

**DEPARTMENT OF ADMINISTRATIVE & FINANCIAL SERVICES
BUREAU OF HUMAN RESOURCES**

November 25, 2002

HUMAN RESOURCES MEMORANDUM 15-02

TO: EXECUTIVE BRANCH EMPLOYEES ORDERED TO ACTIVE DUTY

SUBJECT: SUMMARY OF EMPLOYMENT BENEFITS FOR EMPLOYEES WHO ARE ORDERED INTO THE ARMED FORCES (SUPERSEDES HR MEMO 10-01 DATED SEPTEMBER 21, 2001)

The attached materials are designed to answer employment-related questions that you or your family may have with respect to your service in the U.S. Armed Forces. Although these materials are intended to be a summary, and should not be substituted for actual statutes from which they derive, they have been developed in consultation with appropriate resources and are based in large part on frequently asked questions from supervisors, human resource professionals, and your colleagues.

In order to ensure the most efficient sharing of information, this package is being distributed through your agency human resource office. The Bureau of Human Resources will remain in close contact with agency human resource staff to coordinate responses to other questions that may arise. Additional employment-related information will be published and distributed through agency human resource offices as the need arises.

I hope that you find this information helpful. In closing, please accept my sincere appreciation for your service to our country.


Donald A. Wills, Director
Bureau of Human Resources

DAW/pjs

Enclosures: Civil Service Bulletin 11.16A, *Policy and Procedures Governing Military Leave*, Bureau of Human Resources, *Military Leave - Q&A Sheet No. 2* (11/20/02)
Employee Health Insurance, *Anthem Blue Cross Blue Shield and Northeast Delta Dental Coverage* (09/17/01)
Maine State Retirement System, *Active Military Duty Interrupts Employment::Effects on MSRS Membership and Service Credit* (11/06/02)
Employer Support of the Guard and Reserve, *FACTSHEET* (Note website and phone)

DEPARTMENT OF ADMINISTRATION AND FINANCIAL SERVICES
BUREAU OF HUMAN RESOURCES
August 26, 2002

CIVIL SERVICE BULLETIN 11.16A

TO: Agency and Department Heads, Directors of Administrative Services,
Agency Human Resource Representatives

SUBJECT: **POLICY AND PROCEDURES GOVERNING MILITARY LEAVE**

The purpose of this bulletin is to implement PL 2001, Ch. 662 (effective 07/25/02) pertaining to paid military leave for state employees, to describe the procedures governing military leaves of absence, and to outline the reemployment rights of state employees who are on military leave. Civil Service Bulletin 11.16A supersedes Civil Service Bulletin 11.16 (10/13/99).

The provisions of this bulletin apply to those employees who perform military service voluntarily or involuntarily, in peacetime or in wartime.¹ An employee must be granted military leave of absence when properly ordered to military training or service.² Employees who enter active military service retain reemployment rights under Maine law and federal law.

1. MILITARY LEAVE OF ABSENCE WITH PAY: This category of military leave of absence applies to those state employees who are members of the National Guard or any of the Reserve components of the United States Armed Forces who are engaged in military training activities. State employees who are members of the National Guard or the Reserves of the United States Armed Forces must be granted a paid leave of absence, not to exceed 17 workdays each calendar year, for military training activities.³

Weekend drills are now considered military training for purposes of paid military leave. Consequently, if weekend drill activities occur on an employee's scheduled workday, it may be counted as one of the 17 paid workdays authorized by law.

This category of military leave extends to all types of state employment, including various non-status appointments such as acting capacity, project, etc.⁴

Leave of absence in this category shall be without loss of pay or benefits.⁵

Employees requesting this category of military leave of absence are required to furnish advance written or verbal notice to their appointing authority.⁶ Unless individual circumstances dictate otherwise, the advance notice requirement shall be accomplished by providing proper military orders.

With respect to health and dental insurance, while the employee remains on paid military leave there is no change in health insurance coverage.

2. MILITARY LEAVE OF ABSENCE WITHOUT PAY: Military leave other than that provided in (1.) above, is without pay.

Employees requesting this category of military leave of absence are required to furnish advance written or verbal notice to their appointing authority.

