

# Georgia Department of Public Safety Policy Manual

<b>SUBJECT</b> <b>MILITARY LEAVE</b>	<b>POLICY NUMBER</b> <b>5.21</b>
<b>DISTRIBUTION</b> <b>ALL EMPLOYEES</b>	<b>DATE</b> <b>11/30/2018</b>
	<b>POLICY REVIEWED</b> <b>11/30/2018</b>

## 5.09.1 Purpose

To establish policies and procedures regarding employee absences for ordered military duty and for the administration of paid military leave.

## 5.09.2 Policy

It shall be the policy of the Georgia Department of Public Safety to adhere to the Uniformed Services Employment and Reemployment Rights Act (USERRA) and State Personnel Board Rule 478-1.19, as well as all applicable state and federal law regarding military leave.

## 5.09.3 General Provisions

- A. Ordered Military duty includes any military duty performed in the service of the State or of the United States pursuant to orders issued by a State or federal authority, including but not limited to attendance at any service school or schools conducted by the Armed Forces of the United States as a voluntary member of the National Guard, Georgia State Defense Force, or any reserve force or reserve component of the Armed Forces of the United States.
1. An employee who performs ordered military duty is eligible for military leave, whether paid or unpaid.
  2. In general, an employee may be absent for ordered military duty for a cumulative period of up to five years and retains re-employment rights with the Department. The five year period includes only the time the employee spends actually performing ordered military duty. A period of absence from employment before or after performing ordered military duty does not count against the five year limit.
  3. An employee is eligible to receive leave to attend training for a period(s) of up to a total of six months during any four-year period.
  4. Time served while on military leave will not be considered a break in service and will be credited for purposes of seniority, length of employment service, annual leave or holiday privileges, or for any other right or privilege of employment, re-employment, re-instatement, transfer or promotion.
  5. Regular monthly drill meetings can be carried as pass days. Military leave can be used if orders are provided.

6. An employee is eligible to receive all rights and benefits regardless of whether the military service is voluntary or involuntary.

#### B. Absence for Examination Purposes

An employee who is absent from work because he/she is ordered to report for a pre-induction or other examination to determine physical or other fitness for service in the Armed Forces of the United States will be granted a leave of absence without pay as required by law. In order to receive pay, an employee may request that the absence be charged against accrued annual leave or personal leave.

#### C. Timely Notice of Leave

1. An employee should immediately provide either written or verbal notification to his/her supervisor when notified of a requirement to report for military duty. Acceptable notification may also be provided by an appropriate officer of the branch of the military in which the employee will be serving.
2. The employee also is expected to provide his/her supervisor with as much notice as possible of his/her anticipated date of release from duty and return to work. This notice requirement will be excused only if precluded by military necessity or if giving the notice is otherwise impossible or unreasonable.
3. Supervisors must accept verbal notification of an employee's requirement to report for military duty. Supervisors may request, but cannot require a copy of official orders or other documentation.
4. An employee is not required to ask for or get approval from a supervisor to leave to perform military service. Supervisors who receive notification, whether written or verbal, from an employee regarding a requirement to report for military duty cannot deny the leave, regardless of timing, frequency, or duration.
5. In rare occasions, the Department may ask the military commanding officer to consider a request to reschedule an employee's military training if the timing of the training presents an undue hardship for the Department. Supervisors must contact Human Resources for guidance if they believe an undue hardship exists.
6. Supervisors who have a reasonable suspicion regarding the validity of an employee's requirement to report for military duty should contact Human Resources for guidance.
7. Supervisors should notify the Human Resources Division immediately when an employee is required to report for military duty.

#### D. Clearance Process

1. An employee that is ordered for military duty for four (4) weeks or longer will be required to clear-out with the Department.
2. The employee shall complete clearance activities through proper channels before going on military duty. Supervisors are responsible for directing a member of their staff to assist the employee with the clearance procedures.

#### E. Pay and Benefits

An employee who performs ordered military duty is entitled to his/her base pay and other compensation for up to a total of 144 hours (18 days) of military leave in any one federal fiscal year (October 1 through September 30) while he/she is on military leave.

1. In the event the Governor declares an emergency and orders an employee to military duty as a member of the National Guard, while performing such duty, the employee will be paid his/her base pay and other compensation for an additional 96 hours (12 days) of military leave in any one federal fiscal year (October 1 through September 30) while he/she is on military leave.
2. The employee is required to provide a copy of his/her military orders or annual training schedule in order to be paid any military leave.
3. If the period of ordered military duty extends beyond the period covered by paid military leave as described in this section, the employee will be granted an authorized leave of absence without pay as required by law. Employees may use accrued annual leave, personal leave, holiday time, and/or compensatory time for absences due to military duty after paid military leave has been exhausted.
4. An employee reinstated following ordered military duty will be entitled to seniority, status, pay and all other benefits as if the employee had not been absent, in compliance with applicable federal law.

