

Salinas Union High School District

MILITARY LEAVE

Military leave shall be granted in accordance with law to employees performing military duties on a voluntary or involuntary basis in a uniformed service, including active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, examination to determine fitness for duty, and performance of funeral honors duty. (Education Code [44800](#); Military and Veterans Code 395, 395.01, 395.02, 395.05, 395.1, 395.2, 395.9; 38 USC 4301, 4316)

(cf. [4161/4261](#) - Leaves)

(cf. [4361](#) - Leaves)

An employee who needs to be absent from the District to fulfill military service shall provide advance written or verbal notice to the Superintendent or designee, unless the giving of such notice is precluded by military necessity or is otherwise impossible or unreasonable. (38 USC 4312)

An employee's cumulative length of the absence and of all previous military leave shall not exceed five years, excluding those training and service obligations specified in 38 USC 4312(c). (38 USC 4312)

Salary/Compensation

An employee shall receive his/her salary or compensation for the first 30 calendar days of any one absence for military leave or during one fiscal year, under any of these conditions:

1. Active Military Training or Exercises: is the employee is granted a temporary military leave of absence to engage in ordered military duty for purposes of active military training, encampment, naval cruises, special exercises or like activity as a member of the reserve corps or force of the United States Armed Forces, National Guard or Naval Militia, provided that: (Military and Veterans Code 389, 395, 395.01)
 - a. The ordered duty does not exceed 180 calendar days, including time involved in going to and returning from such duty.
 - b. He/she has been employed by the District for at least one year immediately prior to the day the military leave begins.
2. Active Military Duty: The employee is on military leave, other than a temporary basis, into active military duty as a member of the reserve corps of the United States Armed Forces, National Guard or Naval Militia, provided that he/she has been employed by the District for at least one year immediately prior to the day the military leave began. (Military and Veterans Code 389, 395.02)

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3. War or Other Emergency: The employee, however long employed by the District, is a member of the National Guard, who is engaged in military or naval duty during a state of extreme emergency as declared by the Governor, or during such time as the National Guard may be on active duty in situations described in Military and Veterans Code 146, including travel time to and from such duty (Military and Veterans Code 395.05)
4. Inactive Duty Training: is the employee is a member of the reserve corps or force of the United States Armed Forces, National Guard or Naval Militia who is engaged in temporary inactive duty training, provided that he/she has been employed by the District for at least one year immediately prior to the day the military leave begins and the ordered duty does not exceed 180 days, including time involved in going to and returning from such duty.

In determining length of District employment when necessary to determine eligibility for compensation for military leave, all recognized military service performed during and prior to District employment shall be counted.

For classified employees, 30 days' compensation shall be one month's salary. For certificated employees, 30 days' compensation shall be one-tenth of the employee's annual salary. (Education Code [45059](#))

Certificated employees shall not be entitled to compensation during non-teaching, non-paying months of the year.

During the period of military leave, an employee may, but is not required to, use any vacation or similar paid leave accrued before the commencement of the military leave. (38 USC 4316)

Benefits

An employee may elect to continue his/her health coverage during the leave. For employees making this election after December 10, 2004, the maximum period of coverage for the employee and his/her dependents shall be either 24 months from the beginning of the leave or until the day after the employee fails to apply for or return to employment, whichever is less. (38 USC 4317)

An employee on military leave may be required to pay the employee cost, if any, of any funded benefit to the extent that other employees on leave are so required. (38 USC 4316)

An employee absent for 30 days or fewer shall not be required to pay more than the employee share for such coverage. An employee absent for 31 days or more may be required to pay not more than 102 percent of the full premium under the plan. (38 USC [4317](#); 20 CFR 1002.166)

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Upon approval by the Board, any District employee called into active military duty as a member of the California National Guard or a United States Military Reserve organization may receive, for up to 180 calendar days, all benefits that the employee would have received if he/she had not been called to active military duty, unless the benefits are prohibited or limited by vendor contracts. (Education Code [44018](#))

Vacation and Sick Leave Accrual

An employee on temporary military leave for the purposes described in item #1 in section entitled "Compensation" above shall continue to accrue the same vacation, sick leave or holiday privileges to which sh/she would otherwise be entitled if not absent. e. (Military and Veterans Code 395)

An employee on military leave who is serving in active duty in time of war, national emergency or United Nations military or police operation shall not accrue sick leave or vacation leave during the period of such leave. (Military and Veterans Code 395.1)

However, an employee who is a National Guard member on active duty for the purposes described in item #3 in section entitled "Compensation" above shall not suffer any loss or diminution of vacation or holiday privileges because of his/her leave of absence. (Military and Veterans Code 395.05)

(cf. [4161.1/4361.1](#) - Personal Illness/Injury Leave)

(cf. [4261.1](#) - Personal Illness/Injury Leave)

Employment Status

Absence for military leave shall not affect the classification of any certificated employee. In the case of a certificated probationary employee, the period of such absence shall not count as part of the service required to obtain permanent status, but shall not be construed as a break in the continuity of service for any purpose. (Education Code [44800](#))

(cf. [4116](#) - Probationary/Permanent Status)

Pension Plan Service Credit

Pension plan service credit and vesting shall continue during an employee's military leave as though no break in service has occurred. Payment of employer and employee contributions shall be made in accordance with law for members of the State Teachers' Retirement System and Public Employees' Retirement System. (Education Code [22850-22856](#); Government Code [20990-21013](#))

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Reinstatement Rights

At the conclusion of the military duty, an employee shall be entitled to return to the position held at the beginning of the military leave, at the salary to which he/she would otherwise have been entitled provided that the employee was not separated from military service with a disqualifying discharge or under other than honorable conditions noted below.. (Education Code [44800](#); Military and Veterans Code 395, 395.2)

