

AR 4161.5 (a)
AR 4261.5 (a)
AR 4361.5 (a)

Personnel

MILITARY LEAVE

Military leave shall be granted in accordance with applicable state and federal law to employees performing military duties on a voluntary or involuntary basis in a uniformed service, including active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, examination to determine fitness for duty, and performance of funeral honors duty. (Education Code 44800; Military and Veterans Code 395, 395.01, 395.02, 395.05, 395.1, 395.2, 395.9; 38 USC 4301, 4303, 4316)

Any district employee who needs to be absent from the district to fulfill his/her military service shall provide advance written or verbal notice to the Superintendent or designee, unless the giving of such notice is precluded by military necessity or is otherwise impossible or unreasonable. (38 USC 4312; 20 CFR 1002.85, 1002.86)

Salary/Compensation

An employee shall receive his/her salary or compensation for the first 30 days of any one absence for military leave or during one fiscal year, under any of the following conditions:

1. **Active Military Training or Exercises:** The employee is granted a temporary military leave of absence to engage in ordered military duty for purposes of active military training, encampment, naval cruises, special exercises, or like activity as a member of the reserve corps or force of the United States Armed Forces, National Guard, or Naval Militia, provided that: (Military and Veterans Code 389, 395, 395.01)
 - a. The employee has been employed by the district for at least one year immediately prior to the day the military leave begins.
 - b. The ordered duty does not exceed 180 days, including time involved in going to and returning from such duty.
2. **Active Military Duty:** The employee is on military leave, other than a temporary military leave, to engage in active military duty as a member of the reserve corps or force of the United States Armed Forces, the National Guard, or the Naval Militia, provided that he/she has been employed by the district for at least one year immediately prior to the day the military leave begins. (Military and Veterans Code 389, 395.02)
3. **War or Other Emergency:** The employee, however long employed by the district, is a member of the National Guard who is engaged in military or naval duty during a state of

AR 4161.5 (b)
AR 4261.5
AR 4361.5

Personnel
MILITARY LEAVE

extreme emergency as declared by the Governor, or during such time as the National Guard may be on active duty in situations described in Military and Veterans Code 146, including travel time to and from such duty. (Military and Veterans Code 395.05)

4. Inactive Duty Training: The employee is a member of the reserve corps or force of the United States Armed Forces, National Guard, or Naval Militia who is engaged in temporary inactive duty training, provided that he/she has been employed by the district for at least one year immediately prior to the day the military leave begins and the ordered duty does not exceed 180 days, including time involved in going to and returning from such duty.

In determining the length of district employment when necessary to determine eligibility for compensation for military leave, all recognized military service performed during and prior to district employment shall be included.

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

During the period of military leave, an employee may, upon his/her own request, use any vacation or similar paid leave accrued before the commencement of the military leave. The district shall not require the employee to use such leave. (38 USC 4316; 20 CFR 1002.153)

Benefits

An employee may elect to continue health plan coverage during the military leave. The maximum period of coverage for the employee and his/her dependents shall be either 24 months from the beginning of the leave or until the day after the employee fails to apply for or return to employment, whichever is less. (38 USC 4317; 20 CFR 1002.164)

An employee on military leave may be required to pay the employee cost, if any, of any funded benefit to the extent that other employees on leave are so required. (38 USC 4316)

An employee absent for 30 days or fewer shall not be required to pay more than the employee share for such coverage. An employee absent for 31 days or more may be required to pay not more than 102 percent of the full premium under the plan. (38 USC 4317; 20 CFR 1002.166)

Any employee called into active military duty as a member of the California National Guard or a United States Military Reserve organization shall receive, for up to 180 days, the difference between the amount of the employee's military pay and the amount the employee would have received from the district and all benefits that the employee would have received if he/she had not been called to active military duty, unless the benefits are prohibited or limited by vendor contracts.

AR 4161.5 (c)
AR 4261.5
AR 4361.5

Personnel
MILITARY LEAVE

Vacation and Sick Leave Accrual

An employee on temporary military leave under the conditions described in item #1 in the section entitled "Salary/Compensation" above, shall continue to accrue the same vacation, sick leave, and holiday privileges to which the employee would otherwise be entitled if not absent. (Military and Veterans Code 395)

An employee on military leave who is serving in active duty in time of war, national emergency, or United Nations military or police operation shall not accrue sick leave or vacation leave during the period of such leave. (Military and Veterans Code 395.1)

However, an employee who is a National Guard member on active duty as described in item #3, in the section entitled "Salary/Compensation" above, shall not suffer any loss or diminution of vacation or holiday privileges because of his/her leave of absence. (Military and Veterans Code 395.05)

Pension Plan Service Credit

Pension plan service credit and vesting shall continue during an employee's military leave as though no break in service had occurred. Payment of employer and employee contributions shall be made in accordance with law for members of the State Teachers' Retirement System or Public Employees' Retirement System. (Education Code 22850-22856; Government Code 20990-21013)

Reinstatement Rights

At the conclusion of the military duty, an employee shall be promptly reinstated in the position held at the beginning of the leave, at the salary to which the employee would otherwise have been entitled, except under the conditions noted below. (Education Code 44800; Military and Veterans Code 395, 395.2; 38 USC 4304, 4313; 20 CFR 1002.180-1002.181)

Any employee who performs active military duty in time of war, national emergency, or United Nations military or police operation has a right to return to his/her position within six months of an honorable discharge or placement on inactive duty. Reinstatement rights shall not be extended to any such employee who fails to return within 12 months after the first date upon which the employee could terminate or could cause to be terminated his/her active service. (Education Code 44800; Military and Veterans Code 395.1)

When an employee has been on military leave for reasons other than war or national emergency, the time frame for reinstatement shall depend on the length of military service as follows: (38 USC 4312; 20 CFR 1002.115, 1002.118)

1. For a leave of 30 days or fewer, the employee shall report for duty no later than the beginning of the first full work day following the completion of military service,

AR 4161.5 (d)
AR 4261.5
AR 4361.5

Personnel
MILITARY LEAVE

provided the employee has a period of eight hours to rest following transportation to the employee's residence.