When the circumstances of a military leave in this category permit, agencies shall advise the employee of his or her reemployment rights prior to his or her entry into service. Providing a copy of Civil Service Bulletin 11.16A may be considered sufficient to meet this requirement.

Employees may use, but are not required to use, accrued vacation, personal leave, or compensatory time while they are engaged in military service.⁷

With respect to unpaid military leave, health insurance, dental insurance, and life insurance benefits shall continue, at no additional expense to the employee, for the first 30 days of military duty pursuant to state or federal military orders. After the expiration of the first 30 days, the employee has the option of continuing health insurance, dental insurance, and life insurance benefits at his or her own expense by paying the insurance premium at the same rate as paid by the employer. Otherwise, employees on unpaid military leave retain the option to suspend health and dental coverage. If coverage is suspended, pre-existing conditions will not be excluded from coverage when coverage is reinstated after return. **Since transition provisions may vary on a case-by-case basis, employees who are ordered to military duty should contact the Office of Employee Health and Benefits as soon as possible when ordered to military service, and prior to returning from military service, to determine appropriate transition arrangements.**

3. ACTIVE STATE SERVICE: In the event that a state employee is called to active state duty by the Governor, for purposes other than training, the employee is placed on unpaid military leave, except that the employee may also utilize accrued vacation, personal leave, or compensatory time as outlined above.⁸

State employees who are called to active state duty continue health and dental insurance.⁹

4. RE-EMPLOYMENT / RETURN PROVISIONS: This section governs the application of reemployment rights under Maine law and the *Uniformed Services Employment and Reemployment Rights Act*.

Both Maine law and the USERRA provide certain reemployment rights and benefits to state employees who leave their positions, voluntarily or involuntarily, to enter military training or military service. Generally, employees will be entitled to reemployment with the same seniority, status, pay, and other benefits that would have been realized had they remained in the employ of the state.

In order to establish his or her right to reemployment, the employee shall provide the appointing authority and the Director, Bureau of Human Resources, appropriate documentation as to character of service.¹⁰

The criteria for reemployment includes that the service member be employed in a position that was not temporary, that the employee must have provided notice to the employer of his or her absence for military duty, that he or she is still qualified to perform the duties of the position.¹¹

Leaves of absence for military training or service will be counted as time worked for purposes of adjustments to the vacation accrual rate (e.g.: adjustment from 1 to 1.25 days per month upon completion of five years; from 1.25 to 1.5 days upon completion of ten years, and so forth).

Total service time during periods of unpaid military leave will not be considered as time worked for purposes of accruing vacation credits.

The time spent on unpaid military leave will not be considered as time worked for completing a probationary period.

Salary and performance review dates will not be advanced as the result of unpaid military leave. Annual performance reviews for merit increases will be conducted on the basis of the anniversary date in effect prior to the military leave.

5. TIME PERMITTED FOR RETURN TO WORK: Under the USERRA, employees have certain rights with respect to the length of time allowed to return to work or to apply for reemployment. The minimum interim periods, which include travel and rest, are generally based upon the length of service. The interim time permitted between the conclusion of military service and returning to work or applying for reemployment also governs when an employee may be scheduled to return to work.

- Less than 31 days (including weekend drills): employee must report back to work not later than the beginning of the first full regularly scheduled work period on the first full

calendar day following completion of military service and safe travel home **plus** an eight-hour period of rest.¹²

- More than 30 days, but less than 181 days: employee must make verbal or written application for reemployment not later than 14 calendar days after the completion of military service.

- More than 180 days: employee must submit an application for reemployment not later than 90 days after completion of military service.

Employees retain additional rights with respect to the timeliness of their return to work in cases where the established time frames are impossible or unreasonable through no fault of the employee or if the employee suffers from illness or injury incurred or aggravated while in military service.¹³

6. POSITIONS VACATED BY MILITARY LEAVE OF ABSENCE: This section provides guidance as to how positions may be filled when an employee vacates a position due to military leave.

Generally, if the absence is for a period of 90 days or less, the employee must be returned to the position that he or she left. Hence, an appointing authority may fill a position vacated as a result of a short-term (less than 91 days) military leave with an acting capacity appointment or by temporary compensation.

