

LOS ANGELES COMMUNITY COLLEGE DISTRICT
PERSONNEL COMMISSION

820 MILITARY LEAVE OF ABSENCE

Military and Veterans Code, Sections 389, 395, 395.01, 395.02, 305.03, 395.04, 395.05, 395.1, 395.2, and 395.3

389. **Definitions.** (a) As used in this chapter, "temporary Military leave of absence" means a leave of absence from public employment to engage in ordered military duty for a period which by the order is not to exceed 180 calendar days including travel time for purposes of active military training, encampment, naval cruises, special exercises or like activity as a member of the reserve corps or force of the armed forces of the United States, or the National Guard, or the Naval Militia.

(b) "Public employee" means any officer or employee of a public agency except for those officers or employees of the state subject to provisions of Chapter 11 (commencing with Section 19770) of Part 2 of Division 5 of Title 2 of the Government Code.

(c) "Public agency" means the state, or any county, and county, city, municipal corporation, school district, irrigation district, water district, or other district.

(d) "Armed forces" or "armed forces of the United States" means the "armed forces" as defined in Section 18540 of the Government Code.

(e) "Recognized military service means service as defined in Section 18540.3 of the Government Code.

395. Temporary Military Leave of Absence; Public Employees; Conflict of Section with Memorandum of understandings. Any public employee who is a member of the reserve corps of the armed forces of the United States or of the National Guard or the Naval Militia shall be entitled to a temporary military leave of absence as provided by federal law while engaged in military duty ordered for purposes of active military training, encampment, naval cruises, special exercises or like activity as such member, providing that the period of duty, and provided that military leave of absence is not required for periods of inactive military duty.

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No change in text.

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He shall have an absolute right to be restored to his former office or position and status formerly had by him in the same locality and in the same office, board, commission, agency, or institution of the public agency upon the termination of such temporary military duty. If the office or position has been abolished or otherwise has ceased to exist during his absence, he shall be reinstated to a position of like seniority, status, and pay if such position exists, or if no such position exists he shall have the same rights and privileges that he would have had if he occupied the position when it ceased to exist and had not taken temporary military leave of absence.

Any public employee who has been in the service of the public agency from which the leave is taken for a period of not less than one year immediately prior to the date upon which his temporary military leave of absence begins, shall receive the same vacation, sick leave, and holiday privileges and the same rights and privileges to promotion, continuance in office, employment, reappointment to office, or reemployment that he would have enjoyed had he not been absent there from; excepting that an uncompleted probationary period if any in the public agency must be completed upon reinstatement as provided by law or rule of the agency. For the purposes of this section, in determining the one year of service in a public agency all service of said public employee in recognized military service shall be counted as public agency service.

If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

395.01. Compensation of Public Employees on Temporary Military Leave of Absence; Conflict of Section with Memorandum of Understanding. (a) Any public employee who is on temporary military leave of absence for military duty ordered for purpose of active military training, encampment, naval cruises, special exercises, or like activity as such member, provided that the period ordered duty does not exceed 180 calendar days including time involved in going to and returning from the duty, but not for inactive duty such as scheduled reserve

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drill periods, and who has been in the service of the public agency from which the leave is taken for a period of not less than one year immediately prior to the day on which the absence begins shall be entitled to receive his salary or compensation as such public employee for the first 30 calendar days of any such absence.

Pay for such purposes shall not exceed 30 days in any one fiscal year. For the purposes of this section, in determining the one year of public agency service, all service of said public employee in the recognized military service shall be counted as public agency service.

(b) If the provisions of this section are in conflict ... in the Annual Budget Act.

395.02. Salary of Public Employee while Absent; "Officer" and "Employee" defined. Every officer and employee of a public agency who is on military leave other than temporary military leave of absence who has been in the service of such public agency for a period of not less than one year immediately prior to the date on which the absence begins shall be entitled to receive his salary or compensation as such officer or employee for the first 30 calendar days while engaged in the performance of ordered military duty.

As used in this section only, the terms "officer" and "employee" mean an officer or employee who

(a) Is ordered into active military duty as a member of a reserve component of the armed forces of the United States;

(b) Is ordered into active federal military duty as a member of the National Guard or Naval Militia; or

(c) Is inducted, enlists, enters or is otherwise ordered or called into active duty as a member of the armed forces of the United States.

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No change in text.