2. For a leave of 31-180 days, the employee shall submit a written or verbal application for reinstatement not later than 14 days after the completion of military service.
3. For a leave of more than 180 days, the employee shall submit a written or verbal application for reinstatement within 90 days after the completion of military service.

Where an employee's reporting or application for reinstatement within the periods specified in items #1 and #2 above is impossible or unreasonable through no fault of the employee, the employee shall report as soon as possible after the expiration of the period. In the case of Items #2 and #3 where an application is required, the employee's application may be made orally or in writing and need not follow any particular format. (38 USC 4312; 20 CFR 1002.115, 1002.117, 1002.118)

An employee who is hospitalized for, or convalescing from, an illness or injury incurred in or aggravated during the performance of military service shall report for duty or submit an application for reinstatement at the end of the period that is necessary to recover from such illness or injury, but no more than two years after the completion of military service unless circumstances beyond the employee's control make reporting within the two-year period impossible or unreasonable. (38 USC 4312; 20 CFR 1002.116)

Upon receiving an application for reinstatement, the Superintendent or designee shall reinstate the employee as soon as practicable under the circumstances of his/her the case, but within a time period not to exceed two weeks, absent unusual circumstances. (20 CFR 1002.181)

If the employee's previous position has been abolished, the district shall be reinstate the employee in a position of like seniority, status, and pay, if such position exists, or to a comparable vacant position for which he/she is qualified. (Military and Veterans Code 395, 395.1; 38 USC 4313; 20 CFR 1002.192)

An employee failing to apply for reinstatement within the appropriate period does not automatically forfeit the entitlement to reinstatement but shall be subject to the district's rules and/or practices governing unexcused absences. (38 USC 4312)

The Superintendent or designee may elect not to reinstate an employee following military leave if any of the following conditions exists:

1. The district's circumstances have so changed as to make such re-employment impossible or unreasonable, such as a reduction in force that would have included the employee. (38 USC 4312; 20 CFR 1002.139)
2. The accommodation, training, or effort described in 38 USC 4313(a)(3), (a)(4), or

AR 4161.5 (e)
AR 4261.5
AR 4361.5

Personnel
MILITARY LEAVE

- (b)(2)(B) would impose an undue hardship on the district as defined in 20 CFR 1002.5 or 1002.198. (38 USC 4312; 20 CFR 1002.139)
3. The employee's position was for a brief, nonrecurrent period and there was no reasonable expectation that such employment will continue indefinitely or for a significant period. (38 USC 4312; 20 CFR 1002.139)
 4. The employee's cumulative length of absence and length of all previous military leave while employed with the district exceeds five years, excluding those training and service obligations specified in 38 USC 4312(c). (38 USC 4312; 20 CFR 1002.99-1002.103)
 5. The employee was separated from military service with a disqualifying discharge or under other than honorable conditions. (Military and Veterans Code 395.1; 20 USC 4304, 4312; 20 CFR 1002.134-1002.138)

Notices

The Superintendent or designee shall provide employees a notice of the rights, benefits, and obligations of employees granted military leave and of the district under the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 USC 4301-4334. (38 USC 4334)

This requirement may be met by posting the notice where the district customarily places notices for employees. (38 USC 4334)

State

Ed. Code 22850-22856: Pension benefits; STRS members on military leave
Ed. Code 44018: Compensation for employees on active military duty
Ed. Code 44800: Effect of active military service on status of employees
Ed. Code 45059: Employee ordered to active military/naval duty; computation of salary
Gov. Code 18540: Definition of armed forces
Gov. Code 18540.3: Recognized military service
Gov. Code 20990-21013: Pension benefits; PERS members on military leave
M&V Code 146: Events justifying calling of militia into active service
M&V Code 389: Definitions; temporary military leave
M&V Code 394: Nondiscrimination based on military service
M&V Code 395-395.9: Military leave

Federal

20 CFR 1002.1-1002.314: Uniformed Services Employment and Reemployment Rights Act of 1994
38 USC 4301-4334: Uniformed Services Employment and Reemployment Rights Act of 1994

Management Resources

Attorney General Opinion: 18 Ops.Cal.Atty.Gen. 178 (1951)

AR 4161.5 (f)
AR 4261.5
AR 4361.5

Personnel

MILITARY LEAVE

Attorney General Opinion: 63 Ops.Cal.Atty.Gen. 924 (1978)

Attorney General Opinion: 69 Ops.Cal.Atty.Gen. 290 (1986)

Attorney General Opinion: 77 Ops.Cal.Atty.Gen. 56 (1994)

Court Decision: Bowers v. San Buenaventura (1977) 75 Cal. App.3d 65

Court Decision: Wright v. City of Santa Clara (1989) 213 Cal. App.3d 1503

U.S. Department of Labor Publication: A Non-Technical Resource Guide to the Uniformed Services Employment and Reemployment Rights Act (USERRA), rev. April 2005

Website: CSBA District and County Office of Education Legal Services

Website: National Committee for Employer Support of the Guard and Reserve

Website: U.S. Department of Labor, USERRA

Website: National School Boards Association

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ORCUTT UNION SCHOOL DISTRICT
Orcutt, California