**Treatment of all Employees on Active Duty**

With the exception of an employee on duty with the National Guard due to local conditions of an emergency nature, all employees on active duty are to be treated the same.

All employees, whether classified or unclassified, are entitled to fifteen days of military leave each year during which time they will draw both their military pay and their full state pay. On other days during the year, these employees are entitled to be paid the difference between their state pay and their military pay, if the military pay is less than the state pay.

Employees shall continue to accrue sick and annual leave as if they were at work, but such leave is to be credited only when the employee returns to work.

The absent employee is entitled to maintain insurance coverage and to make retirement contributions as if they were at work. If the employee elects to do this, the appointing authority must pay their portion. This obviously requires coordination between the employer and the employee. If arrangements have not been made with the employee before the beginning of the absence, the appointing authority should send to the employee’s last known address an explanation of these rights and notification of what the employee must do to maintain them. If the employee elects not to maintain insurance coverage, when the employee returns to work and elects to reinstate that coverage, the coverage must be reinstated without regard to any pre-existing conditions.

If the employee on leave for military duty elects not to make retirement contributions, at any time within five years from being re-employed, the employee may pay the amount the employee would have paid had the employee been at work, i.e. with no interest, and the employer must pay the portion demanded of it by the retirement system. Be sure to contact the appropriate retirement system for more information on this topic.

**Notice Required Upon Leaving**

Ideally, one being called to military service should give advance notice, but the law does not strictly require it. Notice is excused if either “military necessity” determines it is not appropriate to give such notice or where the giving of such notice is impossible or unreasonable. The notice may be either verbal or written. Further, at the time of giving notice, there is no requirement that the employee give notice of an intent to return. There is no problem in asking if someone intends to return, but the employee may not know.

Some employees may volunteer for active military service for training over and over. An employee does not lose the protection of state law or federal law even where it might be rationally concluded the employee is abusing the right to volunteer for military service. The regulations, however, do specifically recognize that an employer may contact the appropriate military authority to discuss problems in this area, and, also, the same regulation requires the military authority to “provide assistance to an employer” on these issues. That regulation in the Code of Federal Regulations is 20 CFR 1002.104. Agencies should attempt open and candid communication with the employee and his military authority if problems arise in this area.
An employer may not rearrange the work schedule of an employee so that the employee is required to work on what would normally be a day off, unless this is done to other employees who are involuntarily away from their normally scheduled work.

**Decisions Based Upon Military Service**

No decision by a manager can be based upon the military service, or prospective military service, of either an employee or a prospective employee. However, if all employees who are absent from the workplace for either voluntary or involuntary reasons are treated the same, then the employee who is absent from the workplace for a same or similar period of time due to military duty may be treated the same as those employees. The decision point is not the reason of absence, but the absence from duty.

**Time to Report Following Service**

If service is less than 31 days, such as for weekend training, then the employee is to report on the first full calendar day following completion of service. For military service that is more than 30 days but less than 180 days, the period of time to report is 14 days. If military service is more than 180 days, the period of time is 90 days to report for service. There is no requirement that the employee report as soon as possible, and the employee may use all of the time allowed whether they are back home and fit to return to work, or not. The regulations go so far as to recognize that the employee may even be working elsewhere while this period of time runs. See the Code of Federal Regulations, 20 CFR 1002.104.

An additional two years to report after completion of service is given to a person recovering from illness or injury incurred or aggravated during service. This recovery is styled in the law as “hospitalized for or convalescing from” the condition.

If the employee does not report within the appropriate time period, that employee does not lose the right to be reinstated, but the employee is subject to the same treatment as the appointing authority would treat another employee who did not report for scheduled work.

Once the employee “returns” from service, the employer must reinstate within 10 days of that “return.” It is not clear exactly what is meant by a “return,” and all circumstances surrounding the return should be considered.

Agencies should be aware of the impact that federal legislation, including the Uniformed Services Employment and Reemployment Rights Act (USERRA), may have on the employment rights of active and returning uniformed servicemen. More information can be found on the U.S. Department of Labor’s web site at [http://www.dol.gov/](http://www.dol.gov/).