



# PROGRAM GUIDELINES

<b>SUBJECT:</b> <i>Active Duty Military Leave of Absence ("Military Leave")</i>	
<b>STATUTORY/RULE REFERENCE:</b> <i>Section 115.08, Definitions, Florida Statutes</i> <i>Section 115.09, Leave to public officials for military service, Florida Statutes</i> <i>Section 115.14, Leave of absence for military service: Employees Florida Statutes</i> <i>Section 250.48, Leaves of Absence, Florida Statutes</i> <i>Rule 60L-33.003, Appointments and Status: General Principles,</i> <i>Rule 60L-34.0041, Attendance and Leave: Annual Leave, and</i> <i>Rule 60L-34.0062, Attendance and Leave: Military Leave, Florida Administrative Code</i>	<b>EFFECTIVE DATE:</b> <i>May 4, 2007</i>
<b>FORMS</b>	<b>ADDITIONAL REFERENCE MATERIAL:</b>  <b><i>USERRA Employment Law Guide</i></b> U.S. Department of Labor, Sept. 2005 <a href="http://www.dol.gov/compliance/guide/userra.htm">http://www.dol.gov/compliance/guide/userra.htm</a>  <b><i>Governor Bush's Resolution Dated September 25, 2001;</i></b> <b><i>Governor Bush's Proclamation Dated September 12, 2003</i></b>

## I. SCOPE AND PURPOSE

From time to time, the Executive Office of the Governor and the Cabinet may issue proclamations or directives which complement the statutes and rules covering military leave. These guidelines clarify military leave procedures for agencies that have employees who are called to active military duty, pursuant to these various provisions.

## II. DEFINITIONS

For the purposes of this document, the terms below are defined as follows:

**Military Pay Supplement** – A payment authorized by s. 115.14, F.S., that makes up any difference between military compensation (that is, military base salary, not including allowances for quarters, rations, variable housing allowances, or other special pay) and civilian salary (that is, State salary

## **Program Guidelines**

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based on regular rate of pay). **Note:** For brevity, this document also uses the term "supplement" to mean the military pay supplement.

**National Guard Member**– A State official or employee who is a member of the organized militia of the State (either Air National Guard and Army National Guard) and who, when called into federal active military service, is entitled to full State salary for the first 30 days pursuant to ss. 115.09 and 115.14, F.S., respectively and, pursuant to the prevailing September 12, 2003, Governor's Proclamation, is entitled to a military pay supplement, if needed.

**Non-Reservists** - An official or employee who is neither a member of the National Guard or the military reserves and who, when serving in the volunteer forces of the United States is entitled to full State salary for the first 30 days pursuant to ss. 115.09 and 115.14, F.S., respectively.

**Positive Pay** – The method of payment whereby a timesheet must be submitted and approved (in the People First System) in order for the employee to receive any salary payment for the pay period in question. Therefore, unless a timesheet has been submitted (and approved) to charge leave credits during the pay period in question, the employee will receive no salary (other than the supplement, if eligible).

**State Regular Rate of Pay** – The pay that is composed of the employee's base rate of pay plus salary additives, with the exception of on-call.

**Reservist** – A State official or employee who is a member of a reserve component of one of the armed forces of the United States and who, when called into active military duty, is entitled to full State salary for the first 30 days pursuant to ss. 115.09 and 115.14, F.S., respectively and, pursuant to the prevailing September 12, 2003 Governor's Proclamation, is entitled to a military pay supplement, if needed. **Note:** For brevity, the term 'Reservist' is used in this document to refer to both members of the National Guard who have been called to federal active military service and members of the reserves who have been called to active military service.

### **III. APPLICABLE STATUTORY AND RULE PROVISIONS**

#### **A. Statutory Provisions**

##### **Section 115.08, Florida Statutes, Definitions**

- (1) The term "active military service" as used in this chapter shall signify active duty in the Florida defense force or federal service in training or on active duty with any branch of the Armed Forces or Reservists of the Armed Forces, the Florida National Guard, the Coast Guard of the United States, and service of all officers of the United States Public Health Service detailed by proper authority for duty with the Armed Forces, and shall include the period during which a person in military service is absent from duty on account of sickness, wounds, leave, or other lawful cause.
- (2) The term "period of active military service" as used in this chapter shall begin with the date of entering upon active military service, and shall terminate with death or a date 30 days immediately next succeeding the date of release or discharge from active military service, or upon return from active military service, whichever shall occur first.

**Section 115.09, Florida Statutes, Leave to public officials for military service.**--All officials of the State, the several counties of the State, and the municipalities or political subdivisions of the State, including district school and community college officers, which officials are also service-members in the National Guard or a reserve component of the Armed Forces of the United States, shall be

## **Program Guidelines**

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granted leave of absence from their respective offices and duties to perform active military service, the first 30 days of any such leave of absence to be with full pay.

