



Technical Bulletin

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VETERAN'S REEMPLOYMENT RIGHTS

by Leslie Shechter

Under the Federal Veterans Reemployment Rights law (VRR), a person leaving a civilian job, voluntarily or involuntarily, to enter active duty in the Armed Forces, has a right to return to that job after discharge, if that person meets the following criteria:

1. The job must not have been "temporary";
2. The veteran must be leaving the job for "active duty" (there are some differences with respect to inactive duty, initial active duty training, and active duty training);
3. The veteran may not remain on active duty longer than four years; except the veteran may remain on active duty up to an additional year if it is "at the request and for the convenience of the federal government";
4. The veteran must receive an honorable discharge (DD214 release);
5. The returning veteran must apply for reemployment within 90 days of discharge.

Tennessee military reemployment rights are much broader than the rights under the Federal Act in two main respects:

1. For reservists, the statute provides for mandatory paid leave for 15 days, excluding holidays and scheduled off days for each year the employee serves. (*Tennessee Code Annotated (TCA)*, Section 8-33-109. Tenn. Admin. Comp. Reg. Section 1120-6-17(1)).
2. There is no four year (or five year, where the continued duty is at the request or convenience of the federal government) time limitation on the leave of absence that a public employer must grant to a person leaving for active military duty. Under state law, a reservist or conscriptee can return at any time and request their job back, including seniority, retirement, and longevity pay that would have ordinarily accrued had the employee not left for active duty. (Tenn. Admin. Comp. Reg. Section 1120-6-17(2)).
3. TCA, Section 8-33-109 governs the reemployment rights of reservists and provides:

All officers and employees of ... any ... municipality ... who are, or may become members of any reserve component of the armed forces ... shall be entitled to 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 to which otherwise entitled, for all periods of military service during which they are engaged in the performance of duty ... under competent orders; provided, that an officer or employee while on such leave shall be paid his salary or compensation for a period, or periods, not exceeding fifteen (15) working days in any one (1) calendar year The military leave herein provided shall be unaffected by date of employment or length of service and shall have no effect on other leaves provided by law, regulation, policy or practice.

The following questions may arise concerning city employees leaving for active duty:

1. **As an employer, do I have to pay my reservist while on active duty?**

Tennessee law requires 15 days of paid leave annually for each year the reservist is serving, not including holidays or scheduled off days.

2. **Do I have to give the returning reservist the same job? What if the employee returns disabled?**

Federal law requires you to offer the individual a job with the same pay, rank, and seniority that they could have expected if their work had not been interrupted by emergency military duty. The statute provides:

Any public employee who leaves a position ... whether voluntarily or involuntarily, in order to perform military duty ... shall:

- (1) If still physically qualified to perform the duties of such position, be restored to such position if it exists and is not held by a person with greater seniority, otherwise to a position of like seniority, status and pay;
- (2) If not qualified to perform the duties of such position by reason of disability sustained during such service, such public employee shall be placed in such other position, the duties of which he is qualified to perform as will provide him like seniority, status and pay, or the nearest approximation thereof consistent with the circumstances of his case.

(Note: With the enactment of the Americans with Disabilities Act, the employer may have greater responsibility to make reasonable accommodations for a disabled veteran.)

3. **If an employee was promised a raise or promotion, is the employee entitled to that new job upon their return?**

The returning employee should be offered a job in conformity with the promised promotion or raise.

4. **Does it make any difference if the employee volunteers for active duty?**

The only difference between the employee that volunteers and a reservist called up for active duty is that the reservist is entitled to up to 15 days of annual pay. Otherwise, the returning volunteer is entitled to the same reemployment rights.

5. **How long must the job be held open?**

While the federal law limits reemployment rights to four, or in some case five years, there is no similar time limit in the state statute. In fact, the statute provides that "military leave herein provided shall be unaffected by ... length of service ..." (TCA, Section 8-33-109).

While the employee is on active duty, the job should be considered "encumbered." That is, the city may replace the reservist, subject to the reservist's reemployments rights.

6. **Do I still have to insure a reservist serving active duty?**

No. If a reservist is covered under your health insurance plan and is called to active duty, you do not have to keep the individual on your plan or continue to pay premiums while the reservist is serving their duty. You do, however, have to provide coverage upon the reservist's return.

You are also required to provide the reservist and family with the opportunity to continue coverage at their expense under COBRA. If either the reservist or their family members chooses COBRA coverage, coverage must be provided at a rate of up to 102% of the premium.

7. **Do I still have to contribute to a retirement plan while a reservist is serving active duty?**

No. Making the contribution to a plan while the employee is serving active duty is not required under the law. The employer, however, may be obligated to pay premiums at some point in the future.

Both state and federal laws state that the individual shall be "re-employed without loss of seniority ... and shall be entitled to participate in insurance and other benefits." For retirement purposes, this requires that the individual is allowed their "status" and "credible service" in the retirement system upon return to employment.

The state retirement law allows for the establishment of "credible service" for military leave. Any payments would be assessed the employer upon the individual's return and request for credit. (TCA, Section 8-34-605(a) and (b)).

Similarly, employers are not required to continue life insurance payments for a reservist serving active duty. The reservist is provided \$50,000 in coverage from the U. S. government. Coverage must be provided upon the reservist's return at the same level as would have been provided had the leave not occurred. Note, however, that "if an employer provides a certain benefit to other employees on leave, it must be provided to the reservist as well."

Thus, while continuing the contributions may not be required, employers may still be responsible for the contributions when the employee returns. Waiting until the assessment of the premium is the most frugal approach, as the employee may not return to your employment, for whatever reason. (Note: Under the Post Mobilization Protection procedures of the Department of the Army, a reservist, upon application to the Veterans Administration, may be granted a guarantee of premium payments for up to \$10,000 of life insurance owned by the reservist prior to entry on active duty. In effect, the reservist obtains a moratorium on payment of premiums during the period of active duty.

8. Does the reservist get different benefits if called up by the government?

The reservist, called to duty by the Governor, "... in case of invasion, disaster, insurrection, riot, attack, or combination to oppose the enforcement of the law by force and violence, or imminent danger thereof, or other grave emergency..." is entitled to at least \$50.00 per day. (TCA, Sections 58-1-106 through 58-1-109).

9. If the crisis ends but the reservist decides to stay in the military, do I have to keep the position open?

Under federal law the job should be considered encumbered for as long as five years. Under Tennessee law the position should always be considered encumbered.

10. How much notice must the employee called up for active duty give?

None. They may leave without any notice and must be granted a leave of absence.

11. Does the 90 day period within which the returning employee must request reemployment also allow the employer to wait 90 days to rehire?

No. The employer is required to rehire the employee upon request.

12. What if the reservist gets into some legal trouble in the military?

If the reservist receives an honorable discharge (DD214) and applies for a job within the 90 day period, the reservist is entitled to their job.

13. What if I sell my business?

The new owner inherits the company's previous obligations to reservists.

14. What if I go bankrupt or change businesses to an area the reservist knows nothing about?

If an employer has a payroll, the obligations under the statute continue.

FOR FURTHER INFORMATION

The federal law is enforced by the Veteran's Employment and Training Service of the U. S. Department of Labor. For further information, contact Mr. George Robb, Veteran's Program Specialist, Tennessee State Office of the Federal Department of Labor at 615/736-5037. The District Attorney enforces the state reemployment rights.

You can also contact Leslie Shechter, Legal Consultant, in Nashville at 615/256-8141 or your local MTAS Municipal Management Consultant in Knoxville at 615/974-0411; Nashville at 615/256-8141; or Jackson at 901/423-3710.

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