An appointing authority may fill a position vacated as a result of a long-term military leave on a permanent basis with the understanding that upon the completion of a period of military service, an employee must be promptly reemployed in the position that he or she left - or - in a position of like seniority, status, and pay which he or she is qualified to perform.

An acting capacity appointment may also be considered to fill a position vacated by a long-term military leave. Although acting capacity appointments generally do not exceed one year, an exception to the one-year provision will be considered, on a case-by-case basis, based on the circumstances associated with the reemployment rights of a service member.¹⁴

Should the employee granted military leave fail to exercise his or her reemployment rights, the vacancy may be filled in accordance with the respective collective bargaining agreement and *Civil Service Rules*.

S/ Donald A. Wills

Donald A. Wills, Director
Bureau of Human Resources

¹The type of military duty is generally indicated in the employee's orders.

²The fact that an employee volunteered for military duty does not diminish the employer's obligation to provide military leave. The employer's operational needs are not criteria to deny military leave.

³The paid leave provision should not be construed to limit, in any way, an employee's right to military leave. It simply means that the service member may be in pay status for up to seventeen days of leave for training purposes. By law, the seventeen-day paid leave provision may be utilized within each calendar year.

⁴Extending military leave with pay to various types of non-status employment derives from MRSA, Title 37-B, Sec. 342. It is not a requirement of the USERRA.

⁵This provision of *Civil Service Rules* and Maine law is interpreted to mean that all benefits remain intact. With respect to salary, an employee in this category will receive both their state salary and military salary for the specified period of training.

⁶Such notice may be given by an appropriate officer of the uniformed service in which the service is performed. Notice is not required if such notice is precluded by military necessity or is otherwise impossible or unreasonable. Advance notification for weekend drills will generally be satisfied by the employee furnishing a copy of the weekend drill schedule to his or her supervisor.

⁷When employees are ordered to state or federal service, particularly in cases of emergency, the identification of those employees for payroll purposes is crucial. Consequently, it is important that human resource representatives utilize proper leave codes for payroll tracking purposes.

⁸Military pay is determined by military rank of the employee or the state minimum wage times 12 hours, whichever is greater. Payment is made from a state company number that is established for this purpose. The USERRA does not apply in this situation. Nevertheless, Maine law provides that service members must be reinstated. Any employee who held a position that was not temporary, who gives notice of their absence for military duty, and who is still qualified to perform the duties of such position must be reinstated without loss of pay, seniority, benefits, status, and any other incidences of advantages of employment as if he or she had remained continuously employed.

⁹Questions regarding the continuation of health and dental coverage for state employees called to active state duty should be directed to the Office of Employee Health and Benefits.

¹⁰Appropriate documentation would generally include discharge papers, military leave and earnings statements, military schooling completion certificates, endorsed military orders, a letter from a proper military authority, or DD Form 214. Documentation should include dates of service. An appointing authority may not delay or attempt to thwart reemployment obligations by requiring documentation that does not exist or is not readily available to the employee. The employer may not establish prerequisites for reemployment in addition to those contained in the USERRA.

¹¹Under Title 38, U.S. Code, if the state law is more beneficial to the service member, state law will prevail.

Under this circumstance, reemployment rights for state employees are extensive. If the employee has incurred a service-connected disability, agency human resource representatives must be consulted.

Agency human resource representatives should be consulted if denial of reemployment for any reason, or other adverse action, is contemplated.

¹²The U.S. Dept. of Labor has interpreted the intent and application of this provision to provide the service member with enough time to return to his or her residence, plus an eight-hour period of rest, before beginning work. The interpretation is, perhaps, best explained by example: A weekend drill ends at 4:00 p.m. on Sunday, the service member's residence is one hour from the drill location: He or she is entitled to an eight-hour rest period, beginning at 5:00 p.m. on Sunday. Therefore, the service member would be available for work after 1:00 a.m. on Monday. This being the case, the service member could not be compelled to report for an 11:00 p.m. shift on Sunday, but could be required to report for any shift beginning after 1:00 a.m. on Monday.

