

10.1 - Short-Term Military Leave

10.1.1 Eligibility

Full-time or part-time permanent employees are eligible for short-term military leave.

If any part of this policy is inconsistent with Federal law, the Federal law takes precedence. Public schools should not rely exclusively on this summary for administration of their legal responsibility. LEAs and charter schools should review their responsibilities under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).

http://www.dol.gov/vets/programs/userra/Final_USERRA_Poster.pdf

10.1.2 Short-Term Military Leave with Pay

Leave with pay shall be granted to members of Reserve Components of the U.S. Armed Forces for periods of active duty training.

Reserve components of the U.S. Armed Forces are the National Guard, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air Force Reserve and the Coast Guard Reserve. The National Guard serves both as a federal reserve component and as the State Militia.

(a) **Periods of entitlement for all reserve components:**

- (i) Military Leave with Pay: Leave with pay shall be granted for up to 15 workdays during the federal fiscal year (October 1 to September 30).
- (ii) Differential Pay: If paid leave is not available and the military pay is less than the pay with the LEA or charter school, the employee is eligible for differential pay. The employee must provide military pay vouchers or other documentation and the LEA or charter school determines the difference between the military pay and pay with the LEA or charter school. Differential pay is made from the same source of funds as the employee's salary.
- (iii) Local Supplement: If a local supplement is paid to employees on the job and the employee is eligible for differential pay, the local supplement is to be paid as a part of the differential pay to employees on short-term military leave

(b) **Physical examination for military service:**

An employee shall be granted necessary time off when the employee must undergo a required physical examination relating to membership in a reserve component (included in the 15 days paid leave per federal fiscal year).

- (c) **Scheduled unit assemblies:**
Regularly scheduled unit assemblies usually occur on weekends and are referred to as “drills”. If an employee is required to leave on a workday, the employee may be allowed to use military leave with pay or other eligible paid leave. This military leave with pay is included in the 15 days allowed each federal fiscal year for training.

- (d) **Additional periods of entitlement for National Guard only:**
 - (i) Military leave with pay shall be granted for infrequent special activities in the interest of the State when so authorized by the Governor or his designee. This leave is in addition to the 15 days allowed for military training.
 - (ii) For active duty in excess of 30 days , employees shall be entitled to military leave with differential pay between military pay and regular pay if the military pay is less than the employee’s regular pay.
 - (iii) Military leave for active state duty is in addition to military leave which may be granted for other purposes.

- (e) **Periods ineligible for paid military leave:**
 - (i) Duties resulting from disciplinary actions imposed by military authorities.
 - (ii) Inactive duty training (drills) performed for the convenience of the members such as equivalent training, split-unit assemblies, make-up drills, etc.

Employing agencies are not required to excuse an employee for unscheduled or incidental military activities such as volunteer work at military facilities and unofficial military activities.

10.1.3 Orders and Leave Documentation

The employee must give advance notice to the employer of absence for military service and apply for reemployment following leave of more than 30 days. The notice and application may be either written or verbal.

The school system may request that the employee submit a copy of the orders or other appropriate documentation of required military duty.

10.1.4 Resolution of Scheduled Conflicts

If a scheduled military leave creates a problem for the school system, supervisors are encouraged to contact the commanding officer at the military unit to which the employee reports and request a schedule accommodation.

10.1.5 Retention of Benefits

Paid military leave is treated like any other paid leave. The employee shall continue to accumulate leave and receive health insurance for self, etc.

Legal Reference(s)

Public Law 103-353 Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) and its regulations found in Title 38, United States Code, Chapter 43—Employment and Reemployment Rights of Members of the Uniformed Services.

G.S. 115C-12(8)

G.S. 115C-302.1(g1)

G.S. 127A-116

16 NCAC 6C.0404

16 NCAC 6C.0406

25 NCAC 1E.0800

NCGA 2003, SB 714

10.2 – Military Leave For Extended Active Duty

10.2.1 Employee Eligibility

All permanent, probationary and trainee employees who enter active military service are eligible for military leave for extended active duty.

