasonable expectation that such employment would continue indefinitely or for a significant period.

Reemployment Benefits

- An individual certified by MARAD to be entitled to reemployment shall also be entitled to other benefits of employment that would have accrued to that individual because of an employment contract or agreement or an employer policy, plan or practice and includes rights and benefits under a pension plan, a health plan, an employee stock ownership plan, insurance coverage and awards, bonuses, severance pay, supplemental unemployment and benefits, vacations and the opportunity to select work hours or location of employment.

Reemployment Position

- The employee must apply for reemployment with MARAD, who will certify if the employee has reemployment rights. An employee with reemployment rights shall be promptly reemployed to their previous position. The employer may proactively grant reemployment without prompting from MARAD or the reemployment process. The employee should notify the employer of their intent to return to employment:
 - No later than 14 days after completion of service that is less than 181 days; or
 - 90 days after completion of service greater than 181 days.
- The three categories of reemployment priority, in ascending order, are for those who:
 - Served for 90 days or less;
 - Served for more than 90 days; or
 - Have a disability incurred in, or aggravated during, the performance of such merchant service.
 - The employer shall make reasonable efforts to accommodate the disability to allow that person to be employed in the position they would have occupied had their employment with the employer been continuous or in the position in which employed on the date



service began as a merchant seaman.

- If the employee is not qualified for either position, they may be reemployed in a substantially equivalent position.

Employment Issues for State Employees Serving in the USMM

For more information, please follow the links below.

- [U.S. Department of Transportation Maritime Administration](#) – Information to help employers understand reemployment rights.
- [Section 349 of the Code of Federal Regulations](#) – Detailed information on reemployment rights of certain merchant seamen.