**Section 115.14, Florida Statutes, Leave of absence for military service: Employees.**--All employees of the State, the several counties of the State, and the municipalities or political subdivisions of the State shall be granted leave of absence under the terms of this law; upon such leave of absence being granted said employee shall enjoy the same rights and privileges as are hereby granted to officials under this law, insofar as may be, including, without limitation, receiving full pay for the first 30 days. Notwithstanding the provisions of s. [115.09](#), the employing authority may supplement the military pay of its officials and employees who are reservists called to active military service after the first 30 days in an amount necessary to bring their total salary, inclusive of their base military pay, to the level earned at the time they were called to active military duty. The employing authority shall continue to provide all health insurance and other existing benefits to such officials and employees as required by the Uniformed Services Employment and Reemployment Rights Act, Chapter 43 of Title 38 United States Code (U.S.C.).

**Section 250.48, Florida Statutes, Leaves of absence.**--Any officer or employee of the State, of any county or school district of the State, or of any municipality or political subdivision of the State who is a member of the Florida National Guard is entitled to leave of absence from his or her respective duties, without loss of pay, time, or efficiency rating, on all days during which the officer or employee is engaged in active State duty for a named event, declared disaster, or operation pursuant to ss. [250.28](#) or [252.36](#), F.S. However, a leave of absence without loss of pay granted under this section may not exceed 30 days for each emergency or disaster, as established by executive order.

### **B. Rule Provisions**

#### **Rule 60L-33.002, Florida Administrative Code, Appointments and Status, General Principles.**

- (3) Employees on military leave shall be treated as if they had been continuously employed for purposes of status, pay, and other benefits.

#### **Rule 60L-33.003, Florida Administrative Code, Status Upon Appointment.**

- (2)(d)3. Time spent on military leave shall count toward completion of the employee's probationary period, and an employee on military leave can attain permanent status while on such leave.

#### **Rule 60L-34.0041, Florida Administrative Code, Annual Leave.**

- (4)(a) At the close of business on December 31 of each calendar year, a career service employee's annual leave balance in excess of 240 hours shall be transferred to sick leave on an hour-for-hour basis. In accordance with an agency-wide plan, the employee may carry-over up to 360 hours of annual leave credits past December 31. For senior management service and selected exempt service employees, at the close of business on the day before the member's anniversary date, all annual leave credits in excess of 480 hours shall be converted to sick leave on an hour-for-hour basis.

#### **Rule 60L-34.0062, Florida Administrative Code, Military Leave.**

- (1) An employee, except an employee who is a commissioned reserve officer or reserve enlisted personnel in the United States military or naval service or member of the National Guard, or who is employed in a temporary position or employed on a temporary basis, who is drafted or who volunteers for active military service shall be granted leave beginning with the date of

## **Program Guidelines**

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induction and ending up to one year after the date of separation from the military service or from hospitalization continuing after discharge. Active military service includes active duty with any branch of the United States Army, Navy, Air Force, Marines, or Coast Guard, of the National Guard of the State, or of any other service as provided in ss. 115.08 and 115.09, F.S. The leave of absence shall be verified by official orders or appropriate military certification, which shall be filed in the employee's personnel file.

- (2) An employee, who is a commissioned reserve officer or reserve enlisted personnel in the United States military or naval service or a member of the National Guard, shall be granted leave in accordance with s. 115.07, F.S.
- (3) An employee, who is a member of the Florida National Guard, shall be granted leave in accordance with s. 250.48, F.S.
- (4) An employee, except an employee employed in a temporary position or employed on a temporary basis, who is a commissioned reserve officer or reserve enlisted personnel in the United States military or naval service or member of the National Guard, who is ordered to active military duty under Title 10, U.S.C., s. 673b, shall be granted leave beginning with the day ordered to duty and ending up to thirty-one days after the date of release from the military service or from hospitalization continuing after discharge. Active military service includes active duty with any branch of the United States Army, Navy, Air Force, Marines, or Coast Guard, of the National Guard of the State, or of any other service as provided in ss. 115.08 and 115.09, F.S. The leave of absence shall be verified by official orders or appropriate military certification, which shall be filed in the employee's personnel file.

## **IV. POLICY**

Pursuant to the provisions of ss. 115.09 and 115.14, F.S., and Governor Bush's Resolution dated September 25, 2001 and Governor Bush's Proclamation dated September 12, 2003, agencies are directed to implement the provisions of s. 115.14, F.S., to supplement the pay of state employee's whose military pay is less than their State regular rate of pay. However,

- a) At no time shall the combination of employees' military pay supplement and military base pay exceed their State regular rate of pay for the pay period.
- b) At no time shall the combination of the employees' compensation from the State (i.e. military pay supplement and/or paid leave) exceed their State regular rate of pay for the pay period.

## **V. HUMAN RESOURCE RELATED ISSUES**

<b>A. ATTENDANCE AND LEAVE ADMINISTRATION</b>
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### **1. How is an employee placed on a military leave of absence?**

Upon inspecting the employee's official military orders, a Personnel Action Request (PAR) must be processed to place the employee in the appropriate pay status.

