




Policy Title	Military and other Uniformed Services Leaves
Effective Date	December 11, 2023
Supersedes	Policy dated February 1, 2017
Approval	 <p style="text-align: right;">Matthew A. Brown State Personnel Director</p>
References	USERRA 38 U.S.C 4301-4330 USERRA regulations 20 C.F.R. 1002, et seq. 42 U.S.C. 5149 IC 10-16-7 IC 4-15-2.2-40 31 IAC 5-8-6(d) 31 IAC 5-8-8 State's Leaves and Absences Policy

PURPOSE

To facilitate leave for Active Military and other Service in the Uniformed Services and provide instructions for compensation and benefits.

SCOPE

This policy applies to employees in the state civil service except employees appointed on a temporary or intermittent basis.

POLICY STATEMENT

It is the policy of the State of Indiana to fully adhere to the requirements of federal and state law regarding leaves for performance of Service in the Uniformed Services. Leave(s) will be granted in accordance with any orders for Service in the Uniformed Services.

Differential Pay (the difference between the basic active military salary and the salary that would have been paid as an active state employee) will be granted to employee who is a member of the Indiana National Guard or other Indiana Reserve component of the armed forces of the United States on Active Military Service. Differential pay does not apply to service performed exclusively for training nor service as the Federal Emergency Management Agency (FEMA) Reservist. Employee who is performing Service in the Uniformed Services have the option to continue existing coverage under a state health care plan by paying the employee's portion of the premium.

Employee performing Service in the Uniformed Services desiring to return to work following service will be reinstated in accordance with applicable federal and state laws.

Leave(s) of absence spent in Service in the Uniformed Services will be counted as if the employee had not been on leave for purposes of calculating seniority, retirement benefits, and eligibility for family-medical leave subsequent to the employee's return to work.



DEFINITIONS

Active Military Service: either state active-duty service, federally funded state active service, or federal active service, but excludes service performed exclusively for training, including basic combat training, advanced individual training, annual training, inactive duty training, and special training periodically made available to reserve members. The term does not include Service in the Uniformed Services as FEMA Reservist.

Benefits Continuation includes the following components: (1) The State shall continue the employee's enrollment in healthcare coverage and the State's contribution toward that coverage, if any, until the service member is covered by health coverage provided by the armed forces (this is normally immediately for continuous leaves of more than 30 days); and (2) the State shall offer the employee the option to continue coverage which was in effect at the time the employee reported for Service in the Uniformed Services at the employee's own expense by paying the employee share of the premiums; and (3) The State shall also permit the employee to continue participating in any flexible spending account in which the employee participated at the time the employee reported for Service in the Uniformed Services; and (4) employees who have elected to make Voluntary Pre-tax contributions to PERF or TRF must continue those contributions while receiving Differential Pay from the State.

Designated Contact Person: a person who is authorized to provide and/or receive information concerning the employee's state employment. The contact person should be the same for State purposes as for Federal notification procedures.

Differential Pay, sometimes called Supplemental Pay: an amount equal to the difference between the service member's basic Active Military Service salary and the salary the service member would be paid as an active state employee, including any adjustments the service member would have received had he or she not been on leave of absence from state employment. Active duty pay is a monthly salary; therefore, Differential Pay is calculated by converting the active duty pay into a biweekly amount by multiplying the monthly salary times twelve (12) months and then dividing that product by twenty-six (26) pay periods in most years.

Dishonorable Discharge or Other Bad Conduct is determined by the military or FEMA. That decision will be used in determining the employee's reinstatement rights after leave in excess of 30 calendar days. Military discharge type is documented on a DD214 Form. FEMA will determine appropriate documentation for type of discharge assigned to participants upon separation from Service in the Uniformed Services as a FEMA Reservist.

ERP: the State's employee data and payroll recordkeeping system.