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395.04. **California National Guard Member, Compensation.** During such time as an officer or enlisted man of the California National Guard, who is on full-time active duty in the military service of the State, and is engaged, with the approval of the Adjutant General, in the military service of the State in attendance at drills, camps, or special exercises, sponsored by federal authority or by the War Department, as a member of the National Guard of the United States, he shall receive his salary, pay, and compensation as provided in Sections 320 and 321 of this code.

395.05. **Public Employees who are National Guard Members; Absence from Service; Compensation; Conflict of Section with Memorandum of Understanding.** (a) any public employee who is a member of the National Guard, shall be entitled to absent himself from his duties or service, without regard to the length of his public service, while engaged in the performance of ordered military or naval duty and while going to and returning from such duty, provided such duty is performed during such time as the Governor may have issued a proclamation of a state of extreme emergency or during such time as the National Guard may be on active duty in one or more of the situations described or included in Section 146 of this code provided such absence does not exceed the duration of such emergency. During the absence of such officer or employee while engaged in such military service during emergency and while going to and returning from such duty, and for a period not to exceed 30 calendar days, he shall receive his salary or compensation as such officer or employee and shall not be subjected by any person directly or indirectly by reason of such absence to any loss or diminution of vacation or holiday privilege or be prejudiced by reason of such absence with reference to promotion or continuance in office, employment, reappointment to office, or reemployment.

(b) If the provisions of this section are in conflict ... in the Annual Budget Act.

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No change in text.

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395.1. Public Employees; Return to Position After Termination of Active Service; Conflict of Section with Memorandum of Understanding. (a) Notwithstanding any other provision of law to the contrary, any officer or employee of the state not subject to civil service, or any public officer, deputy, assistant, or employee of any city, county, city and county, school district, water district, irrigation district, or any other district, political corporation, political subdivision, or governmental agency thereof who, in time of war or national emergency as proclaimed by the President or Congress, or when any of the armed forces of the United States are serving outside of the United States or their territories pursuant to order or request of the United Nations, or while any national conscription act is in effect, leaves or has left his office or position prior to end of the war, or the termination of the national emergency or during the effective period of any such order or request of the United Nations or prior to the expiration of the National Conscription act, to join the armed forces of the United States and who does or did without unreasonable and unnecessary delay join the armed forces or, being a member of any reserve force or corps of any of the armed forces of the United States or of the militia of this State, is or was ordered to duty therewith by competent military authority and served or serves in compliance with such orders, shall have a right, if released, separated or discharged under conditions other than dishonorable, to return to and reenter upon the office or position within six months after the termination of his active service with the armed forces, but not later than six months after the end of the war or national emergency or military or police operations under the United Nations or after the Governor finds and proclaims that, for the purposes of this section, the war, national emergency, or United Nations military or police operation no longer exists, or after the expiration of the National Conscription Act, if the term for which he was elected or appointed has not ended during his absence; provided, that such right to return to and reenter upon the office or position shall not extend to or be granted to such public officer, deputy assistant, or employee of the state, or of any city, county, city and county, school district, water district, irrigation district or any other district, political corporation, political sub-division of governmental agency thereof, who shall fail to return to and reenter upon his office or position within 12 months after the first date upon which he could terminate or could cause to have terminated his active service with the armed forces of the United States or of the militia of

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this State. He shall also have a right to return to and reenter upon the office or position during terminal leave from the armed forces and prior to discharge, separation or release therefrom.

(b) Upon such return and reentry to the office or employment the officer or employee shall have all of the rights and privileges in, connected with, or arising out of the office or employment which he would have enjoyed if he had not been absent therefrom; provided, however, such officer or employee shall not be entitled to sick leave, vacation or salary for the period during which he was on leave from such governmental service and in the service of the armed forces of the United States. If the office or position has been abolished or otherwise has ceased to exist during his absence, he shall be reinstated in a position of like seniority, status and pay if such position exists, or to a comparable vacant position for which he is qualified.

(c) Any officer or employee other than a probationer who is restored to his office or employment pursuant to this act shall not be discharged from such office or position without cause within one year after such restoration, and shall be entitled to participate in insurance or other benefits offered by the employing governmental agency pursuant to established rules and practices relating to such officers or employees or furlough or leave of absence in effect at the time such officer or employee left his office or position to join the armed forces of the United States.

(d) Notwithstanding any other provisions of this code, any enlisted person who was involuntarily ordered to active duty (other than for training) for a stated duration shall not lose any right or benefit conferred under the provisions of this code if he voluntarily elects to complete the period of such duty.

