

Hot Topics for Tennessee cities and towns

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#41

National Guard's Weekend Drills are Considered Training

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Last summer, the Tennessee Attorney General's Office issued an opinion that affects every city in Tennessee with employees and officers (subsequently called "employees") who are members of the Tennessee National Guard or any other reserve unit of the United States armed forces. The Attorney General issued Opinion No. 98-155, which addresses whether National Guard weekend drills are considered training under the law and subject to the military leave provisions of the *Tennessee Code Annotated (T.C.A.)*.

T.C.A. 8-33-109 provides employees a "leave of absence from their respective duties without loss of time, pay, regular leave or vacation, impairment of efficiency rating, or any other rights or benefits ... entitled for all periods of military service during which they are engaged in the performance of duty or training in the service of this state or of the United States ..." The statute further states that while on such leave, the employee shall be paid his or her salary for a period or periods not to exceed 15 working days in any one calendar year. Additionally, the act provides for leave for any additional days resulting from a call to active duty. This military leave is unaffected by date of employment or length of service and has no effect on other leave provided by the city.

According to the Attorney General's opinion, "Weekend training appears to be within the statutory terms of the *T.C.A.*" The term "training" ordinarily would encompass the term "drill." Drill is defined by Webster's dictionary as "the act of training soldiers in the military art ... a kind or method of military exercises." The A.G. cited an Alabama case, *Britton vs. Jackson*, 414 So.2d 966 (Ala. App. 1981) in which the court held that "weekend drill" was within the definition of "other training" for purposes of that state's military leave statute. Therefore, the Tennessee statute covers both military duty as well as military training and appears to apply to weekend drills that are conducted in accordance with military orders.

This modifies an opinion issued by Lt. Colonel Leslie W. Barham, the staff judge advocate of the Tennessee Army National Guard, on April 10, 1985. MTAS used the '85 opinion to develop its model personnel rules and regulations. Barham's opinion stated that the 15 days of military leave is to be used when the employee is in a federal status, such as annual training (summer camp), and not during weekend training. At the time of Barham's correspondence, however, the Attorney General's Office had not issued the opinion in question.

What does this mean for cities?

Cities must allow 15 days of military leave for summer camp and weekend drills for employees who are members of the Tennessee Army National Guard. Many cities will have to modify their personnel policies to reflect the change. If a city denied an employee leave under the act, the city is obligated to reimburse the employee for the denied leave. It is the opinion of MTAS' legal staff that the applicable statute of limitations is six years for an employee to file a claim for back pay under these circumstances.

If your city's personnel policy is not in compliant with the Attorney General's Opinion, you may want to amend your personnel policy with one of the following options:

Option 1

MILITARY LEAVE/VETERANS' RE-EMPLOYMENT – All employees who are members of reserve components of the armed forces, including the National Guard, are entitled to leave while engaged in "duty or training in the service of this state, or of the United States, under competent orders." They must be given such leave with pay not exceeding 15 working days in any one calendar year (*T.C.A.* 8-33-109). Firefighters, who work 24-hours on/48-hours off work schedules and are members of the U.S. Army Reserve, Navy Reserve, Air Force Reserve, or Marine Reserve, will be allowed seven and a half shift days for reserve training. In addition, any city employee who leaves his/her job, voluntarily or involuntarily, to enter active duty in the armed forces may return to the job in accordance with Veterans' Re-employment Rights (38 U.S.C. 202-2016) and the Tennessee Military Leave Act (*T.C.A.* 8-33-101 et seq.).

Option 2

MILITARY LEAVE/VETERANS' RE-EMPLOYMENT – Any regular employee who has completed six months of satisfactory employment and who enters the U.S. armed forces will be placed on military leave. The city manager, mayor, or department head will approve military leave without pay when the employee presents his/her official orders. The employee must apply for reinstatement within 90 days after release from active military duty.

The employee will be reinstated to a position in the current classification plan at least equivalent to his/her former job. His/her salary for the assigned position will be the salary provided under the position classification and compensation plan prevailing at the time of reinstatement or re-employment. If no job is available at the time of the employee returns, he/she will be reinstated into the first available position. No current full-time employee will be terminated or laid off to allow for the reinstatement.

Any regular full-time employee who is a member of the U.S. Army Reserve, Navy Reserve, Air Force Reserve, Marine Reserve, or any of the armed forces will be granted military leave for any field training or active duty required (excluding extended active duty). Such leave will be granted upon presentation of the employee's official order to his/her jurisdictional official. Compensation for such leave will be paid pursuant to *T.C.A.* 8-33-109.

It will be the employee's responsibility to arrange with the department supervisor to attend monthly meetings on regular off-time, with pay applicable to the annual two-week training period. Employees entering an extended active duty will be given 15 days of pay when placed on military leave.

Firefighters, who work 24-hours on/48-hours off work schedules and are members of the U.S. Army Reserve, Navy Reserve, Air Force Reserve, or Marine Reserve, will be allowed seven and a half shift days for reserve training.

If you have questions about the Attorney General's Opinion, contact Richard Stokes, Municipal Human Resources Consultant, at (615) 532-6827 or the management consultant at the MTAS office closest to your city: Knoxville (423) 974-0411, Johnson City (423) 854-9882, Jackson (901) 423-3710, or Martin (901) 587-7055.



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