

820 MILITARY LEAVE OF ABSENCE

Military and Veterans Code Sections

389. (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, city 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. (a) 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 is 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, inactive duty training, encampment, naval cruises, special exercises, or like activity, providing that the period of ordered duty does not exceed 180 calendar days, including time involved in going to and returning from that duty.

(b) Notwithstanding subdivision (a), a local public agency may, but is not required to, provide paid military leave of absence for periods of inactive duty training.

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

(d) 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 a 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

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reemployment that the employee would have enjoyed had they not been absent, except that an uncompleted probationary period, if any, in the public agency, shall 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 the employee in recognized military service shall be counted as public agency service.

(e) If this section is in conflict with 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 the memorandum of understanding requires the expenditure of funds, it shall not become effective unless approved by the Legislature in the annual Budget Act.

395.01. (a) Any public employee who is on temporary military leave of absence for military duty ordered for purposes of active military training, inactive duty training, encampment, naval cruises, special exercises, or like activity as such member, provided that the period of ordered duty does not exceed 180 calendar days including time involved in going to and returning from the duty, 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, is entitled to receive their salary or compensation as a public employee for the first 30 calendar days of the absence. Pay for those purposes may 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 a public employee in the recognized military service shall be counted as public agency service.

(b) Notwithstanding subdivision (a), a local public agency may, but is not required to, pay an employee during a period of inactive duty training.

(c) 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 those 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.

395.02. 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.

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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.

395.03. No more than the pay for a period of 30 calendar days shall be allowed under the provisions of Section 395.01 or 395.02 for any one military leave of absence or during any one fiscal year, except as otherwise authorized by resolution of the legislative body of a public agency or as provided in a memorandum of understanding reached with an employee organization pursuant to Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code.

395.04. During the time that as an officer or enlisted person 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 United States Department of Defense, as a member of the National Guard of the United States, he or she shall receive salary, pay, and compensation as provided in Sections 320 and 321.

395.05. (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 such 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 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

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if those 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.

395.1. (a) Notwithstanding any other law to the contrary, any officer or employee of the state not subject to Chapter 11 (commencing with Section 19770) of Part 2 of Division 5 of Title 2 of the Government Code, 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 their office or position prior to the end of the war, or the termination of the national emergency or during the effective period of any order or request of this type 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 those 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 their 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 they were elected or appointed has not ended during their absence; provided, that the right to return to and reenter upon the office or position shall not extend to or be granted to any officer or employee of the state not subject to Chapter 11 (commencing with Section 19770) of Part 2 of Division 5 of Title 2 of the Government Code, 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 shall fail to return to and reenter upon their office or position within 12 months after the first date upon which they could terminate or could cause to have terminated ~~his or her~~ their active service with the armed forces of the United States or of the militia of this state. They 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 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

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office or employment which they would have enjoyed if they had not been absent therefrom; provided, however, the officer or employee shall not be entitled to sick leave, vacation, or salary for the period during which they were on leave from that 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 their absence, they shall be reinstated in a position of like seniority, status and pay if the position exists, or to a comparable vacant position for which they are qualified.

(c) Any officer or employee other than a probationer who is restored to their office or employment pursuant to this act shall not be discharged from that office or position without cause within one year after the 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 those officers or employees on furlough or leave of absence in effect at the time the officer or employee left their 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 this code if they voluntarily elects to complete the period of that duty.

(e) 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 those 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.

395.2. 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. In the event that any public officer or employee has resigned or resigns their office or employment to serve or to continue to serve in the Armed Forces of the

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United States or in the militia of this state, they shall have a right to return to and reenter the office or employment prior to the time at which their term of office or their employment would have ended if they 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 their active service with the Armed Forces. The right to return and reenter upon the office or position shall not extend to or be granted to any public officer or employee, who shall fail to return to and reenter upon their office or position within 12 months after the first date upon which they could terminate or could cause to have terminated their active service with the Armed Forces of the United States or of the militia of this state.

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

- (a) Members of the Senate and of the Assembly.
- (b) Justices of the Supreme Court and the courts of appeal, judges of the superior courts, and all other judicial officers.
- (c) All other state officers and employees not within Chapter 11 (commencing with Section 19770) of Part 2 of Division 5 of Title 2 of the Government Code, including all officers for whose selection and term of office provision is made in the California 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 the civil service status as the officer or employee would have if they had not so resigned. Another person shall not acquire civil service status in the same position so as to deprive such officer or employee of their 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.