¹³When illness or injuries preclude reemployment or application for reemployment, the USERRA provides for extensions of up to two years or longer, depending on individual circumstances. **Agency human resource representatives should be consulted when any refusal of reemployment rights is contemplated.**

¹⁴As is indicated in the text, the USERRA makes distinctions with respect to reemployment rights based on the length of service. There are also other aspects (such as disability, qualifications to perform the work and training requirements) that will impact reemployment rights. Employees, supervisors, and managers should consult agency human resource representatives if the appointing authority contemplates reemployment in a position other than that which the employee left.

**DEPARTMENT OF ADMINISTRATIVE & FINANCIAL SERVICES
BUREAU OF HUMAN RESOURCES**

November 20, 2002

TO: Agency Human Resource Representatives

FROM: Phil Schlegel, Public Service Coordinator

SUBJECT: MILITARY LEAVE - Q & A SHEET NO. 2

Some military leave questions have recently come up that are not specifically covered in Civil Service Bulletin 11.16A, as follows:

Q: If an employee is activated, when does military health insurance become effective?

A: I have been provided the following information: If a soldier is activated for more than 30 days, and DEERS is updated for the soldier and family members to reflect this, the soldier and family members are covered under TRICARE. The soldier must enroll to TRICARE Prime. The family members are automatically in TRICARE Standard. The family members have the option to enroll to Martin's Point (similar to TRICARE Prime) or if the soldier is on orders for 179 days or more, the family may opt for TRICARE Prime. They must enroll to TRICARE Prime. <http://tricare.osd.mil/reserve/default.htm>

Active duty soldiers may be entitled to transitional assistance if the soldier is separated from active duty to which called or ordered in support of a contingency operation if the active duty is for a period of more than 30 days. If the soldier has served less than 6 years total active service, the soldier and dependents are entitled to 60 days of transitional healthcare. If the soldier has served 6 years or more total active service, the soldier and dependents are entitled to 120 days transitional healthcare.

The soldier and family members will automatically be disenrolled from TRICARE Prime upon release from duty (when orders end). If they want to continue in TRICARE Prime for the transitional assistance, they must enroll again. They need to enroll prior to the 20th of the month before the end of the orders to continue coverage.

Service members will be briefed by a TRICARE representative coordinated by the state headquarters (this office) on how to access the "TRICARE" system for the service member and the Family Assistance Center will brief or coordinate the briefings for the family members.

Q: Is there a fixed period of time that an agency must provide between the time the employee leaves his or her position and the time military service actually commences?

A: There is no fixed period of time that the agency must provide. Nevertheless, the guiding principle is that an agency must authorize the use of vacation, compensatory time, personal leave days, or other authorized leave when it is the intent of the employee to use the time to prepare for his or her military service. As a matter of policy, it is incumbent on an agency to permit a reasonable period of time, determined on a case-by-case basis, for an employee to prepare for his or her entry into military service. This time should not be coded as military leave, but rather vacation, comp. time, personal leave, etc., as appropriate.

MILITARY LEAVE - Q & A SHEET NO. 2

Page 2

"Military Leave" will commence on the effective date reflected in the employee's military orders.

Q: Is a State employee who is called to active military service eligible for leave with pay as provided in State law, the various bargaining agreements, and *Civil Service Rules*?

A: Military leave is without pay unless the period of military leave, or part thereof, is specifically designated military training activity.¹

¹ Some may recall that during Operation Desert Shield/Storm certain provisions were made to designate a portion of military leave as "annual training". [Reference: Human Resource Memorandum 18-90, as amended December 10, 1990] As of this date, no such provision has been implemented with respect to the current world situation.



STATE OF MAINE
DEPARTMENT OF ADMINISTRATIVE & FINANCIAL SERVICES
Bureau of Human Resources
Division of Employee Health and Benefits
220 Capitol St., 114 State House Station
Augusta, ME 04333-0114

Angus S. King, Jr.
Governor

Janet E. Waldron
Commissioner

TO: Reservists/National Guard
Active Military Call-Up for September 2001 Situation