- a. **First 30 days (The following applies to Reservists and Non-Reservists called to active military duty, as well as reservists in the Florida National Guard called to State active duty)**

## **Program Guidelines**

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- Complete a PAR Action Type “MV014 - Leave of Absence with Pay”,
- Use Reason code “69 - Active Military”

**Timesheet:** Enter leave type 69 (Active Military) for the first 30 days.

**Personnel File:** The agency will dictate the method for receiving and placing orders in the personnel file.

**Impact:** The employee will continue full pay and full leave accruals for the first 30 days.

### **b. After 30 days**

#### **1) The following applies to Reservists Who Will Receive a Supplement**

- Complete a PAR Action Type “MV016 - Leave of Absence Without Pay”
- Use Reason code: “82 - Military Leave With Supplement”
- Indicate the appropriate amount of supplement in the pay section of the PAR (after verifying military base pay and calculating the amount needed to bring the employee up to the State regular rate of pay).

**Timesheet:** If the employee has chosen to use annual, regular or special compensatory leave for a portion of the pay period, the timesheet will need to be completed indicating the appropriate leave types.

The remainder of the timesheet should be completed indicating leave type code “82 – active military with pay supplement”. Timesheets may be submitted and approved in advance of the applicable pay period.

Note that the timesheet must be approved before the payroll cutoff for the employee to receive additional pay as a result of using leave during the period.

Timesheets should be submitted and approved each pay period, even if the employee has elected not to use accrued leave.

**Personnel File:** Agency will dictate the method for receiving and placing orders in the personnel file.

**Impact:** Once the PAR is completed, the employee will receive a military pay supplement. In addition, if a timesheet indicating annual, regular or special compensatory leave is approved for the pay period, then the hours indicated on the timesheet will be paid. Employees placed on this leave status will continue to earn leave credits during their leave of absence. Leave accruals and holiday pay will be handled by the system.

#### **2) The following applies to Reservists who will not receive a Supplement**

- Complete a PAR Action Type “MV016 - Leave of Absence Without Pay”
- Use Reason code “83 - Military Leave Without Pay Supplement”

**Timesheet:** The employee will only be paid for State holiday hours, unless the employee chooses to use annual, special and/or regular compensatory leave.

## **Program Guidelines**

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If the employee has chosen to use annual, regular or special compensatory leave for a portion of the pay period, a timesheet should be completed and approved indicating the number of hours to be paid.

The remainder of the timesheet should be completed indicating leave type code “83 – active military without pay supplement”. Timesheets may be submitted and approved in advance of the applicable pay period.

Note that the timesheet must be approved before the payroll cutoff for the employee to receive additional pay as a result of using leave during the period.

Timesheets should be submitted and approved each pay period, even if the employee has elected not to use accrued leave.

**Personnel File:** Agency will dictate the method for receiving and placing orders in the personnel file.

**Impact:** These employees will continue to earn leave credits during their leave of absence, and will be compensated for holidays, even if they are on leave without pay. However, these employees are on “positive pay”. Therefore, no other pay from the State will be processed unless

- a supplemental amount is entered and/or
- a timesheet indicating annual, regular or special compensatory leave is submitted.

### **3) The following applies to Non-Reservists and reservists in the Florida National Guard called to State active duty**

- Complete a PAR Action Type “Leave of Absence Without Pay”
- Use Reason code:”58 – Authorized Leave Without Pay”

**Timesheet:** If the employee has chosen to use annual, regular or special compensatory leave for a portion of the pay period, a timesheet will need to be completed indicating the appropriate leave types. Timesheets may be submitted in advance of the applicable pay period.

If the employee elects to not use accrued leave for a pay period, the submitted and approved timesheet will indicate hours type “58 – authorized leave without pay” for the pay period. Timesheets may be submitted and approved in advance of the applicable pay period.

Note that the timesheet must be approved before the payroll cutoff for the employee to receive additional pay as a result of using leave during the period.

Timesheets should be submitted and approved each pay period, even if the employee has elected not to use accrued leave.

**Personnel File:** Agency will dictate the method for receiving and placing orders in the personnel file.

**Impact:** Career Service employees who voluntarily enlist in the armed forces are placed on an authorized leave of absence without pay, but (as with any other leave of absence without pay), no leave credits shall accrue and no holidays shall be paid unless employees use their

own accrued leave to continue in pay status. However, SES/SMS employees will still receive their annual leave accrual, notwithstanding their unpaid leave status.

**2. What else needs to be done to properly document the employee's current status now that they are on military leave?**

In the People First System, go to the "EEO – Veteran – AA" screen under Personal Information. Agencies should select the appropriate category from the "Military Status" drop down box to indicate active duty status for employees called to active military duty.

**3. If an employee on active military leave has more than the maximum number of hours of annual leave on the date of their scheduled annual leave rollover (e.g. December 31<sup>st</sup> for Career Service employees or SES/SMS employee's leave accrual date) may the employee request that the excess annual leave remain in annual leave and not roll over into sick leave?**

No. Based on Rule 60L-34.0041(4)(a), Florida Administrative Code, there is no authority to allow employees to carry over excess annual leave hours.

