

State of Wisconsin

OFFICE OF STATE EMPLOYMENT RELATIONS

- COMPENSATION & LABOR RELATIONS BULLETIN -

Date: August 4, 2004

Locator No: OSER-0046-CLR/LR

Subject: Implementation of Executive Order #50:
Extending Military Leave Benefits for up to
Two Years.

The purpose of this bulletin is to provide administrative instructions for implementation of Executive Order #50, effective May 13, 2004. That Executive Order extended the military pay differential benefit for up to two years pursuant to s. 230.315, Wis. Stats. This bulletin should be used in conjunction with OSER bulletin CLR/PP-216/MRS-220/OS-86 (dated March 28, 2002) and OSER-0019-CLR/LR (dated March 31, 2004) because the benefits under Executive Order #50 are *in addition to* military leave pay benefits and leave rights explained in the bulletins.

SECTION I. ELIGIBLE EMPLOYEES

Employees eligible for the benefits of Executive Order #50 are: nonrepresented employees; represented employees having contract language providing for the new benefits; and represented employees who have not settled for 2003-2005.

SECTION II. EXECUTIVE ORDER #50 BENEFITS

Executive Order #50 provides:

“The Governor of the State of Wisconsin does hereby extend the eligibility to receive the pay and benefits provided under s. 230.315, Wis. Stats., for each employee of the State activated to serve in the U.S. armed forces or the U.S. public health service. This benefit shall be for up to two (2) years from: (a) January 1, 2003, if the employee was activated on or prior thereto; or (b) the date of the activation if subsequent to January 1, 2003.”

SECTION III. TWO YEAR BENEFIT 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; and
 - 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; and
 - 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. Two Year Differential Pay and Benefits

1. Beginning on the day in which an employee is activated for qualifying military service, the employee shall receive the pay and benefits described in Section 2., above, for a period of *not more than two years*. 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 two years without loss of pay. An unused portion of the two-year period is *not* added to the next allotment of two years.
2. 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 pay and benefits for up to *two years* only after exhausting the 30 work day benefit in the year in which the employee is activated for qualifying military service.

NOTE: Employees must have permanent status in class to be eligible for the 30 workday benefit; however, employees without permanent status in class are eligible to receive the new two (2) year extension of benefits.

3. If an employee is receiving pay and benefits under the two-year provision at the end of a calendar year, the two-year provision shall be stopped and the employee will begin a new 30-day military benefit at the start of a new calendar year. Once the 30-day benefit has been exhausted in the new year, the employee will continue the original two-year military provision until exhausted. However, an agency may allow an employee to continue the two-year provision and receive the accrued 30-day military leave benefit upon restoration.
4. 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 occurred.

NOTE: The pay differential calculation for this benefit differs from the calculation for the pre-existing and separate 30 work day benefit on two points: 1) the 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 pay 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.

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 OSER 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 and the extended two year periods, as described in B., 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>.

NOTE: Wisconsin residents in the armed forces are liable for Wisconsin income taxes on their entire annual Wisconsin net income, regardless of income source. If a Wisconsin resident is serving in the armed forces overseas, the employee is liable for Wisconsin income taxes on the entire annual Wisconsin net taxable income, wherever earned. A member of the armed forces on active duty who receives military pay from the federal government for services performed while stationed outside of the United States may be eligible for a credit against Wisconsin income tax. Pursuant to Sec.71, etc. (WI ACT 183), military pay received from the federal government while on military leave is not subject to State taxation. However, military differential pay from the State is taxable. Exceptions and other tax information can be referenced through the Wisconsin Department of Revenue at <http://www.dor.state.wi.us> or the Internal Revenue Service website at <http://www.irs.gov>.

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 Department of Employee Trust Funds policies for additional benefits instructions 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 balances should be made as soon as administratively feasible, allowing for the complex nature of the required calculations.

SECTION IV. EXTENSION OF ACCRUED LEAVE CREDITS

An appointing authority shall permit an employee eligible for the two year military pay differential, and who has completed his or her duty with the U.S. armed forces or the U.S. public health service, to carry over unused accrued leave beyond the limitations set forth in ER 18.02(6)(b), Wis. Adm. Code. This extended carryover is limited to the amount of unused accrued leave available to the employee prior to military activation plus the amount of accrued leave earned during the employee's military leave of absence, and shall be granted for a period of not more than two consecutive calendar years from the year of reinstatement. Leave time earned after an employee returns to work from military activation is subject to the carryover provisions outlined in the applicable contract and/or administrative rule.

NOTE: Accrued leave that may be carried over beyond the calendar year, but not more than two years, includes vacation, personal holidays and Sat./legal holidays (floating).

EXAMPLE: For example, an employee is activated on July 1, 2003 and returns to work on July 1, 2005. At the time of activation, this employee had 40 hours of unused accrued leave time available for use. Upon return to work on July 1, 2005, the employee is granted an additional 216 hours of unused accrued leave time (40 hours for the remainder of 2003, 108 hours for 2004, and 68 hours for the first half of 2005). The appointing authority shall permit this employee to carry over 256 (40 plus 216) hours of accrued leave time until December 31, 2007. Any accrued leave time in excess of these 256 hours is time earned after the employee returned to work from military activation and is, therefore, subject to the carryover provisions outlined in the statutes or applicable collective bargaining agreement.

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

- A. An appointing authority shall permit an employee eligible for the military pay differential under Executive Order #50, and who has completed his or her duty with the U.S. armed forces or 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 as described in Section IV above.

- C. The use of up to 160 hours of accumulated paid annual, personal or Saturday/legal holiday 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 VI: REFERRAL OF QUESTIONS

Questions regarding the information provided in this bulletin should be directed to Brian A. Fusie at (608) 266-1418 or by e-mail at brian.fusie@oscr.state.wi.us.

James A. Pankratz, Administrator
Division of Compensation and Labor Relations

BAF