FROM: State of Maine, Employee Health and Benefits

DATE: September 17, 2001

RE: **Anthem Blue Cross Blue Shield and Northeast Delta Dental Coverage**

Employees called to active military status for the current situation have the option of canceling their health and/or dental insurance coverage or they may continue to pay the full monthly premium until they are released. **Most employees and their dependents are covered for health and dental insurance by the military when the employee is in active military status. In this case, it is of no benefit to continue paying their monthly health/dental premium with the State of Maine group.** Cancellation of coverage will be effective for the end of the period in which the last payroll check pays premium for. The two payroll checks each month pay premium for that month. If the last payroll check is the first payroll of the month, premium for health and dental insurance is paid from the 1st through the 15th of that month. If the last payroll check is the second payroll of the month, premium for health and dental insurance is paid from the 16th through the 30th/31st of that month. It is important for our office to receive notification from you to cancel your health and/or dental insurance coverage to eliminate cancellation for nonpayment of premium.

**REINSTATEMENT OF HEALTH AND DENTAL INSURANCE COVERAGE UPON RELEASE
FROM ACTIVE MILITARY STATUS**

If at the time of your call-up you cancelled your Anthem Blue Cross Blue Shield and/or Northeast Delta Dental coverage or were cancelled for nonpayment of premium, the following options are available to you when released from active military status:

Dental insurance coverage will be provided to you, and dependents covered prior to call-up, the first or the 16th of the month following your return to work. An application must be completed and received prior to the anticipated effective date.

There are three options for **health insurance coverage**:

1. Health insurance may be effective with the discharge from the operation. This will ensure coverage from release from active military status to the return to work.

- A copy of the notice from the military terminating your active duty assignment must be provided with the application for reenrollment.
- The health insurance carrier will bill prorated premium. The State of Maine will be responsible for payment of their portion of the premium beginning with the return to work date. The employee will be responsible for payment of premium for coverage prior to the return to work date and the appropriate dependent premium.

OR

2. Health insurance may be effective with the return to work date. This will ensure that you have coverage the first day back to work.

- The health insurance carrier will bill prorated premium. The State of Maine will be responsible for payment of their portion of the premium. The employee will be responsible for the appropriate dependent premium.

OR

3. Health insurance may be effective on the 1st or the 16th of the month following return to work.

- The health insurance carrier will bill the full or ½ month's premium. The State of Maine will be responsible for their portion of the premium. The employee will be responsible for the appropriate dependent premium.

A completed health insurance application must be submitted to the Office of Employee Health and Benefits, 114 State House Station, Augusta, Maine 04333-0114 as soon as possible upon release of active military duty. A copy of this memo, signed, dated and indicating which alternative you choose should be attached to your completed application.

If you have questions, please contact our office at the phone numbers listed below.



Kay R. H. Evans, Executive Director
Gail Drake Wright, Chief Deputy Executive Director

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State Treasurer

SUBJECT: Active Military Duty that Interrupts Employment: Effects on MSRS Membership and Service Credit
DATE: November 6, 2002
TO: Affected Maine State Retirement System Members
FROM: Kay R. H. Evans, Executive Director

Maine State Retirement System (MSRS) members who are on a leave of absence from their MSRS-covered positions to serve in the uniformed services of the United States have, under federal and State law, specific protections, or eligibility for protections, with respect to their MSRS membership and related benefits. The single most important thing for affected members to be aware of is this:

Under certain conditions, MSRS members who (1) are on leave of absence from MSRS-covered employment to serve in the United States uniformed services and (2) return to their MSRS-covered position within 90 days of separation from military service are entitled to accrue service credit for the period of military service and to have their member contributions paid by their employer for the period of service. For teachers, for these purposes, "employer" means the State.

In addition to its effects on MSRS membership and service credit, service in the United States uniformed services while on leave of absence from employment also affects group life insurance and disability coverage. Both the federal law and State law are very detailed, setting out definitions, relevant circumstances and conditions, and other specifics that are significant in the application of the laws to affected individuals.

If you are an affected individual, or think you may be affected in the future, or just want to understand this topic more fully, call the Maine State Retirement System at 512-3100 or 1-800-451-9800 and request this Fact Sheet:

FACT SHEET ON EFFECTS OF MILITARY SERVICE WHILE ON LEAVE OF ABSENCE FROM MSRS-COVERED EMPLOYMENT

The Fact Sheet can be mailed or faxed to you. If you have any questions, please call the above number and ask for the State Unit, the Teacher Unit or the PLD Unit, depending on where you are employed. We encourage you to read the Fact Sheet before you call.

