

SUPERVISOR'S GUIDE TO CREDITING THE ANNUAL MILITARY LEAVE ALLOTMENTS

West Virginia Division of Personnel
Employee Relations Section
June 2011

Administration of paid military leave for West Virginia state government employee's is dictated by West Virginia Code 15-1F-1 (Attachment A). To ease interpretation and application, Section 14.9 of the Division of Personnel *Administrative Rule* (Attachment B) will be revised to incorporate the statutory revisions. Compliance with the Rule will ensure compliance with the statute.

The Rule provides for 30 days (not to exceed 240 hours) per calendar year of paid leave for State National Guard active duty and Federal Reserve military service. These are referred to as Subpart (a) days, from their statutory designation (15-1F-1(a)). The qualifying employee/soldier will be credited with these days on January 1 of each calendar year, except as provided below, and any unused time expires at the end of the calendar year. These days are most often used for weekend drills, training classes and occasionally for special extended periods for, by example, flood mitigation or fighting forest fires.

The Rule also provides for an additional 30 days (not to exceed 240 hours) paid leave for federal active duty for each single call to active duty. These are referred to as Subpart (b) days, from their statutory designation (15-1F-1(b)). This time may continue into the next calendar year.

Effective January 1 of each calendar year, the employee/soldier is credited with 30 Subpart (a) days, unless he or she is in unpaid status with the employer (i.e., leave of absence without pay or suspension) or on active duty status (paid or unpaid) under Subpart (b). Therefore, employee/soldiers in paid status with the employer (i.e., paid annual leave, paid sick leave, paid Subpart (a) State military duty, or working) shall be credited with the next year's Subpart (a) military leave allotment.

Employees on federal military duty, Subpart (b), typically an extended period of military duty, though accruing sick and annual leave while in paid status, are not afforded additional Subpart (a) days until released by the military and they return to the State workforce and payroll. An employee/soldier who is called to active duty under Subpart (b) who has not used all of the 30 Subpart (a) days for the calendar year, shall be entitled to exhaust the remaining Subpart (a) days, provided that the Subpart (a) days may not be carried forward into the next calendar year.

Continuing orders, revised orders, extensions of the service period, and consecutive orders **DO NOT** constitute new orders and there is no additional Subpart (b) military leave eligibility. There must be a break (discharge) between orders and normally a return to work before additional Subpart (b) leave eligibility is credited for a **subsequent** call to military duty. Situations in which an employee/soldier may not return to work prior to subsequent activation but is still entitled to additional Subpart (b) military leave upon subsequent activation include paid or unpaid medical leave of absence or time off for readjustment prior to returning to work as provided in the Uniformed Services Employment and Reemployment Rights Act and/or federal Family and Medical Leave Act. Employees may be permitted to work while under military orders, upon request, based upon the specific needs of the agency and the responsibilities of the position.

**ELIGIBILITY FOR SUBSEQUENT YEAR
MILITARY LEAVE ALLOTMENTS**

	PAY STATUS WITH EMPLOYER	PAID (Working or on Paid Annual or Sick Leave)	PAID SUBPART (a) DUTY (Paid State Active Duty & Reserve)	PAID SUBPART (b) DUTY (Paid Federal Active Duty)	UNPAID (Leave of Absence, Suspension, or Unpaid Federal or State Duty)
MILITARY LEAVE TYPE					
Subpart (a)		YES 30 Subpart (a) Days Posted January 1 **	YES 30 Subpart (a) Days Posted January 1 **	NO 30 Subpart (a) Days Not Posted until released by the military and returns to State employment and Active Pay Status	NO 30 Subpart (a) Days Not Posted until released by the military and returns to State employment and Active Pay Status
Subpart (b)		YES 30 Subpart (b) Days Posted January 1 **	YES 30 Subpart (b) Days Posted January 1 **	NO 30 Subpart (b) Days Not Posted until released by the military and returns to State employment and Active Pay Status	NO 30 Subpart (b) Days Not Posted until released by the military and returns to State employment and Active Pay Status
	**NOTE: The maximum number of days of paid Military Leave for a single call to federal active duty is 60 days.				

EXAMPLES

The Subpart (a) and (b) examples provided below are based on the following calendar:

NOVEMBER						
Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4 H	5	6	7	8
9	10	11 H	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	4 – Election 11 – Veterans 27/28 - Thanksgiving					

DECEMBER						
Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24 H½	25 H	26	27
28	29	30	31 H½			
24/25 – Christmas Eve/Day 31 – New Year’s Eve						

JANUARY						
Su	Mo	Tu	We	Th	Fr	Sa
				1 H	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19 H	20	21	22	23	24
25	26	27	28	29	30	31
1 – New Year’s Day 19 – Martin Luther King						

SUBPART (a) – STATE DUTY: The following examples assume that a soldier is activated (for 45 days) on December 15, 2xxx, for State duty to participate in flood mitigation.