**4. May an employee on active military leave use accrued annual, regular or special compensatory leave to cover payroll deductions?**

Yes. Such leave may be used when requested by the employee and approved by the agency, provided that the amount of leave charged, (in combination with any military pay supplement received), does not exceed the employee's state regular rate of pay for the pay period.

In such cases, the employee shall be entitled to accumulate all benefits granted under paid status.

**5. May the amount of leave used exceed what is actually needed to cover payroll deductions?**

Yes. In recognition of the financial obligations of affected employee's during these extraordinary events, the employee may elect to use any amount of leave, provided that the total amount of leave charged (in combination with military pay supplement, if applicable) does not exceed the employee's state regular rate of pay for the pay period.

**NOTE:** Due to fiscal impact, if an employee requests the use of accrued leave, it is suggested that special compensatory leave should be used prior to the use of annual or regular compensatory leave, unless specifically prohibited by collective bargaining agreements.

**6 Under what circumstances do employees who are called to active military duty (placed on military leave with or without pay supplement) continue to accrue leave credits?**

If the employee is a member of a reserve unit (reservist) who is now serving in active military service, they will continue to accrue full annual and sick leave credits in accordance with the rules applicable to their position (regardless of paid or unpaid leave status). The agency must be sure to use the appropriate PAR type and Reason Code as stated above.

**7. How is leave accrual handled for employees who are non-reservists (i.e. employees who voluntarily enlist in the armed services)?**

During the period of voluntarily service in active military service, such employees will only accrue annual and sick leave credits to the extent that accrued leave is used to remain in pay status.

**8. How does being called to active military duty affect an employee who is still in probationary status?**

Pursuant to Rule 60L-33.003(2)(d)3., Florida Administrative Code, "time spent on military leave shall count toward completion of the employee's probationary period, and an employee on military leave can attain permanent status while on such leave."

**9 How are performance appraisals to be handled for employees on active military duty?**

The employee's performance remains unchanged during military leave. Therefore, if the employee is achieving expectations prior to military leave, a performance evaluation is not required. He/she will have met standards by default at the end of the probationary period.

However, if the rater wishes to acknowledge the employee's performance while actively employed in probationary status, he/she may address such performance, and the additional time spent in probationary status will be rated as "having met standards". The rater may indicate in the comments section of the evaluation, that the employee was called to active duty on a particular date, and has attained permanent status.

**10. What if an employee is on a performance improvement plan prior to being called to active duty?**

If an employee's performance was deficient and was placed on a performance improvement plan prior to going on military leave, the military leave shall be used to extend the review period beyond the improvement plan period on a day-for-day basis.

**B. PAYROLL ADMINISTRATION**

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**1. When are employees eligible for a military pay supplement?**

Ss. 115.08 and 115.09, F.S., authorize the payment of a military supplement to account for the difference between the employee's State salary (regular rate of pay for the pay period) and their military base pay (exclusive of allowances for quarters, rations, variable housing allowances or any other special pay) to employees who are members of the reserves (reservists) and who are called to active military duty.

The State currently operates under the September 25, 2001, Resolution of Governor Bush and his Cabinet, directing all agencies to supplement the pay of reservists who are called to active-duty due to the events of September 11, 2001. Unique with regard to military activation in to the events of September 11, 2001, military pay supplements to eligible employees are not at the discretion of agencies.

**2. How is an employee's military supplemental pay calculated?**

An employee's military pay supplement shall be calculated as follows:

An employee was called to active duty with an effective date of orders of September 20, 2001. On September 19, 2001, the employee was receiving a biweekly regular rate of pay of \$1,000. Employee's military base rate of pay on September 20, was \$1,200 per month.

First, annualize employee's State regular rate of pay.

## **Program Guidelines**

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\$1,000 biweekly times 26 biweekly pay periods	\$26,000.00
Next, annualize employee's military base pay. \$1,200 monthly times 12 monthly pay periods	\$14,400.00
The starting annual military pay supplement is the difference between these amounts.	\$11,600.00
The bi-weekly military pay supplement is the annual amount divided by 26.	\$ 446.15
This is the amount to be paid to the employee.	\$ 446.15

### **3. What are the methods for verifying the employee's military base pay?**

- a. Obtain a copy of the employee's monthly military Leave and Earnings Statement (LES) indicating current military base pay.
- b. Contact the employee's unit of assignment to request verification of military base pay. The address is on the front of the active duty orders.

### **4. What is the employee's responsibility regarding advising the agency of changes in his/her military pay?**

The employee or his/her power of attorney should be advised that they must notify the agency of any change in the employee's military base pay. Keep in mind that pay changes could result from a change in rank or from regular pay increases. The federal fiscal year is from October-September.

### **5 If an employee is called to active duty and wants to work intermittently for the State within the first 30 calendar days, is the 30 calendar days extended based on hours worked?**

No. Based on current rule language, the employee would receive full pay and benefits for the first thirty calendar days, regardless of the hours worked.