This memorandum is prompted by the potential call to military service of MSRS members. The information is also relevant for any leave of absence for the purpose of military service.



**Employer Support of
the Guard and Reserve**

www.esgr.org

F A C T S H E E T

1-800-336-4590

Questions and Answers for Employers and their Employees who participate in the National Guard and Reserve

The **Uniformed Services Employment and Reemployment Rights Act (USERRA)**, enacted October 1994 and significantly updated in 1996 and 1998, provides job protection and rights of reinstatement to employees who participate in the National Guard and Reserve.

The **National Committee for Employer Support of the Guard and Reserve (ESGR)**, an agency within the Office of the Assistant Secretary of Defense for Reserve Affairs, operates programs directed toward U.S. employers, employees, and communities to ensure understanding of the role of Reserve component members. ESGR encourages development of employer policies and practices to facilitate employee participation in the Reserve components through a network of 4,500 volunteers in 54 local ESGR Committees.

The **ESGR Ombudsman program** provides “third party assistance” and informal mediation services to employers and members of the National Guard and Reserve. It works in conjunction with the Veterans’ Employment and Training Service (VETS), U.S. Department of Labor. Volunteer members are trained by ESGR and VETS to provide assistance in the resolution of employment conflicts that can result from military membership, training, or other service requirements protected under USERRA.

To reach your local ESGR Committee for information or assistance, contact:

ESGR Ombudsman:

or

- ◆ the ESGR website at www.esgr.org
- ◆ call ESGR toll-free at 1-800-336-4590
- ◆ call your local National Guard or Reserve unit

The information provided herein should not be considered legal authority. Rather, it is provided as general information about USERRA .

Continued on:

page 2 for employer

page 4 for employee

Factsheet #3

Pg. 1

USERRA Facts, Questions and Answers For Employers

1. Is an employee protected from unlawful discrimination by an employer based on military affiliation?

Yes. USERRA provides protections for initial hiring and adverse employment actions by an employer if the action is motivated even in part by the employee's military service. This protection also extends to witnesses who assist or testify in a USERRA investigation.

2. Can an employer refuse to allow an employee to attend scheduled drills or annual training?

No. Employees must be excused from work to attend inactive duty training (drill) or annual training and the employer must reemploy the employee as if he or she has not been absent.

3. Is there a limit to the amount of military leave an employer must permit?

Yes. Although there is no longer any differentiation between voluntary and involuntary military duty, there is a 5-year cumulative service limit on the amount of voluntary military leave an employee can use and still retain reemployment rights.

4. What is not included in the 5-year cumulative total?

The 5-year total does not include: inactive duty training (drills); annual training; involuntary recall to or retention on active duty; voluntary or involuntary active duty in support of a war, national emergency, or certain operational missions; or additional training requirements determined and certified in writing by the Service Secretary, and considered to be necessary for professional development or for completion of skill training or retraining.

5. Is prior notice to the employer required for leave of absence for military duty?

Yes. Unless precluded by military necessity, advance notice must be provided either orally or in writing. The context for what constitutes timeliness of notification was not spelled out in detail by Congress under USERRA. However, employees who participate in the National Guard or Reserve should provide their employers as much advance notice as possible. Failure to provide notice could result in a denial of the protection of USERRA.

6. What are valid military orders?

All written or verbal orders are considered valid when issued by competent military authority. A military member in receipt of official orders is obligated by federal statute to execute them. The recurring requirement to perform inactive duty training (drill) is an example of when written orders may not be formally issued.

7. When may an employer require an employee to provide documentation of military service?

After periods of military leave of absence for more than 30 days, the employer has the right to request such documentation, which can be used to establish the employee's basic eligibility for protection under USERRA. All National Guard and Reserve members are encouraged to provide a copy of orders, the annual drill schedule, or other type of documentation to employers as soon as available and, if possible, before the commencement of military duty.