Example 1

The employee uses 11 days of his or her 2xxx subpart (a) military leave allotment and does not exhaust the Subpart (a) days for calendar year 2xxx, however, they expire at the end of the day on December 31.

- Since the employee is still in active pay status at the close of business on December 31, 2xxx, the 30-day allotment of Subpart (a) military leave for the following calendar year may be credited and used.

Example 2

The employee uses the 7 remaining days of his or her 2xxx Subpart (a) military leave allotment and is removed from the payroll at the close of business on December 23, 2xxx.

- Since the employee is not in active pay status at the close of business on December 31, 2xxx, the allotment of Subpart (a) military leave for the following calendar year may not be credited until the soldier is released from duty and returns to work or paid status.

Example 3

The employee uses the 7 remaining days of his or her 2xxx Subpart (a) military leave allotment and uses 4 days of accrued annual leave for December 24-31, 2xxx.

- Since the employee is still in active pay status at the close of business on December 31, 2xxx, the 30-day allotment of Subpart (a) military leave for the following calendar year may be credited and used.

Example 4

The employee uses the 7 remaining days of his or her 2xxx Subpart (a) military leave allotment and is on an unpaid leave of absence for December 24-30, 2xxx. The employee requests and is afforded (by using 4 hours of accrued annual leave) a return to the State payroll on December 31, 2xxx (the last scheduled work day in the calendar year).

- Since the employee is in active pay status at the close of business on December 31, 2xxx, the 30-day allotment of Subpart (a) military leave for the following calendar year may be credited and used.

SUBPART (b) – FEDERAL ACTIVE DUTY: The following examples assume that a soldier is activated November 7, 2xxx, for federal active duty for overseas deployment.

Example 1

The employee uses the 15 days remaining of his or her 2xxx Subpart (a) military leave allotment and uses 30 days of Subpart (b) military leave. The employee is removed from the payroll at the close of business on January 15, 2xxx the following year.

- The employee is not eligible for the new calendar year allotment of Subpart (a) or Subpart (b) military leave until the soldier is released from federal active duty and returns to work or paid status.

Example 2

The employee uses the 5 days remaining of his or her 2xxx Subpart (a) military leave allotment and uses 30 days of Subpart (b) military leave. The employee is removed from the payroll at the close of business on December 29, 2xxx, at noon.

- The employee is not eligible for the following calendar year allotment of Subpart (a) or Subpart (b) military leave until the soldier is released from federal active duty and returns to work or paid status.

Example 3

The employee uses the 5 days remaining of his or her 2xxx Subpart (a) military leave allotment and uses 30 days of Subpart (b) military leave and 8 days of accrued annual leave for December 29, 2xxx, at noon – January 8, of the following calendar year. The employee is removed from the payroll at the close of business on January 9.

- The employee is not eligible for the new calendar year allotment of Subpart (a) or Subpart (b) military leave until the soldier is released from federal active duty and returns to work or paid status since he or she is on federal active duty.

WEST VIRGINIA CODE

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 1F. PRIVILEGES AND PROHIBITIONS.

§15-1F-1. Leave of absence for public officials and employees for drills, parades, active duty, etc.

(a) Any officer or employee of state, county or municipal government hired for permanent employment who is a member of the National Guard or armed forces reserve, is entitled to a military leave of absence from his or her respective office or employment without loss of pay, status or efficiency rating, on the days during which he or she is ordered, by properly designated authority, to be engaged in drills, inactive duty training, parades, funeral details, service schools or other duty, during business hours, field training, annual training or other full-time National Guard duty pursuant to Title 10 or Title 32 of the United States Code, or active service of the state, for a maximum period of thirty working days, not to exceed two hundred forty hours in any one calendar year.

(b) Any officer or employee of state, county or municipal government hired for permanent employment ordered or called to active duty for a mobilization or deployment under Title 10 of the United States Code or in support of a contingency operation as defined in 10 U.S.C. §101(a)(13) by the properly designated federal authority is entitled to a military leave of absence from his or her respective office or employment without loss of pay, status or efficiency rating for a maximum period of thirty working days, not to exceed two hundred forty hours for a single call to active duty: Provided, That an officer or employee of state, county or municipal government called to active duty who has not used all or some portion of the thirty working days of military leave of absence granted by subsection (a) of this section is entitled to add the number of unused days from that calendar year to the thirty working days, not to exceed two hundred forty hours granted by this subsection, up to a maximum of sixty days for a single call to active duty: Provided, however, That none of the unused days of military leave of absence granted by subsection (a) of this section may be carried over and used in the next calendar year.