An employee who performs active military duty in time of war, national emergency or United Nations military or police operation has a right to return to his/her position within six months of an honorable discharge or placement in inactive duty. Reemployment rights shall not be extended to any such employee who fails to return within 12 months after the first date upon which he/she could terminate or could cause to be terminated his/her active service. (Education Code [44800](#); Military and Veterans Code 395.1)

When an employee has been on military leave for reasons other than war or national emergency, the time frame for reinstatement shall depend on the length of military service as follows: (38 USC 4312)

1. For a leave of 30 days or fewer, the employee shall report for duty no later than the beginning of the first full work day following the completion of military service, provided the employee has a period of eight hours to rest following transportation to his/her residence.
2. For a leave of 31 to 180 days, the employee shall complete an application for reemployment not later than 14 days after the completion of military service.
3. For a leave of more than 180 days, the employee shall submit a written or verbal application for reinstatement within 90 days after the completion of military service.

An employee who is hospitalized for, or convalescing from, an illness or injury incurred in or aggravated during the performance of military service shall report for duty or submit an application for reemployment at the end of the period that is necessary to recover from such illness or injury but no more than two years after the completion of military service. (38 USC 4312)

(cf. [4032](#) - Reasonable Accommodation)

In cases where reporting within the periods specified in items #1 and 2 above is impossible or unreasonable through no fault of the employee, he/she shall report as soon as possible after the expiration of the period. (38 USC 4312)

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Upon receiving an application for reinstatement, the Superintendent or designee shall reinstate the employee as soon as practicable under the circumstances of his/her case, but within a time period not to exceed two weeks, absent unusual circumstances. (20 CFR 1002.181)

An employee failing to apply for reemployment within the appropriate period does not automatically forfeit his/her rights, but shall be subject to the Board's rules governing unexcused absences. (38 USC 4312)

If the employee's previous position has been abolished, he/she shall be reinstated in a position of like seniority, status and pay if such position exists, or to a comparable vacant position for which he/she is qualified. (Military and Veterans Code 395, 395.1)

The Superintendent or designee may elect not to reinstate an employee following military leave if any of the following conditions exists:

1. The District's circumstances have so changed as to make such re-employment impossible or unreasonable, such as a reduction in force that would have included the employee. (38 USC [4312](#); 20 CFR 1002.139)
2. The accommodation, training, or effort described in 38 USC [4313](#)(a)(3), (a)(4), or (b)(2)(B) would impose an undue hardship on the District as defined in 20 CFR 1002.5 or 1002.198. (38 USC [4312](#); 20 CFR 1002.139)
3. The employee's position was for a brief, non-recurrent period and there was no reasonable expectation that such employment will continue indefinitely or for a significant period. (38 USC [4312](#); 20 CFR 1002.139)
4. The employee's cumulative length of absence and length of all previous military leave while employed with the District exceeds five years, excluding those training and service obligations specified in 38 USC [4312](#)(c). (38 USC [4312](#); 20 CFR 1002.99-1002.103)
5. The employee was separated from military service with a disqualifying discharge or under other than honorable conditions. (Military and Veterans Code [395.1](#); 20 USC 4304, 4312; 20 CFR 1002.134-1002.138)

Notices

The Superintendent or designee shall provide employees a notice of the rights, benefits and obligations of employees granted military leave and of the District under the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 USC 4301-4334. Examples include handing the notice to employees, mailing it, or distributing via email. (38 USC 4334)

This requirement may be met by posting the notice where the District customarily places notices for employees. (38 USC 4334)

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(cf. [4112.9/4212.9/4312.9](#) - Employee Notifications)

Legal Reference: EDUCATION CODE

[22850-22856](#) Pension benefits, STRS members on military leave

[44018](#) Compensation for employees on active military duty

[44800](#) Effect of active military service on status of employees

[45059](#) Employee ordered to military/naval duty - computation of salary

GOVERNMENT CODE

[18540](#) Definition of armed forces

[18540.3](#) Recognized military service

[20990-21013](#) Pension benefits, PERS members on military leave

MILITARY AND VETERANS CODE

[146](#) Events justifying calling of militia into active service

[389](#) Definitions; temporary military leave

394 Nondiscrimination based on military service

[395-395.9](#) Military leave

UNITED STATES CODE, TITLE 38

[4301-4334](#) Uniformed Services Employment and Reemployment Rights Act of 1994

CODE OF FEDERAL REGULATIONS, TITLE 20

1002.1-1002.314 Uniformed Services Employment and Reemployment Rights Act of 1994

COURT DECISIONS

Wright v. City of Santa Clara (1989) 213 Cal. App.3d 1503

Bowers v. San Buenaventura (1977) 75 Cal. App.3d 65

ATTORNEY GENERAL OPINIONS

77 Ops.Cal.Atty.Gen. 209 (1994)

69 Ops.Cal.Atty.Gen. 185 (1986)

63 Ops.Cal.Atty.Gen. 924 (1978)

19 Ops.Cal.Atty.Gen. 132 (1952)

18 Ops.Cal.Atty.Gen. 178 (1951)

U.S. DEPARTMENT OF LABOR PUBLICATIONS

A Non-Technical Resource Guide to the Uniformed Services Employment and Reemployment Rights Act (USERRA), rev. April 2005

NATIONAL SCHOOL BOARDS ASSOCIATION PUBLICATIONS

The Uniformed Services Employment and Reemployment Rights Act (USERRA), NSBA Federal File: Guidance on Federal School Law, 2003

WEB SITES

National Committee for Employer Support of the Guard and Reserve: <http://www.esgr.org>

National School Boards Association: <http://www.nsba.org>

U.S. Department of Labor, USERRA: <http://www.dol.gov/vets/programs/userra>

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