

# **TECHNICAL ASSISTANCE - VETERANS, ACTIVE MILITARY, AND NATIONAL DISASTER RESPONSE PERSONNEL**

Prepared by the Division of Human Resources in the Department of Personnel & Administration. Revised April 30, 2008.

## **GENERAL**

This technical assistance addresses a number of topics related to veterans and active military service, including residency, preference in selection and layoff, military leave, administrative leave and leave sharing for employees called to active service, and leave for intermittent disaster response personnel.

It is a U.S. Department of Labor requirement to post the Uniformed Services Employment and Reemployment Rights Act (USERRA) poster in offices where employment related matters are maintained. For further information about the poster, please access the DOL website at: <http://www.dol.gov/vets/>.

## **RESIDENCY FOR APPLICATIONS BY ACTIVE MILITARY**

Colorado Constitution requires applicants for jobs in the state personnel system to be state residents. Active members of the military who are not currently living in Colorado may be interested in applying for state jobs, but there are restrictions because of the state residency requirement. Unless a residency waiver has been granted by the State Personnel Board, only individuals in the military who declare Colorado as their state of residence on Department of Defense Form DD 2058, *State of Legal Residence Certificate*, are considered to be Colorado residents and permitted to apply for open competitive job openings in the state personnel system. See Technical Assistance –Residency Waivers for additional information.

## **VETERAN'S PREFERENCE IN SELECTION**

Veteran's preference recognizes the economic loss suffered by citizens who have served their country in uniform, restores veterans to a favorable competitive position for government employment, and acknowledges the larger obligation owed to disabled veterans. Therefore, Congress has authorized the awarding of preference points to certain veterans, as outlined below.

### **Five-point preference**

Five preference points may be awarded to:

- Veterans with an honorable or general discharge who served on active duty (excluding active duty for training) in the army, navy, air force, marine corps, or coast guard:
  - During any war declared by Congress;
  - During the period April 28, 1952, through July 1, 1955;
  - For more than 180 consecutive days, any part of which occurred after January 31, 1955, and before October 15, 1976;
  - During the Gulf War period beginning August 2, 1990, and ending January 2, 1992;

- For more than 180 consecutive days, any part of which occurred during the period beginning September 11, 2001, and ending on the date prescribed by Presidential proclamation or by law as the last day of Operation Iraqi Freedom; or,
  - In a campaign or expedition for which a campaign medal has been authorized, such as El Salvador, Lebanon, Granada, Panama, Southwest Asia, Somalia, and Haiti.
- Medal holders and Gulf War veterans who originally enlisted after September 7, 1980, or entered active duty on or after October 14, 1982, without having previously completed 24 months of continuous active duty; must have served continuously for 24 months or the full period called or ordered to active duty.

Note: Effective October 1, 1980, military retirees at or above the rank of major or equivalent, are not entitled to preference unless they qualify as disabled veterans. Reservists who are retired from the Reserves but are not receiving retirement pay are not considered "retired military" for purposes of veterans' preference.

### **Ten-point preference**

Ten preference points may be awarded to:

- Those honorably separated veterans who (1) qualify as disabled veterans because they have served on active duty in the Armed Forces at any time and have a present service-connected disability or are receiving compensation, disability retirement benefits, or pension from the military or the Department of Veterans Affairs; or (2) are Purple Heart recipients;
- The spouse of a veteran unable to work because of a service-connected disability;
- The unmarried widow/widower of certain deceased veterans; and
- The mother of a veteran who died in service or who is permanently and totally disabled.

Veteran's preference in selection and reduction in workforce is authorized by the Colorado Constitution, Article XII, Section 15. This section provides for preference in both selection (Sec. 15(1)(a-e)) and in reduction (Sec. 15(3)(a-b)) of the workforce. Section 15(6) of the article states that "no person is entitled to the addition of points under this section for more than one appointment or employment with the same jurisdiction, personnel system, civil service, or merit system." State Personnel Board Rules and technical assistance on separation also provide information concerning preference provided veterans when there is a workforce reduction.

### **Documentation**

Proof of eligibility must be provided before points are allowed. This consists of the following:

- For veterans, a DD214 reflecting dates of service, type of discharge, and, if appropriate, a campaign badge or service medal. If information regarding a campaign badge or service medal is necessary to award preference points and is not reflected on the DD214, other documents reflecting the grade or medal must be provided.
- For disabled veterans, a DD214 and proof of disability in the form of a letter from the Veteran's Administration verifying that the veteran is currently receiving monetary benefits or has a disability retirement.

- For spouses of veterans unable to work due to a service-connected disability, a DD214, proof of the disability as outlined above, and a copy of the marriage license.
- For unmarried widows/widowers of deceased veterans, a DD214, a copy of the marriage license, a copy of the death certificate, and a signed statement from the widow/widower that she/he has not remarried.
- For mothers of veterans who died in service or who are permanently and totally disabled, a DD214, proof of the disability as outlined above or a copy of the death certificate, and a copy of the birth certificate.

## **Applications, Scoring, and Referral**

Veteran's preference in selection does not apply to promotional exams, reassignments, individual allocations, transfers, or reinstatements.

