

ALL PERSONNELMilitary Leave

The Office of Education shall grant military leave to Office of Education 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. Such employees shall retain those rights and privileges guaranteed by law.

An employee who needs to be absent from the Office of Education 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.

The following employees shall be entitled to receive their salary for the first 30 calendar days of any one absence for military leave or during one fiscal year, under the following conditions:

1. Temporary Military Leave for Active Military Training or Exercises: Employees on temporary leave of absence for ordered 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:
 - a. The ordered duty does not exceed 180 calendar days, including coming and going time; and
 - b. The employee has been an employee of the Office for not less than one year prior to the day the military leave commences. There is no entitlement to salary for scheduled reserve drill periods. Service in the military service shall count toward the period of time that the employee has been employed by the Office.
2. Active Military Duty Leave: Employees ordered into active military duty as a member of the reserve corps or force of the United States Armed Forces, the National Guard, or Naval Militia on other than a temporary basis. The employee must have been an Office of Education employee for not less than one year prior to the date on which the military leave begins. There is no tacking for military service as with temporary leaves.
3. War or State of Extreme Emergency: Employees who are members of the National Guard, however long employed by the Office, who are engaged in

military or naval duty during a state of extreme emergency as declared by the Governor or pursuant to the Governor's call of the militia into active service 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; provided the leave does not exceed the duration of the emergency.

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)

Certificated employees shall not be entitled to compensation during non-teaching, non-paying months of the year.

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.

Injured Service Member Family Leave

Employees who are the spouse, parent, child, or next of kin (nearest blood relative) of a service member who has incurred a serious injury or illness on active duty in the Armed Forces may take up to 26 weeks of leave in a single 12-month period to care for the injured service member. The military caregiver leave must be taken in combination with regular Family Leave.

Leave During a Family Member's Active Duty

Employees with a spouse, parent, or child who is on or has been called to active duty in the Armed Forces may take up to 12 weeks of Family Leave yearly when they experience a "qualifying exigency" as defined by U.S. Department of Labor regulations. (Until regulations are issued, examples of qualifying exigency leave could include: arranging for childcare, seeing a child or spouse off/or welcoming home ceremony, attending pre-deployment briefings, attending family support meetings, or attending reintegration briefings.)

Leave for employee whose spouse is on leave from deployment in combat zone

A spouse of a member of the Armed Forces, National Guard or Reserves may take up to 10 days unpaid leave when the service member is on leave from deployment in a combat zone. To request the leave, the employee must give two business day's notice and submit written documentation certifying that the service member will be on leave from deployment during the time requested. This provision does not preclude an employee from using other forms of leave available to him or her for this purpose.

Benefits

An employee may elect to continue his/her 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)

Vacation and Sick Leave Accrual

An employee on temporary military leave under the conditions described in item #1, Temporary Military Leave for Active Military Training or Exercises, shall continue to accrue the same vacation, sick leave, and holiday privileges to which he/she 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, War or State of Extreme Emergency, 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)

Employment Status

Absence for military leave shall not affect the classification of any certificated employee. In the case of a certificated probationary employee, the period of such absence shall not count as part of the service required to obtain permanent status, but shall not be construed as a break in the continuity of service for any purpose. (Education Code 44800)

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 he/she 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 he/she 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, provided the employee has a period of eight hours to rest following transportation to his/her 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.

In cases where reporting within the periods specified in items #1 and #2 above is impossible or unreasonable through no fault of the employee, he/she shall report as soon as possible after the expiration of the period. (38 USC 4312; 20 CFR 1002.115, 1002.117)

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 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, he/she shall be reinstated 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 his/her rights, but shall be subject to the Office of Education's rules 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 Office of Education'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 (b)(2)(B) would impose an undue hardship on the Office of Education 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 Office of Education 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 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 Office of Education customarily places notices for employees. (38 USC 4334)

Legal Reference:

EDUCATION CODE

22850-22856 Pension benefits, STRS members on military leave

44018 Compensation for employees on active military duty

44800 Effect of active military service on status of employees

45059 Employee ordered to military/naval duty - computation of salary

GOVERNMENT CODE

18540 Definition of armed forces

18540.3 Recognized military service

20990-21013 Pension benefits, PERS members on military leave

MILITARY AND VETERANS CODE

146 Events justifying calling of militia into active service

389 Definitions; temporary military leave

394 Nondiscrimination based on military service

395-395.10 Military leave

UNITED STATES CODE, TITLE 38

4301-4334 Uniformed Services Employment and Reemployment Rights Act of 1994

CODE OF FEDERAL REGULATIONS, TITLE 20

1002.1-1002.314 Uniformed Services Employment and Reemployment Rights Act of 1994