

MILITARY LEAVE

Employees of the District shall be entitled to a leave of absence from their employment at the District to serve in the United States military. Military duty includes time spent reporting for and returning from military duty. Military duty shall be deemed to commence when the District employee leaves his or her employment at the District and shall be deemed to end when he or she is reinstated to his or her employment at the District. The termination date of military duty is the date when a District employee receives a certificate of honorable discharge; a certificate of completion of training and service; or temporary disability arising out of and in the course of military duty.

Military duty includes:

1. military service in the Army, Naval, Aviation, or Marine service of the United States;
2. service under the Selective Training and Service Act of 1940, or the National Guard and Reserve Officers Mobilization Act of 1940;
3. service with the United States Public Health Service as a commissioned officer;
4. service with the American Red Cross while with the armed forces of the United States on foreign service;
5. service with the Special Services Section of the armed forces of the United States on foreign service;
6. service in the Merchant Marines;
7. service by one employed by the War Shipping Administration or Office of Defense Transportation as a merchant seaman;
8. service as a civil servant in the United States Army Transport Service, also known as the United States Army Transportation Corps, Water Division, or the Naval Transportation Service;
9. service in police duty on behalf of the United States government in a foreign country, however, if a District employee is a police officer, as defined by New York State criminal procedure, the police officer must obtain prior consent of the District before taking a leave of absence from employment; or
10. enrollee in the United States maritime service on active duty, but not to include temporary and intermittent gratuitous service in any reserve or auxiliary force.

Military duty does not include participation in routine reserve officer training corps unless the employee is a member of a reserve component of the armed forces performing advanced training duty.

Military leave shall not constitute an interruption of continuous employment. No District employee shall be subject to any loss of time, loss of vacation privileges, loss of holiday privileges, or any other right or privilege, nor shall any District employee be prejudiced by reason of his or her military absence with respect to continuity in employment, reappointment, re-employment, reinstatement, transfer, or promotion.

Any employee who is a voluntary member of any force of the organized militia or of any reserve force or reserve component of the armed forces of the United States shall be entitled to a leave of

absence from his or her employment duties while attending any service school conducted by the armed forces of the United States and while going to and returning from that school.

An employee who becomes a member of any force of the organized militia or of any reserve force or reserve component of the Armed Forces of the United States shall be entitled to a leave of absence from his or her employment duties while performing initial full-time training duty or initial active duty for training with the Armed Forces of the United States and while going to and returning from the full-time training duty or active duty for training.

Re-Employment Rights

A District employee who takes a leave of absence for military duty shall be reinstated to his or her position as soon as possible after the termination of his or her military duty, provided he or she makes an application for the reinstatement within 90 days after the termination of his or her military duty or at any time during his or her leave. Thereafter, he or she may be reinstated at the discretion of the District any time after the 90-day period and within one year after termination of the employee's military duty.

At the discretion of the District, an employee who resigns from his or her position during military duty or within six (6) months prior to the commencement of military duty may be reinstated to his or her position within one (1) year after the date of resignation, excluding the period of time on military duty.

An employee restored to his or her position after termination of his or her military duty shall be entitled to the rate of compensation he or she would have received had he or she remained in his or her position continuously during the period of military duty. In addition, the employee shall be deemed to have rendered satisfactory and efficient service in the employment position during the period of his or her leave of absence.

A District employee who sustains injuries or contracts disease while on military duty and who is incapable of efficiently performing the duties of his or her position after the termination of his or her military duty may be transferred to any vacant position in the same classification, provided that the rate of compensation for the vacant position is not greater than the rate of compensation for the position to which the employee was restored.

This provision shall not be applicable to an employee holding a temporary position with the District. That employee will, if practicable, be restored to a position similarly held at the time the employee entered military duty.

In computing seniority and service requirements for promotion eligibility, the period of military duty shall be counted as service in the position held by the employee.

The District is not required to re-employ an employee if:

1. the District's circumstances have changed as to make re-employment impossible or unreasonable;
2. the re-employment would pose an undue hardship on the District; or

3. The employment position held by the employee on leave is for a brief, non-recurrent period and there is not a reasonable expectation that the employment will continue indefinitely or for a significant period.

However, if there is an issue of whether or not the District is required to re-employ the employee for one of the above-mentioned reasons, the District has the burden of proving the impossibility or unreasonableness, undue hardship, or the brief or non-recurrent nature of the employment without a reasonable expectation of continuing indefinitely or for a significant period.

