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MEMORANDUM #26-17HR (*supersedes Memorandum #043-16HR*)

TO: Agency Administrators

FROM: Carolyn Horwich, Esq., Director of Human Resources

THROUGH: Rip Colvin, Executive Director

SUBJECT: Military Leave

DATE: August 4, 2017

The Department of Management Services has released updated guidance on military leave for recurring Reserve or National Guard training. Please see attached.

If you have any questions, please consult with your Justice Administrative Commission Payroll or Benefits coordinator.

Thank you.



DEPARTMENT OF MANAGEMENT SERVICES
DIVISION OF HUMAN RESOURCE MANAGEMENT
POLICY GUIDELINE

STATE PERSONNEL SYSTEM

SUBJECT:

Military Leave for Recurring Reserve or National Guard Training

POLICY GUIDELINE: HRM #2017-019

EFFECTIVE DATE: August 4, 2017

SUPERSEDES: Policy Guideline HRM #2016-009: *Military Leave for Recurring Reserve or National Guard Training*

STATUTES/RULES/REGULATIONS/LAWS:

Title 20 Code of Federal Regulations (CFR) Part 1002, Regulations Under the Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994

Title 38 United States Code (USC) Chapter 43, Employment and Reemployment Rights of Members of the Uniformed Services (USERRA sections 4301-4335)

Section 115.07, Florida Statutes (F.S.), Officers and employees' leaves of absence for reserve or guard training

Section 250.01, F.S., Definitions

Rule 60L-33.002, Florida Administrative Code (F.A.C.), General Principles

Rule 60L-33.003, F.A.C., Status

Rule 60L-34.0062, F.A.C., Military Leave

FORMS: N/A

ADDITIONAL REFERENCE MATERIALS:

Management Advisory 15-003 (REVISED), issued May 18, 2015, by the Division of State Group Insurance (DSGI)

Army National Guard Training (National Guard Regulation 350-1), issued August 4, 2009

SCOPE AND PURPOSE OR ISSUE:

As part of their duties as a reservist or member of the National Guard, employees may be called up annually for specialized training during different times of the year. The statutes and rules covering military leave for training activities provide that such employees will be granted military leave which, at a minimum, will be without loss of time or efficiency rating for a specified period. These guidelines address the leave provisions that apply when agencies have employees in the Career Service, Selected Exempt Service (SES), and Senior Management Service (SMS) who are called to such active or inactive duty military training, pursuant to section 115.07, F.S.

Note: Military leave for training provisions for eligible employees paid from Other Personal Services (OPS) funds are addressed separately in the program guideline entitled *Military Leave Without Pay Provisions for Eligible Other Personal Services Employees*.

Note: Military leave for members of the reserves or the National Guard who are ordered to active duty (as opposed to training) is addressed separately in the program guideline entitled *Military Leave for Salaried Employees*.

DEFINITIONS:

Annual Period – A recurring 12-month period that runs from October 1 to September 30, in accordance with the federal fiscal year.

National Guard Member – A state official or employee who is a member of either the Air National Guard or Army National Guard, as defined in section 250.01, F.S., and who, when called to military duty training under federal provisions, is entitled to leave for up to 240 hours per annual period, without loss of pay, accrued leave credits, or efficiency rating, pursuant to section 115.07, F.S.

Reservist – A state official or employee who is a member of a reserve component of one of the armed forces of the United States and who, when called to federal military duty training, is entitled to leave for up to 240 hours per annual period, without loss of pay, accrued leave credits, or efficiency rating, pursuant to section 115.07, F.S.

POLICY OR PROCEDURE:

In accordance with state and federal provisions, the granting of military leave for recurring training purposes and any associated benefits apply to Career Service, SES, and SMS employees, including part-time and probationary employees. Pursuant to section 115.07, F.S., Career Service, SES, and SMS employees are eligible for 240 hours of administrative leave in each annual period for reserve or guard training. Similar to other benefits, a part-time employee may receive prorated amounts of administrative leave based on their full time equivalent (FTE). For example, a 0.5 FTE employee is eligible for 120 hours of administrative leave for reserve or guard training.

QUESTION AND ANSWER:

Question 1:

How is an employee placed on a military leave of absence for training?

Answer:

Upon inspecting the employee's official military orders, the only action required is proper completion of the employee's timesheet. It is not necessary to complete a Personnel Action Request (PAR) for short-term military training purposes.

Timesheet: Enter Leave Code 0057 (ADMIN-Reserve/NG Training) for the missed work hours. This applies to the employee's first 240 hours of active or inactive duty training in an annual period.