Continued on page 3

USERRA Facts, Questions and Answers For Employees

1. Is an employee protected from unlawful discrimination by an employer due to military affiliation?

Yes. The USERRA provides protections for initial hiring and adverse employment actions by an employer if the actions are motivated, even in part, by the employee's military service. This protection also extends to witnesses who assist or testify in a USERRA investigation.

2. What are the basic eligibility requirements for job protection under USERRA?

To be protected, a National Guard or Reserve member must have a civilian job, must provide timely notification to the employer of military duty, and must report back to work for reemployment in a timely manner. Reemployment rights are provided even if the civilian job is described as "temporary," unless the employment was for a brief period with no reasonable expectation of continuance for a significant period of time.

3. Is there a limit to the amount of active duty an employee can perform and still have reemployment rights?

Yes, there is a 5-year cumulative total of military service an employer is required to support. Not included in that total are: inactive duty training (drills); annual training; involuntary recall to or retention on active duty; voluntary or involuntary active duty in support of a war, national emergency, or certain operational missions; or additional training requirements determined and certified in writing by the Service Secretary, and considered to be necessary for professional development or for completion of skill training or retraining.

4. Does USERRA apply to "state" military duty or governor call-ups of National Guard members?

No. However, protection for such duty is generally provided by state statutes and in most instances is comparable to protections provided under the USERRA.

5. When should an employee provide notification of upcoming duty?

Written or oral notification must be made to employers prior to going on duty, unless precluded by military necessity. Employees are highly encouraged to notify their employer of any "window" of anticipated military activity, when application for orders is made, or if notified of possible involuntary recall. Employees should be sensitive to employer scheduling requirements when providing notification and when submitting application to the unit commander for orders. Where possible, an employee should submit requests for orders during calendar periods outside of peak business seasons and not during the most popular vacation cycles.

6. Does an employee have reinstatement rights following voluntary military service?

Yes. There is no longer any differentiation between voluntary and involuntary orders under the USERRA, so long as the basic eligibility requirements are met.

Continued on page 5

Continued from page 4.

7. What if an employee does not return in a timely manner to work?

The employee is subject to the personnel policies and practices of the employer for unexcused absences.

8. How does military service affect employee status or seniority in the workplace?

An employee must be considered not to have been absent from the workplace if the only reason for that absence was service in a uniformed service. A returning employee must be made "whole" by:

- being allowed to contribute to the pension plan any amount that would have been contributed had the employee not been absent
- being reinstated with privileges and status the employee earned by length of service (for example, after 3 years with a company an employee may be entitled to accrue more vacation per year, or after 5 years an employee is automatically advanced to a management position.)

9. What are the rules on contribution to the pension or thrift savings plan for periods of military leave of absence?

Upon reemployment, the employee has 3 times the length of service (not to exceed 5 years) to make payments and the employer is liable to fund any resulting obligation of the plan within the same time frame.

10. Can an employee contribute to the pension plan when on military leave of absence?

There is no burden under the law for an employer to continue pension contributions while the employee is away from the work site. An employer may choose to offer this benefit.

11. What are the rules for entitlement to health insurance?

For absence of less than 30 days, benefits continue as if the employee has not been absent. For absence of 31 days or more, coverage stops unless the employee elects to pay for COBRA-like coverage (for a period of up to 18 months). Health insurance must be reinstated the day an employee is reinstated with no waiting period. If the employer cannot put the employee back to work immediately upon application, the health insurance must be restored immediately.

12. Does an employee accrue vacation or medical/sick days from the employer while on military leave of absence?

No. However, as in the previous question, an employer may choose to offer accrual of vacation or medical/sick days as an additional benefit. An employer is not required under USERRA to provide short term compensation (pay, vacation accrual, etc.) when an employee is not working at the worksite.

13. Does an employee have the right to make up periods of work missed due to drill or military leave of absence?

No. An employer may choose to offer an employee the opportunity to work hours missed as a benefit not provided under the USERRA. For example, an employer is not required to provide hours of work for an average 2-week, 80-hour period if part of that period is missed due to military service.

Continued on page 6

Continued from page 2

8. What if the employee cannot provide satisfactory documentation for military service in excess of 30 days?

The employer must promptly reinstate the employee pending its availability. The employer may contact the military unit if necessary.