Employee: a full-time or part-time employee of the State of Indiana, but not one employed on a temporary or intermittent basis. (Seasonal employees may be covered if they had a reasonable expectation of continuing employment. They would be covered for reinstatement rights only, not Differential Pay.)

Employee Self-Service Portal (ESS): entry to the ERP.

Employing Agency: the state agency employing the person who takes leave under this policy.

ERP: the State's employee data and payroll recordkeeping system.

FEMA: Federal Emergency Management Agency.

FEMA Reservist: employee deployed by the Federal Emergency Management Agency (FEMA) as a type of incident management responder hired under The Robert T. Stafford Disaster Relief and Emergency Assistance Act for specific disaster or public health emergencies or for training related to duties in 23 cadres: Acquisitions, Alternative Dispute Resolution, Disability Integration, Disaster Emergency Communications, Disaster Field Training Operations, Disaster Survivor Assistance, Environmental Historic Preservation, Civil Rights, External Affairs, Field Leadership, Financial Management, Hazard Mitigation, Human Resources, Individual Assistance, Information Technology, Logistics, Interagency Recovery Coordination, Office of Chief Counsel, Operations, Planning Public Assistance, Safety, and Security.

HR Staff: the human resources staff assigned to the employing agency.

INPRS: Indiana Public Retirement System which operates PERF and TRF.

Leave & Earnings Statement (LES) or equivalent document: a document provided by the uniformed service for which an employee is deployed which details the leave and earnings received by that employee.

Leaves of Absence for Service in the Uniformed Services shall include paid and unpaid leaves.

Military Pay: the basic Active Military Service salary and shall not be construed to include any allowances, stipends, or other benefits a service member might receive during Active Military Service (e.g., travel, food, housing, separation, and other allowances, such as hostile fire pay and combat pay).

Payroll Staff: the payroll staff assigned to the Employing Agency

Pension Contributions: contributions required to be entered into an employee's PERF or TRF retirement account for dates employee was on unpaid leave for Service in the Uniformed Services.

PERF: Public Employees' Retirement Fund.

Service in the Uniformed Services: the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active military duty, active and inactive military duty for training, National Guard duty under Federal statute, active duty or training by FEMA Reservists, and a period for which a person is absent from a position of employment for an examination to determine the fitness of the person to perform such duty.

Service not eligible for Differential Pay: any service other than in the Indiana National Guard or other reserve component of the armed forces of the United States and excludes service, even in the Indiana National Guard or other reserve component of the armed forces of the United States, performed exclusively for training, including basic combat training, advanced individual training, annual training, inactive duty training, special training periodically made available to reserve members, or time designated as on terminal leave. Time spent as a FEMA Reservist is not eligible for Differential Pay. Time spent in AWOL status, or other dishonorable status while on active military

service is not eligible for Differential Pay.

SPD: Indiana State Personnel Department.

State Comptroller: formerly Office of the Auditor of the State of Indiana or AOS.

State Pay: the employee's current base biweekly wages.

TRF: Teachers' Retirement Fund.

Uniformed Services: includes (i) the Armed Forces, (ii) the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, (iii) the commissioned corps of the Public Health Service, (iv) and any other category of persons designated by the President in time of war or national emergency.

RESPONSIBILITIES

Employee is responsible for:

- Providing copies of orders to perform Service in the Uniformed Services as far in advance as possible unless such notice is unreasonable or is precluded by military or FEMA necessity;
- Providing copies of the federal Leave & Earnings Statement (LES), or equivalent document, detailing basic active duty military pay for any time period(s) for which the employee is requesting Differential Pay;
- Using the Employee Self Service Portal (ESS) to update direct deposit information for deposit of Differential Pay;
- Providing any necessary forms or power of attorney documentation authorizing others to provide and/or receive information concerning the employee's state employment;
- Providing and maintaining current contact information for person(s) who are authorized and able to provide and/or receive information concerning the employee's state employment;
- Paying, in a timely manner, the appropriate premium amount(s) for employer-provided group insurance coverage which the employee chooses to maintain in effect, and/or submitting appropriate forms in a timely manner to reinstate any insurance coverage not maintained during the leave;
- Providing information for Benefit Continuation, including dates and coverage for insurance other than employer-provided plans for employee and any dependents covered by employer's plan;
- Notifying employer of his/her intent to return to work, and returning to work, within the time limits set forth in USERRA Section 4313(a);
- Providing documentation, for example a DD214, stating the type of discharge and the dates of all Service in the Uniformed Services occurring during the employee's employment upon return to work from each leave under this policy.