### **6. What salary additives should be continued while on military leave?**

All salary additives, with the exception of On-Call, that the employee received prior to being called to active duty shall be continued while the employee is on military leave.

### **7. Should perquisites be continued for employees on a military leave of absence?**

No, perquisites should be discontinued while employees are on military leave. Upon the employee's return from the leave of absence, perquisites that the employee had been receiving prior to the leave of absence should be reinstated, if applicable.

### **8. Are educational incentive payments (i.e. Criminal Justice Incentive Pay (CJIP) and Firefighter Incentive Pay (FFIP) continued while an employee is on military leave?**

Criminal Justice Incentive Pay and Firefighter Incentive Pay will continue since they are not additives but incentive pay for additional education completed by law enforcement officers and firefighters.

**9. When an employee is ordered to active duty (including active duty training), does he/she receive 30 days of paid leave with each set of orders received?**

- a. If the orders are newly issued, under separate order numbers, then **YES**, the employee is **eligible** to receive another 30 days of paid military leave. The agency must process new PARs for each order to ensure proper pay to employees and to ensure that proper history records are maintained.
- b. If the orders amend (i.e. reference previously issued order numbers), are an extension or a continuation of previously received original orders, then **NO**, the employee **is not eligible** to receive another 30 days of paid military leave.

**10. How is pay handled for employees, who are members of the Florida National Guard, activated to protect the airports in the initial September 11, 2001 activation?**

If the employee is being called to active duty under Title 32 or Title 10, U.S.C., the member of the Florida National Guard is in Federal Service and therefore, eligible for the first 30 calendar days full pay status and the supplement pay thereafter. The official orders will reflect activation pursuant to Title 10 or Title 32, U.S.C. This refers to the initial September 11, 2001 activation only.

**11. How is pay handled for employees, who are members of the Florida National Guard, activated to protect the seaports and nuclear plants in the initial September 11, 2001 activation?**

The official orders will need to be reviewed in order to make this determination.

- a. If the official orders reflect Federal activation pursuant to Title 10 or Title 32, U.S.C., the employee will be eligible for the first 30 calendar days full pay status and the supplemental pay thereafter.
- b. If the official orders reflect activation for State service in accordance with s. 250.48, F.S., the employee shall receive full pay not to exceed 30 calendar days at a time, but is not entitled to a military pay supplement. Each time the employee receives orders for a new event as established by executive order, the employee will be eligible for 30 calendar days of full pay.

**12. How is pay handled for employees, who are members of the Florida National Guard, and are activated in to a State disaster (i.e. hurricanes, tornadoes, floods)?**

The official orders will need to be reviewed in order to make this determination.

- a. If the employee is being called to active duty under Title 32 or Title 10, U.S.C., the member of the Florida National Guard is in Federal Service and therefore, eligible for the first 30 calendar days full pay status and the supplement pay thereafter. The official orders will reflect activation pursuant to Title 10 or Title 32, U.S.C. This refers to the initial September 11, 2001 activation only.
- b. If the official orders reflect activation for State service in accordance with s. 250.48, F.S., the employee shall receive full pay not to exceed 30 calendar days at a time, but is not entitled to a military pay supplement. Each time the employee receives orders for a new event as established by executive order, the employee will be eligible for 30 calendar days of full pay.

**13. How is pay handled for employees who are reservists in the National Guard of another state?**

If employees are called to active duty under Title 32 or Title 10, U.S.C., as members of the National Guard (of any state), they are in Federal Service and therefore, eligible for the first 30 calendar days full pay status and the supplement pay thereafter. The official orders will reflect activation pursuant to Title 10 or Title 32, U.S.C. This refers to the initial September 11, 2001, activation only.

However, if the official orders reflect activation for state service, the employee shall not receive full pay for the first 30 calendar days, nor the military pay supplement. (Such employees should immediately be placed on a leave of absence without pay (PAR reason code "authorized leave").

**14. Are Other Personnel Services (OPS) employees covered by the provisions in these guidelines in the same manner as employees in established positions?**

No. OPS employees are not kept in pay status, nor are they eligible for a military pay supplement.

**15. Are employees on active military leave without pay paid for holidays?**

Only reservists serving in active duty military service will receive holiday pay in accordance with the rules applicable to their position, regardless of whether the employee is on a leave of absence with pay or without pay. If the employee is using intermittent leave, such leave may not be necessary or may be reduced during a holiday work period since the employee is receiving holiday pay.

If the employee is receiving a military pay supplement, the People First System will reduce the military supplemental pay by the number of holiday hours in the pay period. If no military supplemental pay or leave is being used, the employee shall be paid for holiday hours.

**16. If an employee voluntarily enlists in the federal reserves or National Guard and is required to report for 4 months for basic recruit and/or advanced individual training, is the employee eligible to receive a military pay supplement?**

No. However, if an employee enlists in the federal reserves or National Guard and is required to report for basic recruit and/or advanced individual training, the employee shall be placed on a military leave of absence and is entitled to the first 30 calendar days of full-pay.