Substitute Employees

The position held by a District employee on leave for military duty shall, if practicable, continue to exist and shall be deemed temporarily vacant and be filled only when the public interest requires.

Any appointment to fill a temporary vacancy due to military leave will be designated as a substitute appointment only. The substitute appointment may be terminated any time at the discretion of the District. The substitute appointment shall be for a period not to exceed the leave of absence of the District employee on military duty; however, a substitute appointment may be continued for a period in excess of one (1) year.

The substitute employee is temporary and shall not acquire a right to permanent appointment or tenure by virtue of his or her service as a substitute. However, the substitute's rights with respect to permanent appointment or tenure shall not be impaired by his or her acceptance of the substitute appointment.

The substitute position terminates:

1. upon the return of the employee to his or her position with the District;
2. upon the death or permanent total disability of the employee on leave;
3. upon failure of the employee on leave to return to his or her position within 90 days after termination of his or her military duty; or
4. upon the appointment or promotion of the employee on leave to another position.

Pension Benefits

Any District employee on military leave who is a member of any pension or retirement system may contribute to the pension or retirement system during the period of military leave. The amount of contribution is that which he or she would have contributed had his or her employment been continuous. The employee will maintain the same rights with respect to membership in the retirement system as if he or she was engaged in the duties of his or her employment at the District.

The time during which an employee is absent on military duty shall not constitute an interruption of continuous employment. However, the absence will not be counted or included in determining the length of total service unless the member contributes the amount he or she would have been required to contribute if he or she had been continuously employed during the period of absence.

The contribution may be paid at any time while on military duty; within five (5) years after the date of restoration to his or her employment position; or in the event of the death while on military duty, the contribution may be paid by the named beneficiary or the legal representative within one year following proof of death.

Members of the New York State Teachers' Retirement System whose military service terminates on the expiration of his or her contract and for whom there is no employer to cover the cost of his or her accruing pension rights may pay, in addition to his or her own contributions, an amount equal to the percentage of his or her salary which his or her employer would have paid had he or she remained under contract. The contributions will be paid into the pension accumulation fund of the New York State Teachers' Retirement System and be treated as if they had been paid by his or her employer. The contributions may be paid at any time while on military duty or within five (5) years after the employee has returned to public school teaching in New York State.

While on military duty, the employee, or his or her beneficiary, is entitled to all benefits of the retirement system in which he or she is a member, except for accidental disability retirement and accidental death benefit.

Health Benefits

Where a District employee or his or her dependents has coverage under the District's health insurance plan and he or she is on leave, the health plan shall provide that the employee may elect to continue his or her coverage. The maximum period of coverage under the District's health plan shall be the lesser of:

1. the 24-month period beginning on the date in which the leave of absence begins; or
2. the day after the date on which the employee fails to return to his or her employment with the District. [38 U.S.C. §4317(a)(1)]

Any employee who elects to continue the District's health plan coverage may be required to pay not more than 102% of the full premium under the plan associated with such coverage for the District's other employees, except that an employee performing military service for less than 31 days is required to pay only the fair share for that coverage.

Probationary Service

If a teacher enters military duty before the expiration of a probationary period, the time of absence on military duty shall be credited as satisfactory service during the probationary period (for seniority purposes). If the end of the probationary service occurs while the teacher is on military duty or within one year following the termination from military duty, the period of the probationary service may be extended by the Board of Education for a period not to exceed one year from the date of termination from military duty, but in no event for a period of probationary service in the actual performance of teaching services beyond that required by the District at the time of his or her entry into military service. An untenured teacher on military leave will have his or her tenure date extended to reflect the required three years of classroom teaching to achieve tenure.

A District employee appointed for a definite term shall be deemed to have a leave of absence until the end of his or her term of office and until his or her successor has been appointed, but not thereafter.

A certificate from the War Manpower Commission, the United States employment service, or other proper authorities in the armed forces of the United States that an employee is or has been engaged in work essential to the prosecution of the war shall be required.

Paid Military Leave

District employees shall be paid for any and all periods of absence, while engaged in ordered military duty, and while going to and returning from duty, not to exceed a total of thirty (30) days or twenty-two (22) working days, whichever is greater, in any one calendar year, and not exceeding thirty (30) days or twenty-two (22) working days, whichever is greater, in any one continuous period of the absence.

Reference: Military Law §§242 & 243
State Comptroller Opinion 90-56
State Comptroller Opinion 91-40
38 U.S.C. §§4311, 4312, 4317

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