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 those provisions of a memorandum of understanding require the expenditure of

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funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

Education Code Sections

88080. (a) The Commission shall prescribe and, amend, and interpret subject to this article, such rules as may be necessary to insure the efficiency of the service and the selection and retention of employees upon a basis of merit and fitness. The rules shall not apply to bargaining unit members if the subject matter is within the scope of representation, as defined in Section 3543.2 of the Government Code, and is included in a negotiated agreement between the governing board and that unit. The rules shall be binding upon the governing board, but shall not restrict the authority of the governing board provided pursuant to other sections of this code.

(b) No rule or amendment which would affect classified employees who are represented by a certified or recognized exclusive bargaining representative shall be adopted by the commission until the exclusive bargaining representative and the community college employer of the classified employees who would be affected have been given reasonable notice of the proposal.

88081. (a) The rules shall provide for the procedures to be followed by the governing board as they pertain to the classified service regarding applications, examinations, eligibility, appointments, promotions, demotions, transfers, dismissals, resignations, lay-offs, reemployment, vacations, leaves of absence, compensation within classification, job analyses and specifications, performance evaluations, public advertisements of examinations, rejection of unfit applicants without competition, and any other matters necessary to carry out the provisions and purposes of this article.

(b) With respect to those matters set forth in subdivision (a) which are a subject of negotiation under the provisions of Section 3543.2 of the Government Code, such rules as apply to each bargaining unit shall be in accordance with the negotiated agreement, if any, between the exclusive representative for that unit and the public school employer.

87018. (a) In addition to the benefits provided pursuant to Sections 395.01 and 395.02 of the Military and Veterans Code, any employee of a community college district who, as a member of the California National Guard or a United States Military Reserve organization, is called into active military duty, may receive, on approval of the governing board of the school district, the benefits provided for in subdivision (b). (b) Any employee to which subdivision (a) applies, while on active duty, may receive from the community college employer, for a period not to exceed 180 calendar days, as part of his or her compensation, all of the following:

(1) The difference between the amount of his or her military pay and allowances and the amount the employee would have received as an employee, including any

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merit raises that would otherwise have been granted during the time the individual was on active military duty. (2) All benefits that he or she would have received had he or she not been called to active military duty unless the benefits are prohibited or limited by vendor contracts.

A. Definitions

An appropriate military leave shall be granted to any classified employee in accordance with the applicable provisions of the Military and Veterans Code, Education Code, the federal Uniformed Services Employment and Reemployment Rights Act (USERRA), 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, inactive duty training, encampment, naval cruises, special exercises or like activity provided that the period of ordered duty does not exceed 180 calendar days, including time involved in going to and returning from that 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 for a period greater than 180 calendar days, but not to exceed five years, 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. Request for Military Leave

An employee, or an appropriate officer of the uniformed service in which their service is to be performed, must notify the employee's supervisor that the employee intends to take a military leave at least 30 days prior to departure for military duty, or as soon as practicable when such advance notice is not feasible. An employee is excused from providing advance notice of taking military leave if prevented by military necessity or other circumstances.

C. Payment of Military Leave

1. Upon presentation of adequate evidence of military service for which pay is requested, an employee shall be paid their salary or compensation as employee of the Los Angeles Community College

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District for the first 30 calendar days of their military service while on a military leave exclusive of time not covered by their assignment basis code, providing the following conditions are met:

- a. The employee is on military leave as described in A.1; the employee is on military leave other than temporary as described in A.2; or the employee is on military leave as a member of the National Guard and is ordered into military or naval duty 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 in Section 146 of the Military and Veterans Code.
 - b. An employee on temporary military leave or on military leave other than temporary must have been in the service of the District for a period of not less than one year immediately prior to the date the absence begins. An employee on temporary military leave may count all previous recognized military service in order to accumulate the required one year in the service of the District. The one year in the service of the District is not required in the case of an employee who is ordered into military or naval duty as a member of the National Guard under the situations described in Section 395.05 of the Military and Veterans Code.
 - c. A regular employee serving in a limited-term assignment in another class shall receive a military leave from their regular position and shall receive compensation in accordance with their current assignment during the time they are entitled to compensation under the Military and Veterans Code.
 - d. An employee with limited-term status only, who meets other provisions of this rule, shall be compensated only in accordance with their assignment at the time of entry into military service and the compensation shall be for the same number of hours for which compensation was received during the 30 calendar days immediately prior to the beginning of the military leave, exclusive of time not covered by their assignment basis code.
 - e. No more than the pay for a period of 30 calendar days shall be allowed under the provisions of Paragraph C.1 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 District employee. Retroactive salary payments shall be made to employees or former employees who are entitled to those payments.
2. Upon presentation of adequate evidence of military service for which pay is requested, and by the Board of Trustees approval, an employee that is a member of the California National Guard or a United States Military Reserve organization and on leave for active military duty shall receive the difference between the amount of their military pay and allowances and the amount the employee would have received as a District employee, for a period not to exceed 180 calendar days.

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D. Use and Accrual of Benefits

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.
2. Illness leave shall accrue to an employee during temporary military leave, but no illness leave shall be allowed during military leave.
3. Vacation and illness leave shall accrue for an employee on temporary military leave only, provided that they have been in the service of the District for a period of not less than one year immediately prior to the date the absence begins. An employee on temporary military leave may count all 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 of District service is also required for an employee on temporary military leave to have the right to holiday privileges while on leave.
4. An employee on military leave for a period of 30 days or less shall have continuing health plan coverage paid for by the District. An employee on military leave for a period of 31 days or more shall have the option to continue health plan coverage at a rate no more than 102% of the full premium under the plan, for up to 24 months from the start of leave.

E. Examination Eligibility During Leave

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 their name is reached. In the event the employee accepts the appointment, they shall be granted the same type of military leave from the new position.

F. Return to Service Following Leave

1. Upon completion of military service, the employee must notify the District of their intent to return to employment. The employee is required to report to work or submit a timely application for reemployment depending upon the length of service, as follows:
 - a. For a leave of 30 days or fewer, the employee shall report for duty no later than the beginning of the first full work day following the completion of military service, provided the employee has a period of eight hours of rest following transportation to their residence.
 - b. For a leave of 31 to 180 days, the employee shall submit a written or verbal application for reemployment not later than 14 days after the completion of military service.

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- c. For a leave of more than 180 days, the employee shall submit a written or verbal application for reemployment within 90 days after the completion of military service.
2. An employee absent from the service of the District because of a military leave shall continue to accrue seniority credit during such absence.
3. Upon return from military leave, the employee shall be treated as not having a break in service with the District for purposes of participation, vesting, and accrual of benefits in the pension plan.
4. An employee returning from temporary military leave shall be returned to their former position that was held prior to taking leave. If the position no longer exists, they shall be placed in a position in their former job classification. If no vacancy exists in the former class, they shall have the right to exercise bumping rights provided they do not have the least seniority in that class. If an employee's former class has ceased to exist, the employee may be reassigned or shall be placed on the reemployment list for any classes in which they had attained regular status.
5. An employee returning from military leave other than temporary shall, within six months after the cessation of war, national emergency, or completion of active military duty service, be returned to a position in their former classification and, if vacant, to their former position in the class, provided that they were separated from the military under conditions other than dishonorable. The right to return to their position is granted provided that they return within 12 months after the first date upon which they could terminate or could cause to have terminated their active service. If no vacancy exists in the former class, they shall have the right to exercise bumping rights provided they do not have the least seniority in that class. If an employee's former class has ceased to exist, they shall be returned to a vacant position in a comparable class for which they are 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 their application.
6. An employee returning from a military leave, in accordance with Paragraph F. above, shall be eligible to take a special administration of an examination for any class for which an eligible list exists, if the employee was unable to take the examination because of their military service, provided that the veteran met the requirements for the examination at the date it was originally conducted. The special administration of the examinations shall be prepared and conducted under similar conditions and techniques to the respective original examinations to preserve their competitive character. The name of a candidate who is successful in the special administration of the examination shall be added to the list according to examination score, with seniority credit, if applicable, for the class for which they were examined.