STATE HUMAN RESOURCES

PAID MILITARY LEAVE REQUIREMENT

IN THE MONTANA MILITARY SERVICE EMPLOYMENT RIGHTS ACT (MMSERA)

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Introduction

This guide addresses paid military leave administration for Montana state employees under the Montana Military Service Employment Rights Act (MMSERA).

This guide does not address the Uniformed Services Employment and Reemployment Rights Act (USERRA). However, please note that USERRA may apply to more employees than those who are members of the Armed Forces or the National Guard. For example, members of the commissioned corps of the Public Health Services are considered members of the uniformed services under USERRA and are often called to provide medical services during disasters. For more information about USERRA, please see the links to USERRA guidance in the resources section at the end of this guide.

MMSERA significantly changed the rights of employees in Montana who are members of the militia. Most of the MSERRA deals with employees' reemployment rights when they return from military duty. This guide only addresses the portion of the MSERRA that provides state employees with paid military leave for military service.

"Militia" means the organized militia (the national guard and members of the Montana Army and Air National Guard) and the unorganized militia. Montana does not currently have members serving in the "unorganized militia," as recognized by the state.

Eligibility Requirements

State of Montana employees who are members of the Montana national guard, national guard of another state, organized or unorganized reserve corps, or military forces of the United States may be eligible for paid military leave based on the following requirements:

- Paid military leave is available after six continuous months of employment in a permanent, temporary, seasonal, short-term, or student intern employment status.
- Eligibility is not differentiated by an employee's full-time or part-time status.
- A leave of absence without pay greater than 120 working hours does not count towards the six-month qualifying period, unless the leave of absence was for military service.
- Persons contracted as independent contractors or hired under personal services contracts are not considered employees and do not qualify for paid military leave.

Military Leave Accrual

Once eligible, full-time employees accrue 120 hours of paid military leave each calendar year. Part-time employees accrue paid military leave on a pro-rated basis. Employees cannot accrue more than 120 hours of paid military leave per calendar year (or academic year if applicable).

Employees can carry unused paid military leave into the next calendar year but cannot accrue more than 240 hours. Once employees reach their maximum accrual, they do not accrue additional paid military leave until their balance is reduced below 240 hours. This amount is prorated for part-time employees.

Requests to Use Paid Military Leave

Military Service Definition

MMSERA uses the term "military service" to define the situations under which employees can use paid military leave. Military service includes both federally funded military duty and state military duty. "Federally funded military duty" means duty, including required training, performed pursuant to orders issued under either Title 10 or 32 of the United States Code.

State military duty means duty performed during a declared disaster or emergency pursuant to Article VI, section 13, of the Montana Constitution or state duty for special work as defined in MCA § 10-1-505. The definitions can be found at http://leg.mt.gov/bills/mca/CONSTITUTION/VI/13.htm and https://leg.mt.gov/bills/mca/title_0100/chapter_0010/part_0100/section_0030/0100-0010-0100-0030.html.

Military service also includes time spent recovering from an illness or injury incurred while performing federally funded military duty or state military duty.

National Guard members may use paid military leave to participate in monthly drill. While the member might not receive written orders to participate in monthly drill, as they would for a deployment or to attend formal training, they do receive an annual drill schedule each year and are required to participate in 48 drills throughout the year, per Title 32 (32 U.S. Code § 502). This includes 24 Saturdays and Sundays and fifteen (15) days of annual training each year.

Use of Leave

Paid military leave is meant to compensate qualified employees for loss of income because of time spent performing military service. Agencies should grant paid military leave only for the hours the employee was scheduled to work and receive pay. **Agencies may deny paid military leave if it results in an overtime status.**

Employees may request, and employers may grant, paid military leave in as few as one-hour increments. Employees may also use paid military leave intermittently

with leave without pay while performing military service. Employees may use paid military leave retroactively.

For state military duty, the employee is assigned to the Department of Military Affairs. Coordination with the Department of Military Affairs and the employee's regular agency is required to ensure proper payment of time worked and proper use of paid military leave.

An agency may not automatically deduct paid military, sick, or vacation leave from an employee who is absent from work to perform military service. The employee must designate the leave the employee chooses to take and may choose to perform military service without using paid leave.

Special Situations

Military Leave and Benefit Accrual

State employees receive state holiday benefits and accrue sick and annual leave while using paid military leave.

If an employee uses paid leave intermittently, please consult the annual vacation, holiday, and sick leave policies for information regarding adjusting leave benefits. These policies can be found on the State Human Resources Division's policies website - http://www.mom.mt.gov/default.mcpx

Unused Military Leave

Unused military leave cannot be paid to an employee when terminating employment. Agencies may remove the unused military leave balance from an employee's account when the employee's sick leave and annual leave is paid or removed following the employee's termination. If a state employee transfers to another state agency without a break in service, the employee's accrued military leave should transfer along with the employee's accrued sick and annual leave.

Military Leave and Military Pay

Employees may request and use paid military leave simultaneously with receiving state military pay from the Montana Department of Military Affairs, unless it would result in accrued overtime payment.

Resources

Below are additional resources available when administering military leave benefits.

Montana Military Service Employment Rights under Montana Code Annotated: http://leg.mt.gov/bills/MCA_toc/10_1_10.htm

Uniformed Services Employment and Reemployment Rights Act (USERRA) resources from the US Department of Labor and the Employer Support of the Guard and Reserve (ESGR):

Department of Labor:

USERRA Advisor:
http://www.dol.gov/elaws/vets/userra/userra.asp

USERRA Guide:
https://www.dol.gov/vets/programs/userra/USERRA%20Pocket%20Guide.html#1

Employer Support of the Guard and Reserve (ESGR):

USERRA for Service Members: *https://www.esgr.mil/USERRA/USERRA-for-Service-Members*

USERRA for Employers:
https://esgr.mil/USERRA/USERRA-for-Employers

This guide is designed to assist executive branch human resources professionals, supervisors, and managers administer paid military leave; it is a companion to information contained in statute.

Alternative accessible formats of this guide are available when requested. If you need an alternative format, please contact the State Human Resources Division, Department of Administration, 125 N. Roberts St., PO BOX 200127, Helena, MT 59620-0127. Telephone 406-444-3871. Those using a TTY may call through the Montana Relay Service at 711.