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Technical Bulletins: Tennessee Reservists' Leave of Absence (2011)

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June 15, 2011
TENNESSEE RESERVISTS' LEAVE OF ABSENCE
Bonnie Jones, Human Resource Consultant

Effective July 1, 2007, Public Chapter No. 360 (H.B. 2243/S.B. 2187) amended T.C.A. § 8-33-109 by increasing from 15 to 20 the number of paid days for public employee military reservists. During this 20-day period, the employee continues to earn regular pay, service credit, and applicable annual and sick leave accruals. All other rights and benefits to which the employee is otherwise entitled continue.

This Tennessee Military Leave Law is an additional benefit of the job protection granted to all employees engaged in military service. Under federal and state laws, all employees who are members of any reserve component of the armed forces of the United States or of the Tennessee National Guard are entitled to a leave of absence from their duties for all periods of military service during which they are engaged in the performance of duty or training. The duty or training must be in the service of the state or the United States under competent orders as stipulated in 38 U.S.C. §§ 4311-4318, T.C.A. §§ 8-33-101–8-33-109, and T.C.A. § 58-1-106.

An employee or applicant for employment, who performs, applies to perform, or has an obligation to serve in a uniformed service shall not, on that basis, be denied employment or re-employment or be discriminated or retaliated against for such service or application for service in any manner.

“Military Duty” means:

- Training and service performed by an inductee, enlistee, or reservist or any entrant into a temporary component of the armed forces of the United States;
- Time spent reporting for and returning from such training and service, or if a rejection occurs, from the place of reporting for such training and service; and
- Active duty training as a reservist in the armed forces of the United States or as a member of the National Guard when the call is for training only.

The 2007 state amendment provides that during such leave, the employee shall be paid for 20 working days each calendar year. The military leave cannot be affected by date of employment or length of service and shall have no effect on other leave time to which the employee may be entitled under your city’s policies or other laws. After the 20 working days of full compensation have been exhausted, public employers may provide additional compensation to their employees who continue to serve under competent orders.

FREQUENTLY ASKED QUESTIONS

Q: Does this apply to part-time employees?

A: Yes, the law applies to all public employees equally without regard to number of hours worked. However,

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the employer would only pay the employee for the actual hours the employee would have normally worked had he/she not been deployed. The Tennessee Attorney General stated in Opinion No. 00-093 that the act applies to part time employees, since that class of employees is not excluded in the statutory language.

Q: We have public safety employees who work different shifts (i.e., 24/48) and generally work more total hours per year than standard 8-5 positions. How much time do we provide to them under this law?

A: The Tennessee Legislature did not address work schedules in the language and makes no distinctions between different classes or work schedules of employees. It is our opinion that the current Tennessee law provides a benefit of eight-hour days with a maximum of 20 days/160 hours of military leave under this statute. Any additional paid leave would be at the discretion of the employer and applicable policies, but would not qualify under this statute.

In addition, we can look to a relevant court case for some guidance. In the state of Indiana case *Koppin v. Strobe*, 731 N.E.2d 455 (Ind. App. 2002), the court of appeals determined that a law in Indiana must be interpreted as 15 days of eight-hour shifts. The court reasoned that the legislature did not make a distinction between different classes of employees.

Q: Does this apply to members of the Tennessee Army and Air National Guard?

A: Yes. Refer to Attorney General Opinion No. 01-169, which indicates that the act applies to

members of the Tennessee Army and Air National Guard, regardless of whether they are mentioned in the statutory language.

Q: Are there any Tennessee cities that are exempt from having to provide this benefit?

A: No. All Tennessee cities and towns must comply with this law.

Q: If an employee who has not completed the city's probationary period is deployed, is he entitled to the 20 days of leave? I ask this because in section 101 under definitions it indicates that the definition of an employee is one who completed their probationary period. However, the language of the act says:

"All officers and employees of this state, or any department or agency thereof, or of any county, municipality, school district, or other political subdivision, and all other public employees of this state who are, or may become, members of any reserve component of the armed forces of the United States, including members of the Tennessee army and air national guard, 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 or training in the service of this state, or of the United States, under competent orders; provided, that an officer or employee while on such leave shall be paid salary or compensation for a period, or periods, not exceeding twenty (20) working days in any one (1) calendar year, plus such additional days as may result from any call to active state duty pursuant to § 58-1-106. 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. After the twenty (20) working days of full compensation, any public employer may provide partial compensation to its employees while under competent orders."

A: Any officer or employee is entitled to military leave pursuant to T.C.A. § 8-33-109. The statute explicitly says that the leave is "unaffected by date of employment or length of service" of the employee. Hence, despite any definition this specific language ensures that all employees and officers are granted this leave.

Furthermore, the definition is for "public employee" and the language of Section 109 uses only "employee."

You can read the full text of the amendment at <http://tennessee.gov/sos/acts/105/pub/pc0360.pdf>.

For additional information on the Uniformed Services Employment and Re-employment Rights Act (USERRA) you may refer to the 2010 MTAS Hot Topic "Uniformed Services Employment and Reemployment Rights Act" at www.mtas.tennessee.edu, or contact your MTAS human resource consultant.

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