#### F. Health Care Continuation Coverage

While on paid or unpaid military leave, an employee may continue to receive the same health care benefits as when he/she was an active employee for up to 24 months. If the military leave is unpaid, the employee will be responsible for directly paying the premium plus an administrative fee assessed by the State Health Benefit Plan.

#### G. Rights and Contributions under Retirement System

An employee on military leave, whether paid or unpaid, may continue to contribute to the State's pension or retirement system as if they had been present and continuously engaged in the performance of their duties. The amount of required contributions will be deducted from the salary or other compensation paid while an employee is on military leave. If the required contributions exceed the amount of such compensation, the available amount will be applied towards the required contributions and the employee can pay the difference.

#### H. Reemployment Rights

The Department will reemploy an employee after a period of military service, provided the employee complies with applicable federal law, including the advance notice requirement and a timely notification of intent to return to employment, and other qualifying conditions.

##### 1. Return to Work/Reemployment

Upon completing a period of ordered military service, an employee must notify the Department of the intent to return to the employment position by either reporting to work or submitting a timely application for reemployment according to the following schedule:

- a. 1-30 days of service: Report to the next scheduled work day following completion of service, after allowance for safe travel home from military duty location and an 8-hour rest period;
  - b. 31-180 days of service: An application for reemployment must be submitted no later than fourteen calendar days after completion of service, or
  - c. 181-more days of service: An application of reemployment must be submitted no later than ninety calendar days after completion of service.
2. Whether the employee is required to report to work or submit a timely application for reemployment depends upon the length of service. Extenuating circumstances may permit an employee a longer period to make a request for reemployment.
  3. Qualifying Conditions

Employees are not required to go through the Department's pre-employment process in order to be reinstated to their former position. However, they must be able to perform the essential functions of the position with or without reasonable accommodation. If the employee is no longer able to perform the essential functions because of disability sustained during this service, the employee will be considered for another position in the Department for which they are qualified unless the Department's circumstances have changed as to make it impossible or unreasonable to do so.

- a. Additionally, the employee must have received an honorable or general discharge. The employee must provide the State with a certification of completion of military service duly executed by an officer of the applicable force of the Armed Forces of the United States or by an officer of the applicable force of the organized militia.

4. Reemployment Position

A qualified employee who has been on military leave for 90 days or less will be re-instated to the position left, with the employee's seniority, status, and pay adjusted for any promotions, pay increases, or other benefits he/she would have earned had they not been on military leave.

- a. A qualified employee who served for 91 days or more may or may not be reinstated to the exact same position held prior to going on military leave. An employee who is not reinstated to their former position will be reemployed in a position with like seniority, status, and pay that takes into account any promotions, pay increases or other benefits they would have been eligible for had they not been on military leave.

- I. Documentation Upon Return to Work

1. The Department will not require documentation of ordered military duty from an employee for military service time of less than 31 days.
2. The Department will require documentation from an employee upon completion of military service time of greater than 31 days. Reemployment of the service member will not be delayed if the documentation is not readily available at the time of re-employment. The employee is required to provide it to the Department when available.

3. Documentation upon completion of service establishes:
  - a. The application for reemployment was timely,
  - b. The member has not exceeded the cumulative 5-year limit, and
  - c. The member was discharged under "honorable" or "general" conditions.
4. Acceptable legal forms of documentation include:
  - a. DD-214,
  - b. Certificate of release or discharge from active duty,
  - c. Copy of duty orders prepared by the facility where the orders were fulfilled and carrying an endorsement indicating completion of the described service,
  - d. Letter from the commanding officer of a Personnel Support Activity or someone of comparable authority,
  - e. Certificate of completion from military training school,
  - f. Discharge certificate showing character of service, and/or
  - g. Copy of extracts from payroll documents showing periods of service.

J. Protection from Discharge

1. An employee returning from military leave and who served for more than 30 days but less than 181 days may not be discharged except for cause for 180 days after his/her reemployment. An employee returning from military leave and who served more than 180 days may not be discharged except for cause for a period of one year after his/her reemployment.
2. Cause for discharge may be based on conduct or the application of legitimate nondiscriminatory reasons. Employees who serve for 30 or fewer days are not protected from discharge without cause. However, they are protected from discrimination because of military service or obligation.

K. Workforce Replacement

Replacement workers for employees who are on military leave must be informed that they are filling in for employees who are on military leave and may be reassigned or terminated when the employees returns.