

POLICY

2017

6431

Personnel

1 of 5

SUBJECT: UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA) MILITARY LEAVES OF ABSENCE

In accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) and State Law, the school district upon advance notice by the employee, shall grant leaves of absence for service in the uniformed services and/or military duty (hereinafter referred to as "military service" or "military duty") to its employees who are ordered to duty or volunteer for qualifying military service. The employee's notice may be either verbal or written. No advance notice is required if military necessity prevents the giving of notice, or the giving of notice is otherwise impossible or unreasonable under all the circumstances.

Employment Rights

Time during which an employee is absent pursuant to military leave shall not constitute an interruption of continuous employment in the school district and no such employee shall be subjected, directly or indirectly, to any loss or diminution of time service, increment, vacation or holiday privileges or any other right or privilege by reason of such absence; nor shall any employee be prejudiced by reason of such absence with reference to continuance in employment, re-employment, reinstatement, transfer or promotion.

Salary/Compensation

Every employee shall be paid his/her salary or other compensation for any and all periods of absence while engaged in the performance of ordered military duty and while going to and returning from such duty. This payment of salary/compensation shall not exceed a total of 30 days or 22 working days, whichever is after in any one calendar year; and shall not exceed 30 days or 22 working days, whichever is greater, in any one continuous period of such absence.

The employee must be permitted, upon request, to use any accrued vacation, annual or similar leave with pay during the period of military service in order to continue his/her civilian pay. The school district may not require the employee to use accrued leave.

The employee is not entitled to use accrued sick leave during the period of military service, unless the district allows employees to use sick leave for any reason or allows other similarly situated employees on comparable furlough or leave of absence to use accrued paid sick leave.

(Continued)

**SUBJECT: UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA) MILITARY LEAVES OF ABSENCE
(Cont'd)**

Employee Benefits

Health Plan Coverage

If the employee has coverage under a health plan in connection with his/her employment with the district, the employee must be permitted to elect to continue the coverage for a certain period of time as designated in law.

When the employee is performing military service, he/she is entitled to continuing coverage for himself/herself (and dependents if the plan offers dependent coverage) under a health plan in connection with the employment. The plan must allow the employee an opportunity to continue coverage for a period of time that is the lesser of:

- a) The 24-month period beginning on the date on which the employee's absence for the purpose of performing military service begins; or
- b) The period beginning on the date on which the employee's absence for the purpose of performing military service begins and ending on the date on which the employee fails to return from service or apply for a position of re-employment.

Health plan administrators may develop reasonable requirements addressing how continuing coverage may be elected, consistent with the terms of the plan and USERRA's exceptions to the requirement that the employee give advance notice of military service. Further, health plan administrators may develop reasonable procedures for employee payment to continue coverage, consistent with USERRA and the terms of the plan.

Pension/Retirement Plans

While on military duty, any school district employee who is a member of any pension or retirement system may elect to contribute to such pension or retirement system the amount which he/she would have contributed had such employment been continuous. Upon making such contribution, the employee shall have the same rights in respect to membership in the retirement system as he/she would have had if the employee had been present and continuously engaged in the performance of his/her position. To the extent that such contributions are paid, absence while

(Continued)

**SUBJECT: UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA) MILITARY LEAVES OF ABSENCE
(Cont'd)**

engaged in the performance of military duty shall be counted in determining the length of total service under such pension or retirement system.

Alternatively, employees will have an opportunity to make up contributions to the pension or retirement system upon return to employment in the district in accordance with law and the individual employee's pension/retirement system.

Time during which an employee is absent on military duty shall not constitute an interruption of continuous employment, but such time shall not be counted or included in determining the length of total service in the pension or retirement system unless the employee contributes to the pension or retirement system the amount he/she would have been required to contribute if the employee had been continuously employed during the period of military duty.

Re-employment/Restoration Rights ("Escalator Principle")

Per USERRA as a general rule, the employee is entitled to reemployment in the job position that he/she would have attained with reasonable certainty if not for the absence due to military service. The position to which the returning service member should be restored has become known as the "escalator position". The escalator principle requires that the employee be reemployed in a position that reflects with reasonable certainty the pay, benefits, seniority, and other job benefits that he/she would have attained if not for the period of military service.

Depending on the circumstance intervening events, the escalator principle may cause an employee to be re-employed in a higher or lower position, transferred, laid off, or even terminated.

The employee must be qualified for the re-employment position. The district shall make reasonable efforts to help the employee become qualified to perform the duties of this position. The district is not required to reemploy the employee on his/her return from military service if the employee cannot, after reasonable efforts by the district, qualify for the appropriate reemployment position.

Per state law, an employee restored to his/her position after the termination of military duty shall be entitled to the rate of compensation he/she would have received had the employee remained in his/her position continuously during the period of military duty; and the employee shall be deemed to have rendered satisfactory and efficient service in the job position during the period of

(Continued)

POLICY

2017

6431

Personnel

4 of 5

**SUBJECT: UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA) MILITARY LEAVES OF ABSENCE
(Cont'd)**

military leave of absence. Further the employee shall not be subjected directly or indirectly to any loss of time service, increment, or any other right or privilege; nor shall an employee be prejudiced in any way with reference to promotion, transfer, reinstatement or continuance in employment.

All other rights, benefits, and responsibilities of a district employee serving in the military shall be in accordance with law, regulations and/or the applicable contract/collective bargaining agreement.

Probationary Service

Public Employees in General

If a public employee (with the exception of the probationary service of “teachers” as described below) enters military duty before the expiration of the probationary period in any position to which he/she may have been appointed, or to which he/she may thereafter be appointed or promoted, the time such employee is absent on military duty shall be credited as satisfactory service during this probationary period.

Teachers/Supervisory Staff

In any case where a “teacher” (as defined in State Education Law Section 3101, the term “teacher” encompasses a broad category of full-time members of the teaching and supervisory staff of the district and is not limited to “instructional” employee) enters military duty before the expiration of the probationary period to which he/she may have been appointed, the time the “teacher” is absent on military duty shall be credited as satisfactory service during this probationary period. If the end of such probationary service occurs while the “teacher” is on military duty or within one year following the termination of military duty, the period of the probationary service may be extended by the Board of Education for a period not to exceed one year from the date of termination of military duty. However, in no event shall the period of probationary service in the actual performance of teaching services extend beyond that required by the school district at the time of the “teacher’s” entry into military service.

Collective Bargaining Agreements/Contracts/Plans/Practices

In accordance with USERRA, any state or local law, contract, agreement, policy, plan or practice

(Continued)

POLICY

2017

6431

Personnel

5 of 5

SUBJECT: UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA) MILITARY LEAVES OF ABSENCE

that establishes an employment right or benefit that is more beneficial than or is in addition to, a right or benefit under USERRA, such greater employment right or benefit will supersede this Federal Law.

Notice of Rights and Duties

The district shall provide a notice of the rights, benefits and obligations of employees and the district under USERRA. The district may provide the notice by posting it where employee notices are customarily placed. The district may also provide such notice to its employees in other ways that will minimize costs while providing the full text of the notice (e.g. by handling or mailing out the notice, or distributing the notice via electronic mail.)

The U.S. Department of Labor has developed and made available on its web site <http://www.dol.gov/vets/programs/userralposter.htm>, a poster for use by private and state employers (including school districts) that can be posted in order to comply with the notification mandate.

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)
38 United States Code (USC) Sections 4301-4333
Public Law 108-454
20 Code of Federal Relations Part 100
Military Law Sections 242 and 243
Education Law Section 3101

Adopted: 11/1/91

Revised: 9/11/06, 1/9/17