Personnel File: The agency will dictate the method for receiving and placing copies of the orders in the personnel files.

Impact: The employee remains in full-pay status with full leave accruals and is paid for any applicable state holiday, during the first 240 hours of military training leave, pursuant to sections 115.07(1) and (2), F.S.

Question 2:

How is an employee placed on leave if they exceed the 240 hours for active or inactive duty training?

Answer:

Timesheet: Enter Leave Code 0058 (Leave Without Pay (LWOP)–Authorized) or, if the employee elects to use accrued leave, the appropriate paid leave code, for the missed work hours.

This applies to any hours of work that are missed beyond the first 240 hours of active or inactive duty military training in an annual period.

Timesheets should be submitted and approved each pay period, even if the employee has elected not to use accrued leave.

Note: If an employee whose training period will exceed the 240 hours does not have sufficient leave credits to cover the extended period, you may wish to place such employee on a leave without pay personnel action request (PAR) to avoid an overpayment situation if a time sheet is not timely submitted.

Impact: Unless the employee elects to use personal accrued leave, he/she will not accrue leave credits, be eligible for paid holidays, or receive the employer premium contribution for state basic life insurance and the SMS/SES disability income plan (if applicable) during active or inactive duty military training leave in excess of 240 hours, in accordance with section 115.07(2), F.S. This is because, in cases of leave that exceed 240 hours, the standard provisions that govern leave without pay apply with respect to pay and benefits.

However, employees who must be placed on leave without pay during an annual period in which they have exceeded their 240 hours of administrative leave will continue to be eligible for the employer premium contribution for health insurance notwithstanding their leave without pay (LWOP) status, pursuant to DSGI Management Advisory 15-003 (REVISED) issued May 18, 2015.

Question 3:

Are employees entitled to paid leave under section 115.07, F.S., if they are members of another state's National Guard and called to active or inactive duty military training?

Answer:

Yes. Upon consultation with the Florida Department of Military Affairs' Legal Office, it has been determined that to the extent that section 115.07(1), F.S. and Rule 60L-34.0062(2), F.A.C., do not specify the Florida National Guard, the State Personnel System (SPS) will apply the provisions of section 115.07(2), F.S., to Florida state officials and SPS employees who, as members of the Air or Army National Guard, are engaged in active or inactive duty military training ordered under the provisions of the United States military or naval training regulations for such personnel regardless of whether the orders are issued under the authority of the federal government or under the authority of any state. In both cases, the training is conducted under the provisions of the United States military or naval training regulations, as referenced in the Army National Guard Training guidance (National Guard Regulation 350-1 dated August 4, 2009), which is a requirement in order to receive paid leave under section 115.07(1), F.S.

Question 4:

When does the employee's leave begin in order to report fit for duty for National Guard or Reserve training and when is an employee authorized to use administrative leave (Leave Code 0057, Admin-Reserve/NG Training) in response to orders for National Guard or Reserve training?

Answer:

In accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) an employee must, at a minimum, have sufficient time after leaving the employment position to travel safely to the service site and arrive fit to perform the service. An example of how this would be applied for an employee who works an overnight shift is given in Title 20 CFR Part 1002, Uniformed Services Employment and Reemployment Rights act (USERRA) of 1994:

§1002.74:

- (a) If the employee performs a full overnight shift for the civilian employer and travels directly from the work site to perform a full day of uniformed service, the employee would not be considered fit to perform the uniformed service. An absence from that work shift is necessitated so that the employee can report for uniformed service fit for duty.

Therefore, in accordance with USERRA, the employee is to be relieved from duty for the full shift prior to reporting to the military service site. Pursuant to section 115.07, F.S., the employee may request use of administrative leave effective 12:01 a.m. on the day the training begins. If the employee has exhausted the 240 hours of administrative leave allocated in section 115.07(2), F.S., the employee will be authorized LWOP (Leave Code 0058) for those hours or, in lieu of LWOP, the employee may elect to use accrued leave (see Question 2 for administration of leave beyond the 240 hours of administrative leave). Additionally, the employee may use LWOP or accrued leave for the shift hours prior to the beginning of the military training day.

Example: The employee is scheduled to work 7:00 p.m. Friday to 7:00 a.m. Saturday. The employee is ordered to report for National Guard training at 8:00 a.m. on Saturday. In accordance with USERRA, the employee is to be released from the entire shift prior to reporting to duty on Saturday. However, in accordance with section 115.07, F.S., the employee will be able to utilize administrative leave only for the time beginning on the day of training (12:01 a.m. Saturday).

