

State of Wisconsin

OFFICE OF STATE EMPLOYMENT RELATIONS

- COMPENSATION & LABOR RELATIONS BULLETIN -

Date: March 31, 2004

Locator No: OSER-0019-CLR/LR

Subject: Implementation of New Military Leave Provisions, Including Leave Without Loss of Pay or Benefits and Use of Accrued Leave Before Return to Work.

The purpose of this bulletin is to provide administrative instructions for the implementation of new military leave benefits as provided for in 2003 Wisconsin Act 162, effective March 31, 2004. This bulletin should be used in conjunction with OSER bulletins CLR/PP-216/MRS-220/OS-86 (10/26/01) and CLR/PP-216/MRS-220/OS-86 -Addendum (3/28/02) because the benefits under Act 162 are *in addition to* previously existing military leave pay benefits and reemployment rights explained in those bulletins.

SECTION I. ELIGIBLE EMPLOYEES

Employees now eligible for the benefits of Act are: nonrepresented employees; represented employees that have contract language providing for the new benefits; and represented employees who have not settled for 2003-2005.

SECTION II. 179 DAYS WITHOUT LOSS OF PAY AND BENEFITS

A. Qualifying Military Service

1. Qualifying military service includes active duty in the U.S. armed forces, on or after January 1, 2003, provided the employee meets all of the following three conditions:
 - a. On or after January 1, 2003, the employee is activated to serve, or is serving, on military duty in the U.S. armed forces, other than for training purposes.
 - b. On the date on which he or she is activated, the employee is either a member of the Wisconsin National Guard or a member of a reserve component of the U.S. armed forces or is recalled to active military duty from inactive reserve status.
 - c. The employee is on a military leave of absence from state service.
2. Qualifying military service includes service, on or after January 1, 2003, in the U.S. public health service on detail with any of the U.S. armed forces.

NOTE: State active duty under a call up by the Wisconsin Governor is not qualifying military service. Employees on state active duty may elect to receive state pay or military pay for such period of service under s. 230.35 (3)(a), Wis. Stats., or contractual provisions specific to state active duty service.

B. 179 Days of Differential Pay and Benefits

1. If an employee is eligible to receive 30 work days of leave without loss of pay and benefits for military service under s. 230.35 (3)(a), Wis. Stats., or corresponding contractual provisions, the employee may become eligible to receive the new, additional pay and benefits of up to 179 calendar days only after exhausting the 30 work day benefit in the year in which the employee is activated for qualifying military service. The new 179 calendar day benefit is in addition to the 30 work days available to most employees; they are not at any time applied simultaneously.

NOTE: Employees must have permanent status in class to be eligible for the 30 work day benefit; however, employees without permanent status in class are eligible to receive the 179 calendar day benefit.

2. Each eligible employee with qualifying military service shall be paid his or her state salary, less any base military pay and housing allowances (less base federal pay and housing allowances if in the U.S. public health service), unless the military or federal base pay and housing allowances equal or exceed the employee's state salary, and in any case the employee shall accumulate sick leave, paid annual leave, and other benefits as though no interruption in state service had occurred.

NOTE: The pay differential calculation for this new 179 calendar day benefit differs from the calculation for the pre-existing and separate 30 work day benefit on two points: 1) the 179 day pay differential takes into account any military housing allowance, the 30 day differential does not; 2) the 30 day pay differential utilizes the employee's base state pay, while the 179 day differential utilizes the employee's state salary, meaning the pay rate the employee receives while on paid vacation leave, which may include non-base pay supplements.

3. Beginning on the day in which an employee is activated for qualifying military service, the employee shall receive the pay and benefits described in 2., above, for a period of not more than 179 calendar days, unless extended by the governor (see 5., below). An employee who is released from qualifying military service, and is subsequently re-activated for another period of qualifying military service, shall be eligible for a new allotment of 179 calendar days without loss of pay. An unused portion of the 179 day period is not added to the next allotment of 179 days.
4. If an employee is receiving pay and benefits under the 179 day provision at the end of a calendar year, the remainder of the 179 day provision shall be exhausted for qualifying military service in the new year before applying the new allotment of 30 work days for the new calendar year.
5. The governor, by executive order, may extend the period that an employee receives the pay and benefits under 2., above, up to a period of 2 years from the date on which the person is activated to serve on military duty in the U.S. armed forces or to serve in the U.S. public health service. Any extension granted by the governor under this paragraph may apply to an individual employee or to a group of employees, as determined by the governor. Any such extension may be applied retroactively.