9. Can an employer require an employee to apply for military leave of absence or otherwise submit official documentation for approval of military leave of absence?

No. As stated earlier, an employer may not require documentation for notification prior to military duty. Further, an employer does not have a "right of refusal" for military leave of absence, so long as the employee has not exceeded the 5 years of cumulative service provided under USERRA.

10. Can an employee be required to find someone to cover his or her work period when military duty interrupts the work schedule?

No, an employee is responsible for notification but not for altering the work schedule or finding a replacement.

11. Can an employer require an employee to reschedule drills, annual training, or any other military duty obligation?

No. When military duties would require an employee to be absent from work for an extended period, during times of acute need, or when (in light of previous leaves) the requested military leave is cumulatively burdensome, the employer may contact the military commander of the employee's military unit to determine if the duty could be rescheduled or performed by another member. If the military commander determines that the military duty cannot be rescheduled or canceled, the employer is required to permit the employee to perform his or her military duty.

12. Is an employer required to pay an employee who is on military leave of absence?

No. While many employers offer differential pay or a specific number of paid military leave days, an employer is not required to pay an employee on military leave of absence.

13. Are there time limits for an employee to return to work after completion of military duty?

Yes. There are three formats for reinstatement (application for reemployment), dependent on the duration of military service. Please refer to question 15 for a detailed breakdown of these formats. An employer should reinstate an employee within a matter of days of application, if not on the same day as the application is made.

Continued on page 6

Factsheet #3

Continued from pages 3 and 5

14. After completion of weekend drill, what is the time limit for an employee to return to work?

The beginning of the next regularly scheduled work period on the first full day following completion of service and expiration of an 8-hour rest period following safe transportation home. For example, an employer cannot require a service member who returns home at 10 p.m. to report to work 2.5 hours later at 12:30 a.m. However, the employer can require the employee to report for the 6 a.m. shift, or scheduled work period, the next morning (after reasonable commute from military duty to home followed by 8-hours). Included in the 8 hour period is time for rest and the commute to work.

15. What is the time limit for an employee to return to work after Annual Training or other types of extended military leave of absence?

Time limits for returning to work depend on the duration of the orders. The rules are:

Service of 1 to 30 days: the beginning of the next regularly scheduled work period on the first full day following completion of service and expiration of an 8-hour rest period following safe transportation home.

Service of 31 to 180 days: application for reinstatement must be submitted not later than 14 days after completion of military duty.

Service of 181 or more days: application for reinstatement must be submitted not later than 90 days after completion of military duty.

16. What if the employee has an accident, is delayed by lack of military transportation, or is otherwise unable to report back in a timely manner?

The employee must report back to work as soon as possible. Unless the delay is through no fault of the employee, he or she is subject to the personnel policies and practices the employer would normally apply to employees with unexcused absences.

17. What if an employee is injured or incurs a disability during military duty?

The deadline for reinstatement may be extended for up to 2 years for persons who are convalescing due to a disability incurred or aggravated during military service, and employers must make reasonable accommodations for the impairment.

18. What job position is an employee returned to after military leave of absence?

Except with respect to persons whose disability occurred in or was aggravated by military service, the position into which an employee is reinstated is determined by priority, based on the length of military service. The rules are: **Service of 1 to 90 days:** (a) in the job the person would have held had he or she remained continuously employed (possibly a promoted position), so long as the person is qualified for the job or can become qualified after reasonable efforts by the employer, or (b), if the person cannot become qualified, in the position the person was employed on the date of the commencement of the military service. **Service of 91 or more days:** (a) same as for service of 1 to 90 days, or a position of like seniority, status and pay, so long as he or she is qualified, or (b) if the person cannot become qualified, in the position the person was employed on the date of the commencement of the military service or which nearly approximates that position.

Note: The reemployment position with the highest priority reflects the "escalator" principle, which requires that a returning service member steps back onto the seniority escalator at the point the person would have occupied if the person had remained continuously employed.

USERRA specifies that returning employees must be "promptly reemployed." What is prompt will depend on individual circumstances. Reinstatement after 3 years on active duty might require two weeks to allow giving notice to an incumbent employee who might have to vacate the position.