HR Staff is responsible for:

- Maintaining documentation, including all communications and forms, related to all aspects of each leave taken by employees under this policy necessary to audit records and confirm compliance;
- Entering all necessary transactions into the ERP system in each affected pay period;
- Informing Payroll Staff of requests from employees on unpaid leave due to Active Military Service for 15-days' paid leave as available in subsequent calendar years;



- Providing to Payroll Staff the current LES and Deployment Orders for calculation of Differential Pay for each eligible employee on Active Military Service in the Employing Agency;
- Submitting to SPD Employee Relations the employee's return from leave information, such as a DD214 or equivalent document provided by employee, in order to know exactly when to stop the Differential Pay payouts.
- Reinstating employees returning from leave for Service in the Uniformed Services on the next scheduled workday upon the employee's timely request;
- Notifying returning employee on date of return of the procedures for reinstating insurance coverage; and
- Ensuring the returning employee receives any necessary training as well as a reasonable time to renew any certifications or licenses required to perform his/her state duties.

Payroll Staff is responsible for:

- Processing as an off-cycle warrant requests from employees on unpaid leave due to Active Military Service for 15-days' paid leave as available in subsequent calendar years;
- Submitting the LES or equivalent document, and deployment orders to SPD Employee Relations for calculation of Differential Pay and/or Pension Contributions for each affected pay period and submission to State Comptroller for payment;
- Processing Pension Contributions within the pay period for any unpaid leave under this policy that starts and stops in the same pay period;
- Tracking in each pay period the State Pay missed by an employee taking unpaid leave under this policy; and
- Submitting to SPD that biweekly/pay period record of State Pay for purposes of Pension Contribution make-up plus all supporting documentation upon an employee's return to work after any leave of more than a single pay period by the end of the pay period following the employee's return, unless the employee has not yet provided required discharge or other paperwork documenting the service;

SPD is responsible for:

- Calculating Differential Pay and submitting to the State Comptroller biweekly for payment.
- Applying any general salary adjustments applicable to the employee;
- Applying any adjustments to health care or other insurance plans applicable to the employee and/or dependents;
- Providing information on open enrollment and flexible spending accounts to the employee or Designated Contact Person in a timely manner;
- Submitting to State Comptroller and INPRS any necessary documentation provided by Employer regarding Employee's return to work;
- Serving as liaison between the employee or Designated Contact Person and state agencies or benefits carriers relative to the employee's state employment, salary and benefits issues, or retirement account(s) with PERF and/or TRF. Communications with the Designated Contact Person should be via certified mail in those instances where face-to-face contact is not possible; and
- Applying the layoff policy and procedure authorized by IC 4-15-2.2-40 in the event that no vacancy exists.

State Comptroller is responsible for:

- Paying the Differential Pay biweekly (once all the documentation has been processed) and any retroactive pay due for the time period involved in the proper processing of the Differential Pay;



- Processing any off-cycle warrant upon submission by an employer for paid military leave while the employees is on extended unpaid military leave;
- Submitting all required documentation regarding wages and contributions to PERF or TRF each quarter; and
- Preparing and delivering to the employee or designated contact person in a timely manner all necessary forms and information concerning taxes on Differential Pay.

INPRS is responsible for:

- Ensuring that time spent in military service is counted and recorded appropriately for purposes of service credits and contributions toward retirement in the appropriate fund.