**17. If an employee voluntarily enlists in the federal reserves or National Guard, completes their training, returns to work and is subsequently called to active duty in to the events of September 11, 2001, will the employee be eligible for supplemental pay?**

The official orders will need to be reviewed in order to make this determination.

- a. If the federal reservist or member of the National Guard is activated pursuant to Title 10 or Title 32, U.S.C., the answer is **Yes**. The employee shall be eligible for the first 30 calendar days of full pay and supplemental pay thereafter.
- b. If the employee is activated for State service in accordance with S. 250.48, F.S., the employee shall receive full pay not to exceed 30 calendar days at a time. Unless activated in to September 11, 2001, the employee is not entitled to a military pay supplement.

## **Program Guidelines**

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### **18. Are employees eligible to receive legislatively approved pay increases while on a military leave of absence?**

Yes. Employees on a military leave of absence are eligible to receive legislatively approved pay increases in accordance with the provisions of the General Appropriations Act (GAA).

### **19. How are legislatively approved pay increases handled for state employees who are on a leave of absence for active duty when the pay increase takes effect?**

Pay increases for employees on a leave of absence are not automatically processed as part of the mass load in the People First System. The pay increase for any employee on a leave of absence must be handled through the PAR process.

- Complete a PAR Action Type “*MV021 Pay Change*”
- Use Reason code “*10 - Legislative Mandate*”

For employees receiving a military supplement, agencies should verify the employee’s military pay to determine how much to adjust the military supplement paid by the State.

It is recommended that the PAR is processed for all employees on a leave of absence, indicating the statewide effective date of the pay increase so in the event that the employee uses accrued leave on the timesheet that it is paid appropriately.

**NOTE: After processing the PAR for the pay increase, another PAR must be processed to put the employee back out on a leave of absence.**

<b>C. COMPLIANCE WITH THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA)</b>
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#### **1. What is the Uniformed Services Employment and Reemployment Rights Act?**

USERRA protects the job rights of individuals who voluntarily or involuntarily leave employment positions to undertake military service or certain types of service in the National Disaster Medical System. USERRA also prohibits employers from discriminating against past and present members of the uniformed services and applicants to the uniformed services.

#### **2. Who is covered under the provisions of USERRA?**

USERRA covers Career Service, SES and SMS employees, including part-time and probationary employees.

#### **3. What are the basic provisions and requirements of USERRA?**

The pre-service employer must reemploy service members returning from a period of service in the uniformed services if those service members meet all five criteria:

- a. The person must have held a civilian job;
- b. The person must have given notice to the employer that he or she was leaving the job for service in the uniformed services, unless giving notice was precluded by military necessity or otherwise impossible or unreasonable;
- c. The cumulative period of service must not have exceeded five years;

## **Program Guidelines**

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- d. The person must not have been released from service under dishonorable or other punitive conditions; and
- e. The person must have reported back to the civilian job in a timely manner or have submitted a timely application for reemployment.

USERRA establishes a five year cumulative total in military service with a single employer, with certain exceptions allowed for situations such as call-ups *during emergencies, reserve drills and annually scheduled active duty for training.*

### **4. What re-employment provisions are granted under USERRA?**

Employees have the right to be reemployed with their agency if they leave that job to perform service in the uniformed service and they:

- a. provide the agency with advance written or verbal notice of service;
- b. have five years or less of cumulative service in the uniformed services while with that particular employing agency;
- c. return to work or apply for reemployment in a timely manner after conclusion of service; and
- d. have not been separated from service with a disqualifying discharge or under other than honorable conditions.

Employees who are reservists called to active military service must notify the agency within 90 days from the date of discharge from active service. The employee or his/her power of attorney is responsible for notifying the agency of the last day of active duty.

### **5. What are the reemployment rights provided for under the provisions of USERRA for an employee whose position is slated for lay-off or a workforce reduction, but the employee is called to active military duty prior to the lay-off?**

Section 4312(d)(1)(A) of Title 38, U.S.C., Changed Circumstances provides:

Reemployment of a person is excused if an employer's circumstances have changed so much that reemployment of the person would be impossible or unreasonable. A reduction-in-force that would have included the person would be an example.

### **6. How long do agencies need to hold the jobs or guarantee reemployment of employees who take a leave of absence for active duty service in the military forces?**

The cumulative length of service that causes an employee's absence from a position of employment may not exceed five years, subject to a number of exceptions set forth below.

Most types of service will be cumulatively counted toward the five year period; however, there are eight categories of service that are exempt from the five year limitation. These include:

- a. Service required beyond five years to complete an initial period of obligated service (Title 38, USC, Section 4312(c)(1)). Some military specialties, such as the Navy's nuclear power program, requires initial active service obligations beyond five years.
- b. Service from which a person, through no fault of the person, is unable to obtain release within the five year limit (Title 38, USC, Section 4312(c)(2)). For example, the five year limit will not be applied to members of the Navy or Marine Corps whose obligated service dates expire while they are at sea.