C. Pay Administration Procedures

1. Pay administration for annual training duty and other short term active duty may continue to be processed as described in DER bulletin CLR/PP-216/MRS-220/OS-86, Section IX., “Adjustment of Pay Upon Return from Military Duty.” For any type or duration of military service, the final pay differential reconciliation after receipt of military pay vouchers or after completion of such service should be calculated in the same manner (with due attention to the differences for calculating the pay differential for the 30 work day versus 179 calendar day benefit periods, as described in C., above).
2. To minimize or eliminate overpayments to employees activated for military service, it is strongly recommended that agencies estimate in advance the employee’s base military pay, and housing allowance, if applicable, and deduct these amounts pre-tax from the employee’s pay check each pay period during the time of military service. Monthly military pay for active duty and reserve monthly drill training, based on rank and years of service, and housing allowance information, may be accessed through the Defense Finance and Accounting Service at <http://www.dfas.mil/money/milpay/pay>.
3. It is highly recommended that agency payroll and benefits personnel meet with employees in advance of departures for active military service, not only to explain military leave pay and benefits, but also to acquire information about each employee’s military rank and years of service, type of duty, and expectation of a housing allowance.
4. The amount of military pay deducted from state paychecks may be reduced if necessary to allow for the deduction of state health insurance, life insurance, and income continuation insurance premiums, employee reimbursement account deductions, or other necessary payroll deductions. Overpayments (or underpayments) to employees will be reconciled upon completion of military service and receipt of military pay vouchers for the applicable time periods.

NOTE: The payment each pay period of the differential between an employee’s state pay and base military pay plus housing allowance will be an estimate. A final pay reconciliation according to the payroll procedures described in DER bulletin CLR/PP-216/MRS-220/OS-86, Section IX., will be necessary after receipt of the employee’s military pay vouchers, either during the course of military service or after completion of service.

5. Whether or not the net pay to an employee eligible for military leave without loss of pay is greater than zero, the employee receives all benefits that accrue for being in pay status, and receives retirement system contributions in accordance with state and federal law. See ETF policies for additional benefits instruction for employees on military leave.
6. A full retroactive adjustment to pay and benefits will be necessary for qualifying military service on or after January 1, 2003, to the present. Payments and adjustments to leave accounts should be made as soon as administratively feasible, allowing for the complex nature of the required calculations.

SECTION III. AN EMPLOYEE'S RIGHT TO USE UP TO 160 HOURS OF ACCUMULATED VACATION LEAVE BETWEEN MILITARY SERVICE AND REPORTING BACK TO WORK

- A. An appointing authority shall permit an employee eligible for the military pay differential of up to 179 days, and who has completed his or her duty with the U.S. armed forces of the U.S. public health service, to use up to 160 hours of accumulated paid leave before reporting back to his or her state job. Any such leave must be used no later than 30 calendar days after the completion of military service. Accumulated paid leave that may be used includes annual leave, sabbatical leave, personal holidays, and earned Saturday/legal holidays, but does not include sick leave.
- B. If, after using such leave, an employee has any paid leave remaining that was accumulated while on duty with the U.S. armed forces or the U.S. public health service, the appointing authority shall permit the employee to carry over the leave into the next calendar year for use in that year.
- C. The use of up to 160 hours of accumulated paid leave in the first 30 days after release from military service shall not be deemed as application for reemployment or restoration after military leave under state or federal law. Regardless of use of such leave, classified employees retain the right to make application for restoration within 180 days after release from military service, or hospitalization resulting from such service, as provided at s. 230.32 (1)(d), Wis. Stats. This means that after use of such paid leave, an employee may choose to be on leave of absence without pay for some or all of the remaining 180 days as allowed by statute. (The state law provision of 180 days to apply for restoration is more generous, and therefore takes precedence over, federal statutes concerning application for reemployment.)

SECTION IV: REFERRAL OF QUESTIONS

Questions regarding the law cited in this bulletin should be directed to David Vergeront at (608) 266-0047 or by e-mail at David.Vergeront@oser.state.wi.us Questions regarding compensation related matters should be directed to Brian A. Fusie at (608) 266-1418 or by e-mail at Brian.Fusie@oser.state.wi.us

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