PROCEDURES

Leave Without Pay

Employees are to give advance verbal or written notice of their need for leave to perform duty in the Uniformed Services unless such notice would be unreasonable or is precluded by military necessity. Only leave without pay is subject to Differential Pay.

Double-filling positions during Leave for Service in the Uniformed Services

Requests by the Employer to double-fill positions because of military leave require approval of SPD. Requests must be completed and submitted to SPD, to the attention of the Compensation Division.

15-Days of Paid Military Leave

Employees who are members of the Armed Forces Reserves or the Indiana National Guard are entitled to not more than fifteen (15) calendar days leave in each calendar year in which military service, as defined in IC 10-16-7, is performed, without loss of pay or vacation time. To receive pay, the employee is required to submit a written order or official statement requiring the military duty. Paid military leave is charged in accordance with the military orders for each day the employee is scheduled to work during the dates of the orders. Employees using this paid leave are not entitled to Differential Pay for the same time period.

If the employee is on military leave with pay for at least one day in the calendar week when a legal holiday is observed, holiday pay will be included in payment for that calendar week.

If the military leave continues into the next calendar year, the employee may be eligible for an additional fifteen (15) days of military leave without loss of pay. The employee must request the payment and submit a copy of the military orders if the original orders or extension already submitted do not include the proposed time frame. No military leave will be paid until a request is received by the employing agency and a copy of the orders requiring military service for the time period in question has been submitted to the employer. Such payments are made by separate warrant and not by returning the employee to payroll for this short period of time. Only PERF contributions and payroll taxes are deducted from this warrant. FEMA Reservists are not eligible for 15-Days of Paid Military Leave.

Differential Pay

Employees on Active Military Service are eligible to receive an amount equal to the difference between the service member's basic Active Military Service salary and the salary the service member would be paid as an active state employee, including any adjustments the service member would have received had he or she not been on leave of absence from state employment.

Active-duty pay is a monthly salary; therefore, Differential Pay is calculated by converting the active duty pay into a biweekly amount by multiplying the monthly salary times twelve (12) months and then dividing that product by twenty-six (26) pay periods in most years.

Information for this calculation and payment must be provided by the employee in a timely manner.

Health Insurance Benefits

Employees on leave for Service in the Uniformed Services are entitled to health care coverage for the first thirty (30) days of leave at the employee's portion of the premium. Employees whose leave for Service in the Uniformed Services extends beyond thirty (30) days are entitled to elect continuation of coverage for the duration of their leave for Service in the Uniformed Services by paying the employee's portion of the cost of the plan coverage. If an individual does not elect to continue coverage while on leave, no waiting period is imposed on return. Employees shall be allowed to coordinate coverage to ensure there is no lapse in coverage nor redundant payments. Questions about health care benefits provided by the armed forces must be directed to the armed forces.

Taxes

Differential pay is subject to federal, state, and county taxes and is processed through the regular payroll process and reported on the employee's W2 Form as wages.

Return to Work Requirements

In order for an employee to be returned to work from leave for Service in the Uniformed Services, the employee must:

- (1) return to work or submit a request to return to work within the time limits listed below;
- (2) be physically and mentally capable of performing the work as determined by the Service; and
- (3) if on leave more than thirty (30) days, provide the agency with documentation establishing that:
 - (a) the request is timely, (b) the entitlement has not been terminated by a Dishonorable Discharge or Other Bad Conduct, and (c) they have not voluntarily served beyond the five (5) year limitation.

The five (5) year limitation involves a combination of all previous leaves for Service in the Uniformed Services but does not include time where the person is ordered to remain on active duty or called into federal service as a member of the National Guard.

Reinstatement cannot be denied if the person is unable to provide the documentation because it is not readily available.

Reinstatement should occur immediately upon request or as soon thereafter as feasible. Such reinstatement cannot be denied or delayed just because a vacancy does not exist.