(c) The term "without loss of pay" means that the officer or employee shall continue to receive his or her normal salary or compensation, notwithstanding the fact that the officer or employee may have received other compensation from federal or state sources during the same period.

WEST VIRGINIA ADMINISTRATIVE RULE
DIVISION OF PERSONNEL

Chapter 29-6-10
Series I, 2010 Amended

14.9. Military Leave

(a) State Active Duty and Reserve Military Service - In accordance with the provisions of West Virginia Code §15-1F-1(a), all officers and employees of the State who are members of the National Guard or of any of the reserve components of the armed forces of the federal government are entitled to a leave of absence from employment without loss of pay, status, or efficiency rating, on all days during which they are engaged in drills or parades , or for examination to determine fitness for duty, inactive duty training, funeral honors duty for the State or federal government, active duty for training or active service for the State all to include reasonable travel time to and from the duty location, for a maximum period of thirty working days in any one calendar year when ordered or authorized by proper authority. The term "without loss of pay" means that the employee continues to receive his or her normal salary or compensation, notwithstanding the fact that the employee may have received other compensation during the same period. An employee need not exhaust all annual leave or sick leave. Furthermore, the leave of absence is considered as time worked for the agency in computing seniority, eligibility for salary increase and experience with the agency. The terms of this subdivision do not apply under the provisions of any military selective service act. An employee shall provide to the appointing authority advance written or verbal notification of an obligation or intention to perform military duty and such written orders or other documentation, if available, in support of the request for military leave. None of the unused days of military leave for which an officer or employee is eligible under this subdivision may be carried over and used in the next calendar year. An employee on extended federal active duty or full-time National Guard duty is eligible for leave provided in this subdivision only in the year he or she is called to active duty, and in subsequent years only after he or she has been discharged from military duty and returned to State employment.

(b) Federal Active Duty - In accordance with the provisions of West Virginia Code §15-1F-1(b), all officers and employees of the State who are ordered or called to active duty by properly designated federal authority are eligible for an additional leave of absence from employment without loss of pay, status, or efficiency rating for a maximum period of thirty working days for each single call to active duty, active duty for training, initial active duty for training, or full-time National Guard duty, all to include reasonable travel time to and from the duty location. All officers and employees of the State called to federal active duty or full-time National Guard duty who have not used all or some portion of the thirty working days of military leave granted by subdivision (a) of this subsection are eligible to use those unused days in the same calendar year prior to using the thirty days for which they are eligible under this subdivision, up to a maximum of sixty days for a single call to active duty. None of the unused days for which an officer or employee is eligible under subdivision (a) may be carried over and used in the next calendar year. An employee on extended federal active duty or full-time National Guard duty is eligible for leave provided in subdivision (a) of this subsection only in the year he or she is called to active duty, and, in subsequent years, only for a subsequent call to duty and only after he or she has been discharged from military duty and returned to State employment. The term "without loss of pay" means that the employee shall continue to receive his or her normal salary or compensation, notwithstanding the fact that the employee may have received other compensation from federal or state sources during the same period.

(c) Other than as provided in subdivision (b) of this subsection, any employee hired for permanent employment entering the U.S. armed services in time of war, national emergency or under compulsory provisions of law of the U.S. in time of peace shall be granted a leave of absence from his or her service with the agency. Upon completion of and discharge from the armed services and within the applicable time period prescribed by federal statute, rule, or regulation regarding return to employment, the employee has the right to resume his or her service with the agency without any prejudice to his or her status, merit rating or standing by reason of the absence, in accordance with subdivision) 12.6(b) of this rule. An employee shall be credited with all annual leave and sick leave not used at the commencement of his or her military leave in accordance with subdivision 12.6(c) of this rule. This subdivision shall not be construed:

1. As an attempt to enlarge or to extend the length of employment of any temporary employee or to create a definite term where no definite term with respect to the position previously existed;

2. As providing that the salary paid by the agency shall continue to be paid to the employee while he or she is not performing the duties of his or her position with the state because of the services with the armed forces of the United States; or,

3. As having precedence over the provisions of any applicable federal statute, rule, or regulation regarding military leave or re-employment rights with which this subdivision is inconsistent or in conflict including, but not limited to, the Uniformed Services Employment and Reemployment Rights Act.

**Rule revisions are forthcoming to achieve consistency with the revised statute.*