## **Program Guidelines**

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Nor will it be applied when service members are involuntarily retained on active duty beyond the expiration of their obligated service date, as was experienced by some persons who served in Operations Desert Shield and Storm.

- c. Required training for reservists and National Guard members (Title 38, USC, Section 4312(c)(3). The two week annual training sessions and monthly weekend drills mandated by statute for reservists and National Guard members are exempt from the five year limitation. Also excluded are additional training requirements certified in writing by the Secretary of the service concerned to be necessary for individual professional development.
- d. Service under an involuntary order to, or to be retained on, active duty during domestic emergency or national security related situations (Title 38, USC, Section 4312(c)(4)(A)).
- e. Service under an order to, or to remain on, active duty (other than for training) because of a war or national emergency declared by the President or Congress (Title 38, USC, Section 4312(c)(4)(B)). This category includes service not only by persons involuntarily ordered to active duty, but also service by volunteers who receive orders to active duty.
- f. Active duty (other than for training) by volunteers supporting “operational missions” for which Selected Reservists have been ordered to active duty without their consent (Title 38, USC, Section 4312(c)(4)(c)). Such operational missions involve circumstances other than war or national emergency for which, under presidential authorization, members of the Selected Reserve may be involuntarily ordered to active duty under Title 10, U.S.C. Section 12304. The U.S. military involvement in Afghanistan and Iraq are two examples of such an operational mission.

This sixth exemption for the five year limitation covers persons who are called to active duty after volunteering to support operational missions. Persons involuntarily ordered to active duty for operational missions would be covered by the fourth exemption, above.

- g. Service by volunteers who are ordered to active duty in support of a “critical mission or requirement” in times other than war or national emergency and when no involuntary call up is in effect (Title 38, USC, Section 4312(c)(4)(D)). The Secretaries of the various military branches each have authority to designate a military operation as a critical mission or requirement.
- h. Federal service by members of the National Guard called into action by the President to suppress an insurrection, repel an invasion, or to execute the laws of the United States (Title 38, USC, Section 4312(c)(4)(E)).

### **7. What would disqualify an employee from their reemployment rights under the provisions of USERRA?**

Title 38, USC, Section 4304, lists four circumstances when service would be disqualifying:

- a. Separation from the service with a dishonorable discharge or bad conduct discharge
- b. Separation from the service under other than honorable conditions. Regulations for each military branch specify when separation from service would be considered “other than honorable.”
- c. Dismissal of a commissioned officer in certain situations involving a court martial or by order of the President in a time of war (Section 1161(a), Title 10).

- d. Dropping an individual from the rolls when the individual has been absent without authority for more than three months or is imprisoned by a civilian court (Section 1161(b), Title 10).

**8 Where can I find more information regarding the provisions of USERRA?**

Further information regarding USERRA can be found on the Department of Labor's website at <http://www.dol.gov/compliance/laws/comp-userra.htm>.

**D. STATE GROUP INSURANCE BENEFITS**

**Health/life/supplemental insurance benefits**

**1. What happens to an employee's State benefits when they are called to military active duty?**

An employee called to active duty will automatically continue coverage in any benefit plans the employee was enrolled in at the time of reporting for active duty, unless coverage is cancelled. For health and basic life, the employer will continue to pay the State share of the premiums for that coverage.

**2. What are the employees' responsibilities regarding payment for the amount of their portion of the insurance contribution?**

The employee will continue to be responsible for any amount that the employee had been paying, whether through continued payroll deductions or by personal check or money order. If payments are to be made by personal check/money order, employees must be given instructions to make the personal check or money order payable to the Division of State Group Insurance and remit the payment to the People First Service Center at the following address:

People First Service Center  
PO Box 863477  
Orlando FL 32886-3477

If the employee participates in a plan outside of the State Group Insurance Program (i.e. agency contracted plans), the agency personnel office should inform the employee of payment options and how to remit payment.

**3. What happens to the optional life and/or supplemental insurance coverage of employee called to active military duty?**

If enrolled in optional life or any supplemental insurance coverage, the employee may continue or cancel any or all of the coverage. Since the premiums for this coverage are the total responsibility of the employee, employees continuing the coverage are responsible for the entire monthly premium.

For those electing to continue an insurance coverage, any premium amounts due from the employee will continue to be deducted from each payroll. If the amount of the employee's pay is not sufficient, the employee or their representative must make the payments by personal check or money order. In such instances, payments are due no later than the tenth (10) day of the month prior to the coverage, i.e., by October 10 for November coverage. Paying after that date will suspend coverage.

**Note:** The basic life insurance and optional life insurance both provide additional coverage for accidental death and dismemberment at no cost. Regardless of the reason for the death, the basic and optional life insurance will pay the beneficiary. However, the additional coverage for accidental death and dismemberment is only paid in the event of an accident and will not be paid if death occurs due to war or any act of war, declared or undeclared. But, since it is provided at no cost, it is not possible to cancel the accidental death and dismemberment portion of the coverage and retain the basic life coverage.