Special rules apply and guidance should be sought from SPD for those who are not qualified to return to their prior positions or when more than one returning employee is entitled to the same position.

If the employee requests reinstatement after the expiration of the appropriate time period, the employee is not entitled to reinstatement, and if employment is not reinstated, then the employer must treat the person consistent with the practice used for other employees that are absent without

authorization (i.e., provide appropriate notices and initiate disciplinary procedures).

Return to Work Time Limits

If the employee was absent for less than thirty (30) days, the employee must return to work on the next scheduled workday following an eight (8) hour period after returning from Service in the Uniformed Services.

If the employee was absent for more than thirty (30) days but less than one hundred eighty-one (181) days, the employee has fourteen (14) days following the completion of Service in the Uniformed Services to submit a request to return to employment.

If the employee has been on leave for longer than one hundred eighty days, the employee has ninety (90) days following the completion of the Service in the Uniformed Services to submit a request to return to work.

If it is impossible or unreasonable, by no fault of the employee, to submit the request within the applicable time period, the employee shall submit the request when it becomes possible. Also, other extenuating circumstances (e.g., service-connected injury) may extend the time limits. The employee must keep records and make records available to the employer which outline unusual or extenuating circumstances. This includes documents while on federal duty.

Reinstatement

Reinstatement is at the salary the employee would have been making if the leave had not occurred.

The employee is returned to the position the person would have occupied if employment had continued without interruption (including any promotions or reclassifications). In some instances, it is permissible to return the employee to a like position in the same classification. If there is no funded vacancy in the classification, a vacancy shall be created by demoting an employee in the classification. If demotion is not feasible, an employee shall be laid off.

Dismissal

Employees returning to work after more than 30 but less than 180 days' leave under this policy may not be dismissed, within 180 days of their return, except for cause.

Employees returning to work after 180 or more days' leave under this policy may not be dismissed, within one year of their return, except for cause.

Accrued Leave

An employee on leave under this policy may not be required to use accrued leave time but may request to use accrued leave. If an employee requests vacation or personal leave, that leave request shall be honored within the guidelines of the prescribed policies for all employees. Vacation leave requests for less than four (4) calendar weeks should be approved by the employer. Vacation leave requests in excess of four (4) calendar weeks coinciding with Service in the Uniformed Services are hereby approved by the State Personnel Director pursuant to 31 IAC 5-8-2(e).

Employees on unpaid leave of more than thirty (30) consecutive days do not accrue vacation, sick or personal leave.

Employees using accrued leave or paid military leave as described above to provide 100% of salary

are not entitled to receive Differential Pay for the time period covered by the use of accrued, paid leave.

Upon return from leave under this policy employees are given credit towards the accrual of bonus vacation leave for their time spent on leave, and the bonus vacation leave accrued in the twelve (12)-month period immediately preceding their return to work shall be immediately credited to the employee's leave balance. Accrual dates are not adjusted to reflect the leave of absence due to leave for Service in the Uniformed Services.

Family-Medical Leave

In determining whether an employee meets the FMLA eligibility requirement, the months employed and the hours that were actually worked for the state should be combined with the months and hours that would have been worked, but for the time spent in Service in the Uniformed Services, during the twelve months prior to the start of the family-medical leave.

Retirement Benefits

Retirement benefits (PERF & TRF) are not forfeited during a period of leave under this policy. In addition, service credit shall be granted for the duration of this leave if the individual performing Service in the Uniformed Services becomes reemployed with the PERF- or TRF-covered employer pursuant to the provisions and time limits set forth in USERRA.

Any adjustments for Annuity Savings Account contributions, employer contributions, and service credit must be done at the time of reinstatement. Such adjustments will be reported by the Auditor to INPRS using the biweekly wages the employee would have received except for the military leave absence.

FORMS & RESOURCES

<https://www.in.gov/spd/policies-and-procedures/employee-relations/military/>

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