(e) If the provisions of this section are in conflict . . . in the annual Budget Act.

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395.2. Noncertificated School Employees in Active Military Service; Return to Position. Any employee of a board of school trustees or board of education in a position not requiring certification qualifications who enters the active military service of the United States of America or of the State of California, including active service in any uniformed auxiliary of, or to, any branch of such military service created or authorized as such auxiliary by the Congress of the United States of America or by the Legislature of the State of California, or in the full time paid service of the American Red Cross, during any period of National emergency declared by the President of the United States of America or during any war in which the United States of America is engaged, shall regain all rights to his position and shall be reinstated thereto upon his application at any time within six months of the termination of that service but in any event within one year from the date of a treaty of peace terminating the hostilities in which the United States is now engaged. The provisions of this act shall apply to service in the Merchant Marine as that phrase is now defined in any federal statute relating to reemployment rights of persons in service in the Merchant Marine.

395.3. Resignation of Public Employee to Enter Military Service; Return to Employment; "Public Officers and Employees" defined; Retroactive Appreciation; Validity; Conflict of Section with Memorandum of Understanding. In the event that any public officer or employee has resigned or resigns his office or employment to serve or to continue to serve in the armed forces of the United States or in the armed forces of this state, he shall have a right to return to and reenter the office or employment prior to the time at which his term of office or his employment would have ended if he had not resigned, on serving a written notice to that effect upon the authorized appointing power, or if there is no authorized appointing power, upon the officer or agency having power to fill a vacancy in the office or employment, within six months of the termination of his active service with the armed forces; provided, that such right to return and reenter upon the office or position shall not extend to or be granted to such public officer or employee, who shall fail to return to and reenter upon his office or position within 12 months after the first date upon which he could terminate or could cause to have terminated his active service with the armed forces of the United States or of the militia of this state.

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As used in this section, "public officers and employees" includes all of the following:

- (a) Members of the Senate and of the Assembly
- (b) Justice of the Supreme Court and the courts of appeal, judges of the superior courts and of the municipal courts, and all other judicial officers.
- (c) All other state officers and employees not within the state civil service, including all officers for whose selection and term of office provision is made in the Constitution and laws of this state.
- (d) All officers and employees of any county, city and county, city, township, district, political subdivision, authority, commission, board, or other public agency within this state.

The right of reentry into public office or employment provided for in this section shall include the right to be restored to such civil service status as the officer or employee would have if he had not so resigned; and no other person shall acquire civil service status in the same position so as to deprive such officer or employee of his right to restoration as provided for herein.

This section shall be retroactively applied to extend the right of reentry into public office or employment to public officers and employees who resigned prior to its effective date.

This section does not apply to any public officer or employee to whom the right to reenter public office or employment after service in the armed forces has been granted by any other provision of law.

If any provision of this section, or the application of this section to any person or circumstance, is held invalid, the remainder of this section, or the application of this section to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

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If the provisions of this section are in conflict ... in the annual Budget Act.

A. An appropriate military leave shall be granted to any classified employee in accordance with the provisions of the Military and Veterans Code and this Rule. As used in this Rule, "military leave" means either a Temporary Military Leave or a Military Leave Other Than Temporary or both.

1. Temporary Military Leave

An employee who is a member of the reserve corps of the armed forces of the United States or of the National Guard or of the Naval Militia shall be granted a Temporary Military Leave while engaged in military duty ordered for purposes of active military training, encampment, naval cruises, special exercises or like activity as such member, and provided that the period of ordered duty does not exceed 180 calendar days, including time involved in going to and returning from such duty.

2. Military Leave Other Than Temporary

A Military Leave Other than Temporary shall be granted to any employee who is ordered into active military duty as a member of a reserve component of the armed forces of the United States; is ordered into active Federal military duty as a member of the National Guard or Naval Militia; or is inducted, enlists, enters, or is otherwise ordered or called into active duty as a member of the armed forces of the United States.

B. Vacation and Illness Leave

1. Vacation shall accrue during temporary military leave. Vacation already earned but not taken may be granted prior to, during an unpaid period, or after return from military leave in accordance with the vacation policy or collective bargaining agreements in effect at the time the vacation leave is taken. No vacation shall accrue during military leave other than temporary.
2. Illness Leave. Illness leave shall accrue to an employee while on temporary military leave but no illness leave shall be allowed during military leave.