**4. Can employees who cancelled their insurance coverage when called to active duty re-enroll upon discharge from military service?**

Yes. An employee canceling an insurance coverage due to being called to active duty may reenroll in that same coverage if the employee returns to work no later than ninety (90) calendar days after separation (date of discharge per DD-214) from military service. Information on how to enroll is on the People First website. Enrollment is handled by the People First Service Center and they can be reached at 1-866-ONE-HRFL (866-663-4735) For such employees, any pre-existing condition provisions of any coverage will not apply to those persons who were insured under the employee's coverage in effect at the time the employee was called to active duty.

Employees should contact the People First Service Center to ensure the State's PPO third-party administrator (TPA) is properly notified that pre-existing conditions are waived.

**5. Where can the agency and employees find information regarding the administration of State insurance benefits during military leave?**

Agencies and employees can obtain specific information/instructions by calling the People First Service Center at 1-866-663-4735.

The People First website also addresses the State benefits available to all employees and how to continue each insurance plan. The website is <https://peoplefirst.myflorida.com>. Employees will log on to the system using their People First User ID and Password.

**6. What happens to medical care reimbursement/dependent care spending accounts during a military leave of absence?**

Enrollment in medical care reimbursement and dependent care spending accounts may be continued at the elected amount, at a reduced amount or cancelled. The same reenrollment provisions apply to these accounts as apply to an insurance coverage, except that an employee that cancels a medical care reimbursement account may not reenroll in such an account in the same calendar year. Also, if the employee's pay is less than the amount of the deduction (under payment), the employee or their representative must make the payments by personal check or money order, payable to the Division of State Group Insurance and remit to the following address:.

People First Service Center  
PO Box 863477  
Orlando FL 32886-3477

Remember to advise your employees of the next open enrollment period (usually September-October of each year). These employees should be encouraged to make their necessary benefit changes prior to departure.

**E. POST TAX INSURANCE (agency sponsored plans)**

**How is the continuation of post-tax insurance plans handled (auto insurance, universal life, etc)?**

Agencies should provide employees with assistance in contacting the applicable carriers, so that if the employees are not able to continue payments through payroll deductions, other arrangements can be made.

**F. OTHER MISCELLANEOUS BENEFITS AND PROGRAMS**

**1. What happens to Deferred Comp Deductions during a military leave of absence?**

An employee's military pay cannot be considered by the State in computing the amount of deferral. Upon call-up, an employee who is participating in the deferred compensation program may choose whether or not he/she wishes to continue his deduction while serving on active duty. Unless the appropriate papers have been processed through the Deferred Compensation Office, deferrals will continue at the same amount as was in effect prior to call-up, unless the military pay supplement is not sufficient to cover the deferral.

If an employee wishes to discontinue their deduction, they must contact their investment provider directly. If the employee is not sure who his/her investment provider is, they can contact the State Deferred Compensation Office toll-free at 877-299-8002.

**2. What happens to savings bond deductions during a military leave of absence?**

An employee's authorized savings bond deduction will continue as long as the military pay supplement and/or accrued leave charged is sufficient to cover the amount of the deduction. However, the employee or person having power of attorney may advise the agency that he/she wishes to discontinue savings bond deductions.

**3. How are retirement contributions handled during a military leave of absence?**

Reservists on military leave of absence shall receive full retirement credit for the period of such leave upon their return to employment. The State Comptroller shall make the appropriate retirement contribution on any salary (military supplemental salary payments and/or accrued leave) paid to employees during such period of military leave. When these employees return to employment, the State (employing agency) shall pay the additional retirement contribution necessary to make up the difference between the contribution paid on any State compensation received during the leave and the contribution that would have been paid on the regular rate of pay at the time military leave was granted.

Enlisted/Non-Reservists on military leave of absence shall receive retirement credit for the period of such leave for which the State Comptroller has made the appropriate retirement contribution on any salary (accrued leave) paid to them during such period of military leave. When these employees return to employment, they may be eligible to purchase retirement service credit; therefore, they should be advised to contact the Division of Retirement.

**4. How are court-ordered or other mandatory payroll deducted payments handled during a military leave of absence?**

If the employee has monetary obligations (i.e., Garnishments, Court Ordered Support, IRS Tax

## ***Program Guidelines***

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Levies, Federal Student Loans) being deducted from his/her check, these deductions will continue to be processed through the State payroll system if the employee remains in pay status. Employees will need to make up any difference in the amount owed for any court ordered support that is not collected through payroll deduction during this time. Agencies should contact the Bureau of State Payrolls to coordinate this collection activity.

### **5. How are other non-insurance payroll deductions handled during a military leave of absence?**

Employees who have payroll deductions for credit unions, football tickets, FSECC, etc., must advise their payroll office of their wishes to continue or stop each of these deductions.

### **6. What happens to Direct Deposit during a military leave of absence?**

Direct Deposit (EFT) will continue for any payments processed during the leave, unless the employee makes a change.