If any part of this policy is inconsistent with Federal law, the Federal law takes precedence. Public schools should not rely exclusively on this summary for administration of their legal responsibility. LEAs and charter schools should review their responsibilities under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).

http://www.dol.gov/vets/programs/userra/Final_USERRA_Poster.pdf

10.2.2 Service Schools and Reserve Training

All or any portion of an employee's 15 days paid military leave or regular vacation leave may be used in lieu of or in conjunction with unpaid military leave for:

- (a) Attendance at Service Schools, or
- (b) Attendance at Active Duty Training in a Reserve Unit.

10.2.3 Extended Active Duty

Leave without pay shall be granted as outlined below for periods of active duty in the armed forces of the United States. At the start of extended active duty, an employee may use eligible (see Section 3.1.3(d)) paid leave.

- (a) **“Extended active duty” is defined as:**
 - (i) Any active military service for a period not to exceed five years plus any period of additional service imposed by law.
 - (ii) All active military service during declared state or national emergency or during time of war.
 - (iii) Any mobilization or order to Federal active duty of an employee in the National Guard or one of the other reserve components.
- (b) **Leave before and after active duty:** Permanent, trainee, and probationary employees who enter active military service may also use unpaid military leave for the following reasons:
 - (i) **While awaiting entry into active duty**, to allow the employee to settle any personal matters or if the delay is not the employee's fault. This period shall be for up to 30 days and can be extended in exceptional cases.

- (ii) **Following active military service** while employee's reinstatement is pending. The employee must apply for reinstatement within 90 days following release from active duty of more than 180 days, or within 14 days following active duty of 30 to 180 days.
- (iii) **Involuntary extensions:** Unpaid military leave shall be granted for any involuntary extension of military service. The employee may be required to present evidence that the extension was involuntary.
- (iv) **Hospitalization:** Unpaid military leave shall be permitted for extensions of enlistment due to hospitalization for service-connected disability certified by the attending physician.

In addition, the employee is entitled to leave without pay from the time of release by the physician until actually reinstated, provided the employee applies for reinstatement within the time limits described above.

- (c) **Employee responsibility:**
 - (i) Notice: The employee or an appropriate military officer shall give advance notice of the military service to the superintendent of the school system or charter school administrator.
 - (ii) Differential Pay: If military pay is less than the pay with the LEA or charter school, the employee is responsible for providing military pay vouchers or other documentation and requesting differential pay within 12 months from the date of separation or discharge.
 - (iii) Reinstatement: The employee is responsible for making application for reinstatement within the appropriate time limit.
- (d) **Employer responsibility:**
 - (i) Eligibility for Leave: It is the responsibility of the employer to ascertain that the employee is eligible for available paid leave and/or unpaid military leave.
 - (ii) Explaining Benefits: The superintendent or designee shall explain to the employee the rights and benefits concerning leave, salary increases, medical insurance options, retirement status, the possibility of differential pay and reinstatement from military leave.
 - (iii) Differential Pay: If the employee's military pay is less than his/her pay with the LEA or charter school, the LEA or charter school determines the differential pay using the military pay documentation provided by the employee and pays the difference (including any local supplement) from the same source of funds as the employee's salary.

- (e) **Retention and continuation of benefits:** An employee going on extended active duty may choose to have accumulated vacation leave paid in a lump sum, exhaust eligible leave, or retain all or part of the accumulated leave until he or she returns to work. The maximum accumulation of 30 days or 240 hours applies to a lump-sum payment.

The employee retains all accumulated sick leave and continues to earn state service credit and time toward salary increases.

An employee will receive full retirement membership service credit for all active duty service in the armed forces if he or she is honorably discharged. Enlistment up to five years is creditable. The employee should contact the Retirement System for instructions.