Question 5:

What should agencies review and consider in order to assist them in approving military leave for training?

Answer:

To ensure that employees are eligible for paid military training leave under section 115.07, F.S., agencies should obtain a copy of the actual orders and verify that they cite the United States Code or a state statute or code.

However, orders received by the employee under Title 10 USC Chapter 1209 ss. 12301-12322 for active duty training do not fall under section 115.07, F.S. Rather, such training orders are to be treated as active military service under sections 115.09 and 115.14, F.S. Additionally, orders

received by the employee under Title 32 USC s. 501 or 502 will require review on a case-by-case basis to evaluate whether they fall under sections 115.07, 115.09, or 115.14, F.S.

In most instances, the orders for annual training that do fall under section 115.07, F.S., will be presented in the form of a notification letter stating the weekend drill and two-week training drill dates for the upcoming year. There may be additions/changes to this in the form of orders if the dates need to be amended. However, because orders tend to vary in format, it is recommended that the agency verify the authority under which the training orders have been issued, as needed, to determine eligibility for paid military leave under the appropriate statute.

APPLICABLE STATUTORY AND RULE CITATIONS:

[Title 20 CFR Part 1002, Regulations Under the Uniformed Services Employment and Reemployment Rights act \(USERRA\) of 1994](#)

[Title 38 USC Chapter 43, Employment and Reemployment Rights of Members of the Uniformed Services \(USERRA sections 4301-4335\)](#)

Section 115.07, F.S., Officers and employees' leaves of absence for reserve or guard training

(1) All officers or employees of the state, of the several counties of the state, and of the municipalities or political subdivisions of the state who are commissioned reserve officers or reserve enlisted personnel in the United States military or naval service or members of the National Guard are entitled to leaves of absence from their respective duties, without loss of vacation leave, pay, time, or efficiency rating, on all days during which they are engaged in training ordered under the provisions of the United States military or naval training regulations for such personnel when assigned to active or inactive duty.

(2) Leaves of absence granted as a matter of legal right under the provisions of this section may not exceed 240 working hours in any one annual period. Administrative leaves of absence for additional or longer periods of time for assignment to duty functions of a military character shall be without pay and shall be granted by the employing or appointing authority of any state, county, municipal, or political subdivision employee and when so granted shall be without loss of time or efficiency rating.

(3) When an employee's assigned employment duty conflicts with ordered active or inactive duty training, it is the responsibility of the employing agency of the state, county, municipal, or political subdivision to provide a substitute employee, if necessary, for the assumption of such employment duty while the employee is on assignment for the training.

(4) It is the intent of the Legislature that the state, its several counties, and its municipalities and political subdivisions shall grant leaves of absence for active or inactive training to all employees who are members of the United States Reserve Forces or the National Guard, to ensure the state and national security at all times through a strong armed force of qualified and mobilization-ready personnel.

Section 250.01, F.S., Definitions

(2) "Air National Guard" means that part of the National Guard of a state or territory of the United States, Puerto Rico, or the District of Columbia, active or inactive, which is:

- (a) An air force;
- (b) Trained, and has its officers appointed, under the United States Constitution;
- (c) Organized, armed, and equipped wholly or partially at federal expense; and
- (d) Federally recognized.

(6) "Army National Guard" means that part of the National Guard of a state or territory of the United States, Puerto Rico, or the District of Columbia, active or inactive, which is:

- (a) A land force;
- (b) Trained, and has its officers appointed, under the United States Constitution;
- (c) Organized, armed, and equipped wholly or partially at federal expense; and
- (d) Federally recognized.

Rule 60L-33.002, F.A.C., General Principles

(3) Employees on military leave shall be treated as if they had been continuously employed for purposes of status, pay, and other benefits pursuant to the terms of the type of authorized leave they have been granted and in accordance with Title 38, United States Code, Chapter 43, the Uniformed Services Employment and Reemployment Rights Act (USERRA).

Rule 60L-33.003(2)(a), F.A.C., Status

1. Employees on military leave. Time spent on any form of military leave shall count toward completion of the probationary period, and an employee on military leave may attain permanent status in the position while on such leave.

Rule 60L-34.0062, F.A.C, Military Leave

(2) An employee, who is a commissioned reserve officer or reserve enlisted personnel in the United States military or naval service or a member of the National Guard, shall be granted leave in accordance with section 115.07, F.S.

PREPARER'S INITIALS: DLO
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