CHANGES:

Minor editorial changes in Paragraph A. Paragraph B. 1. and 2., changed to clarify that employees shall accrue vacation and illness leave during temporary military leave.

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- C. Return to Position. An employee absent from the service of the Los Angeles Community College District because of a military leave shall continue to accrue seniority credit during such absence. An employee returning from military leave shall, upon application made within one year after the cessation of war emergency or within six months of prior completion of active military duty service, be returned to a position in his classification, if such a position exists, in accordance with pertinent provisions of the Military and Veterans Code. The right to return to his position is granted provided that he returns within 12 months after the first date upon which he could terminate or could cause to have terminated his active service. He shall be entitled to a position in his former class ahead of any employee with a lesser amount of seniority with the understanding that vacancies caused by the granting of such leave may be filled by regular appointment. If such a position in his former class has ceased to exist during his absence, he shall be returned to a vacant position in a comparable class for which qualified. In the absence of such a vacant position in a comparable class for which qualified, the employee's name shall be placed on such reemployment list for a period not to exceed 39 months from the date of his application.
- D. Eligibility to Take Examinations. An employee shall be eligible to take examinations for which otherwise qualified during the time of military service. An employee on a military leave whose name appears on an eligibility list shall be certified for assignment to a position in the class during the life of any such list when and if his name is reached. In the event the employee accepts the appointment, he shall be granted the same type of military leave from the new position.
- E. Placement on an Eligible List. An employee returning from a military leave, in accordance with Paragraph C. above, shall be eligible to take a supplementary examination for any class for which there is an eligible list in effect, the examination for which he was unable to take by reason of his military service, provided such veteran met the requirements for such examination at the date it was originally conducted. Such supplementary examinations shall be prepared and conducted under conditions and techniques which are sufficiently similar to the respective original examinations to preserve their original character. The name of a candidate who is
- successful in the supplemental examination shall be added to the list for the class for which he was examined immediately ahead of the person who received the next lower grade among those taking either the original examination or any examination supplemental thereto.

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- F. Compensation for First 30 Calendar Days of Military Leave. Upon presentation of adequate evidence of military service for which pay is requested, an employee shall be paid his salary or compensation as employee of the Los Angeles Community college District for the first 30 calendar days of his military service while on a military leave exclusive of time not covered by his assignment basis code, providing the following conditions are met:
1. The employee is on military leave as a member of the National Guard or Naval Militia, or a member of a reserve component of the armed forces of the United States; or the employee is on military leave as a result of being inducted, enlisted, or otherwise having entered or been called into active duty as a member of the armed forces of the United States.
 2. An employee on temporary military leave or on military leave other than temporary must have been in the service of the Los Angeles Community college District for a period of not less than one year immediately prior to the date the previous recognized military service in order to accumulate the required one year in the service of the Los Angeles Community College District. The one year in absence begins. An employee on temporary military leave may count all the service of the Los Angeles Community College District is not required in the case of an employee who is ordered into active military service as a member of the National Guard under a situation included within Section 146 of the Military and Veterans Code.
 3. A regular employee with provisional, relief, or substitute status in another class shall receive a military leave from his regular position and shall receive compensation in accordance with his current assignment during the time he is entitled to compensation under the Military and Veterans Code.
 4. An employee with provisional, relief, or substitute status only who meets other provisions of this rule shall be compensated only in accordance with his assignment at the time of entry into military service and shall be compensated not in excess of one month's salary for the same number of days for which compensation was received during the calendar month immediately prior to the beginning of the military leave. In no case shall a provisional, relief, or substitute employee receive salary or compensation for more days than the number of working days during the first 30 calendar days of his military service while on military leave, exclusive of time not covered by his assignment basis code.

CHANGES:

Changes referenced in Paragraph F. from calendar month to 30 calendar days. Changes referenced in Sub-paragraph 4. from calendar month to 30 calendar days.

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5. No more than the pay for a period of 30 calendar days shall be allowed for any military leave or military leaves involving continuous military service or during any one fiscal year. The salary to be paid is equivalent to that salary rate which the employee would have received during the first 30 calendar days of military leave. Fractions of less than 30 days shall be paid on the same basis as if the employee had been in active service as a Board employee. Retroactive salary payments shall be made to employees or former employees who are entitled to such payments.

CHANGES:

Changes referenced in Sub-paragraph 4. from calendar month to 30 calendar days.