

## DEFINITIONS

Active Military Service means 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.

Auditor means the Office of the Auditor of the State of Indiana.

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 active military service 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 other pretax account in which the employee participated at the time the employee reported for active military service; 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 means 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, means an amount equal to the difference between the service member's basic active duty military 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.

Employee means 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.)

Employer means the human resources or payroll staff assigned to the agency employing the person who takes military leave under this policy.

Leaves of Absence for Military Duty shall include leaves of absence (LOA) without loss of pay, in accordance with the provisions of IC 10-16-7 and 31 IAC 5-8-6(d) as well as unpaid LOA in accordance with the provisions of 31 IAC 5-8-8.

Military Pay means the basic active duty military 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).

Military Service not eligible for Differential Pay means 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 in AWOL status, or other dishonorable status while on active military service is not eligible for Differential Pay.

PERF means the Public Employees' Retirement Fund.

SPD means the State Personnel Department.

State Pay means the employee's current wages.

TRF means the Teachers' Retirement Fund.

INPRS means the Indiana Public Retirement System which operates PERF and TRF.

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| <b>RESPONSIBILITIES</b> |
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Employee is responsible for:

- providing copies of military orders as far in advance as possible unless such notice is unreasonable or is precluded by military 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;
- providing direct deposit information and completed forms 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 (See Appendix);
- 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 coordination 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).

Employer is responsible for:

- processing all aspects of military leaves for less than thirty (30) calendar days, including processing in a timely manner all appropriate personnel and payroll forms and utilizing proper codes;
- processing requests from employees for paid leave as available in subsequent calendar years including appropriate personnel forms and separate warrant forms;
- preparing, for each employee called to active duty for more than 30 days, a file including all necessary documentation and information relevant to the employee's military leave, current salary and benefits situations, contact information, and a biweekly record of state earnings for purposes of PERF/TRF catch-up, etc. and submitting the file to SPD in a timely

manner with properly completed personnel and payroll forms and information utilizing proper codes

- calculating differential pay
- ensuring that an employee's return to work is processed in a timely manner by returning the employee immediately upon request whether or not a vacancy exists and submitting all necessary documentation to SPD in a timely manner;
- notifying the returning employee in a timely manner 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.

State Personnel Department is responsible for:

- verifying the calculation of differential pay;
- 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 Auditor and PERF or TRF 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; and
- applying the layoff policy and procedure authorized by IC 4-15-2.2-40 in the event that no vacancy exists.

Auditor's Office 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;
- 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.

Communications with the designated contact person should be via certified mail in those instances where face-to-face contact is not possible. (This is a recommendation from Adjutant General's Office, not a requirement)

## PROCEDURES

Adherence to the following guidelines should resolve most military leave issues. In the event of a dispute, the provisions of Uniformed Services Employment and Re-employment Rights Act (USERRA) control.

### **Leave Without Pay**

Employees are to give advance verbal or written notice of their need for leave to

perform duty in the uniform service, 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 Military Leave**

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

### **15-Days of Paid 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 when a legal holiday is observed, the employee has the option of compensatory time or payment, subject to the approval of the employer.

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. (See Appendix). 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.

### **Health Insurance Benefits**

Employees on military leave are entitled to health care coverage and may not be required to pay more than the employee's normal premium for the first thirty (30) days of leave.

Employees whose military leave extends beyond thirty (30) days are entitled to continuation of coverage for the duration of their military leave by paying the employee's portion of the cost of the plan coverage. (See Appendix)

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. (See Appendix)

Questions about health care benefits provided by the armed services must be directed to the armed services.

### **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 military leave, 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; 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) s/he has not voluntarily served beyond the five (5) year limitation.

The five (5) year limitation involves a combination of all previous military leaves 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 veteran is entitled to the same position.

If the employee requests reinstatement after the expiration of the appropriate time period, s/he is not entitled to reinstatement, and if his/her 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 military service.

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 to submit a request to return to employment.

If the employee has been on military leave for longer than one hundred eighty days, the employee has ninety (90) days following the completion of the military service to submit his 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.

### **Discharge**

Veterans returning to work after more than 30 but less than 180 days leave may not be discharged, within 180 days of their return, except for cause.

Veterans returning to work after 180 or more days leave may not be discharged, within one year of their return, except for cause.

### **Accrued Leave**

An employee on military leave 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, including the policy that employees may not move in/out of pay status using only accrued leave

and/or compensatory time off, that is, accrued leave or compensatory time off must be used consecutively for each day of absence. 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 active duty service are hereby approved by the State Personnel Director pursuant to 31 IAC 5-8-2(e).

Employees on unpaid military 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 leave.

Upon return from military leave, employees are given credit towards the accrual of bonus vacation leave for their time spent on military 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 military leave.

### **Family-Medical Leave**

In determining whether a veteran 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 military service, 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 military leave. In addition, service credit shall be granted for the duration of the military leave if the member becomes reemployed with his or her PERF or TRF 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 PERF or TRF on a quarterly basis using the biweekly wages the employee would have received except for the military leave absence.

## **REFERENCES & RESOURCES**

Executive Order 05-18  
IC 10-16-7  
31 IAC 5-8-6(d) 31 IAC 5-8-8  
IC 4-15-2.2-40  
USERRA 38 U.S.C.A. §§4301-4330 (1994)  
USERRA Regulations 20 C.F.R. § 1002, et seq.  
<https://osc.gov/Services/Pages/USERRA.aspx>  
[www.dol.gov/vets](http://www.dol.gov/vets)

## **APPENDIX**

*For Employees:*

[Designated Contact Person Form](#)  
[Health Care Option Statement](#)  
[Insurance Reinstatement Options upon Return to Work](#)  
[Request for Fifteen-Day Paid Leave](#)

Military Leave  
Responsibilities & Procedures

February 1, 2017

*For Employers:*

[Agency Checklist for Benefits](#)

[Agency Worksheet and PERF/TRF Make-up Form](#)