- (f) **Reinstatement from leave without pay for military service:** Employees on leave without pay and honorably discharged from military service who apply for reinstatement within the appropriate time limit must be reemployed in a position equivalent in status, seniority, and pay and as if employment had not been interrupted.

If an employee is disabled during military service to the extent that he or she cannot perform the duties of the original position, the employee shall be reinstated to a position with duties compatible with the disability. In no case will the reinstated employee's salary be less than his or her salary prior to military leave.

Employees who resign without knowledge of their eligibility for military leave and reinstatement of benefits, but who are otherwise eligible for the reinstatement under military leave provisions, shall be reinstated from military service just as if they had applied for and been granted leave for active military duty.

Legal Reference(s)

Public Law 103-353 Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) and its regulations found in Title 38, United States Code, Chapter 43—Employment and Reemployment Rights of Members of the Uniformed Services

G.S. 115C-12(8)

G.S. 115C-302.1(g1)

G.S. 127A-116

16 NCAC 6C.0404

16 NCAC 6C.0406

25 NCAC 1E.0800

NCGA 2003, SB 714

10.3 – Civil Air Patrol

10.3.1 Periods of Entitlement for Duty with the Civil Air Patrol

Members of the Civil Air Patrol are not required to participate in missions or training exercises. Employees attending these regularly scheduled unit training assemblies are not eligible for military leave with pay; however, school systems are encouraged to arrange work schedules to allow employees to attend this training.

If missions or training exercises are authorized by the Air Force, the Governor, or the Secretary of the Department of Crime Control and Public Safety, members who wish to participate are entitled to military leave with pay not to exceed 15 days in any calendar year. This leave is included in the 15 days of paid military leave to which full-time employees are entitled. The 15 days of leave are prorated for part-time employees.

LEA or charter school employees on leave of absence for State or federal military duty for required training or special emergency management service shall be paid the difference in military base pay and public school salary, (including non-performance based bonuses) when the military pay is less than the public school salary. Only honorable service is eligible for differential pay. Differential pay is paid from the same source of funds as the public school salary. (See Sections 10.1 and 10.2 for additional information on differential pay).

Service may be verified by the Secretary of the Department of Crime Control and Public Safety.

Legal Reference(s)

G.S. 115C-302.1(g1)
G.S. 127A-116
G.S. 143A-241
16 NCAC 6C.0404
16 NCAC 6C.0406
25 NCAC 1E.0800
NCGA 2003, SB 714

10.4 – State Defense Militia

10.4.1 Periods of Entitlement for Members of the State Defense Militia

Only when called out by the Governor are school employees who are members of the State Defense Militia entitled to paid military leave. This paid military leave cannot exceed 15 days during any calendar year and is included in the annual entitlement of paid military leave.

The State Defense Militia is a reserve to the National Guard, but it is not a reserve component of the U.S. Armed Forces. Duty status may be verified by the Vice Chief of Staff-State Operations in the Office of the Adjutant General, North Carolina National Guard.

LEA or charter school employees on leave of absence for State or federal military duty for required training or special emergency management service shall be paid the difference in military base pay and public school salary, (including non-performance based bonuses) when the military pay is less than the public school salary. Only honorable service is eligible for differential pay. Differential pay is paid from the same source of funds as the public school salary. (See Sections 10.1 and 10.2 for additional information on differential pay).

School employees who are members of the State Defense Militia are not entitled to paid military leave when volunteering for support of activities sponsored by civic or social organizations even when such support has been authorized by the Governor or his designee.

Members of the State Defense Militia attending regularly scheduled unit training assemblies are not eligible for paid military leave; however, school systems are encouraged to arrange work schedules to allow the employee to attend this training if possible.

Legal Reference(s)

G.S. 115C-302.1(g1)
G.S. 127A-116
16 NCAC 6C.0404
16 NCAC 6C.0406
25 NCAC 1E.0800
NCGA 2003, SB 714