Points are applied as follows:

- Only applicants who have never had preference points applied to a final score are eligible to receive points.
- Current employees who were eligible for preference at the time of initial hire are deemed to have been given preference whether points were actually applied or not.
- Current employees may receive preference points only by becoming eligible for preference *after* initial employment, and only on open competitive exams. (*Example: An employee who was not eligible for preference points when initially hired and received the Southwest Asia Service Medal for service during Operation Desert Storm when already a State employee. This person could apply five points on open competitive exams.*)
- Preference points are only added to the final converted<sup>1</sup> passing examination scores. Points are not added after individual test components, nor are they added to any step in an examination process to allow a candidate scoring below a cutoff point to continue in the process.
- Preference points may be added at any time after an examination has been scored. (*Example: An applicant presents Form DD214 establishing eligibility for preference after a referral is made.*) In such cases, the addition of points will change the individual veteran's score and may alter the ranking on the eligible list. However, the addition of preference points and subsequent revision of an eligible list shall not affect referrals or appointments already made from a list.
- A veteran who is still in the service may be granted tentative preference points on the basis of information contained in the job application, but must produce a Form DD214 documenting entitlement to preference prior to referral.

## **Additional Information**

If an applicant has both an honorable and a dishonorable discharge, the most recent discharge is used to determine eligibility for preference points.

No minimum service is required for veterans with compensable service-connected disabilities or for those discharged for disabilities incurred in the line of duty.

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<sup>1</sup>The term final converted score means the final score converted to a 100-point scale.

The U.S. Office of Personnel Management maintains a web site with updated information on veteran's preference, including service dates. Most information on this web site pertains to the selection and hiring processes for federal government positions and does not apply for purposes of veterans' preference in state government. However, Appendix A of the *VetGuide* on the web site provides service dates and lists of campaigns that are used in awarding veterans' preference eligibility within the State Personnel System. The link for Appendix A of the *VetGuide* is: <http://www.opm.gov/veterans/html/vgmedal2.htm>

## **MILITARY LEAVE**

Upon submission of proper evidence documenting the call to report to duty, state employees (probationary or certified) must be given military leave. Proper documentation may include the official set of orders from the branch of service or orders from the organization or unit to which the employee is assigned. Military leave begins on the date and hour published in the orders.

Personnel Director's Rules provide for paid leave of up to 15 working days (120 hours) within a calendar year (January 1st through December 31<sup>st</sup>) for military service whether for training or active duty. An employee must first exhaust the 15 days of paid military leave before being placed on another type of leave. Once the paid military leave is exhausted, the employee must use compensatory time or may use annual leave before being placed on unpaid leave. (*Note: for the make-whole policy, see the Administrative Leave and Leave Sharing section below.*) The employee is not required to turn over military pay in order to receive compensation from the State for paid leave.

### **Key Issues Regarding Leave and Return to Work**

Federal guidelines provide time periods for veterans to return to work. If the employee is gone less than 30 days, the employee must return the next workday following the calendar day of completion of service; if the absence is 31 to 180 days, the employee must apply to return within 14 days of completion of service; if the employee is gone 181 days or more, the employee must apply to return within 90 days of completion of service.

Although federal law sets specific time periods for veterans to return to work, the state law allows for the return to employment within one year of the period of initial service, plus any additional service imposed by law. This right is available whether the military service is voluntary or involuntary. **Because the State constitution is more generous than federal law, it is applied in all circumstances.**

If the employee's absence is 90 calendar days or less, the employee is entitled to return to his/her former position within the same department. The employee should contact the department prior to return. Departments should establish and communicate who the point of contact will be, e.g., HR office or appointing authority.

If the absence is 91 calendar days or more, the employee returning from active duty is entitled to return to a position within the department in the same or comparable class in which the employee was previously employed. The employee must submit a copy of the Form DD214 or other official release and written notice of the intent to return.

Any absence due to military duty is not a break in service although the employee is not entitled to accrue sick or annual leave while on unpaid military leave. Service dates are not to be adjusted and PERA will credit the employee for the *unpaid* time period up to five years.

Under federal law, reserve and National Guard troops can count their active military duty to establish eligibility for Family/Medical Leave (like other employees on the payroll even if on an unpaid leave). To qualify, the employee must be absent from work because of uniformed service, including duty, training, or examination for fitness.

## Frequently Asked Questions

Q1. Does an employee return to state service in probationary status if the employee was probationary when called to active duty?

A1. Yes. A probationary employee returns to state service in probationary status and is entitled to complete whatever portion of the period that remains. For example, a returning employee would have four months of the probationary period remaining if the employee had completed eight months of probationary service prior to entering active duty. This would also be true for the balance of a six-month trial service period.

An employee who is certified when entering active duty remains certified upon returning to state service.

All returning employees receive credit for the period of military service for seniority purposes, within the limits prescribed by law.

Q2. Does an employee earn annual and sick leave while on unpaid military leave?

A2. No, an employee does not earn annual or sick leave while on unpaid military leave. However, the employee receives credit for time spent in the military for purposes of movement to the next higher annual leave earning rate. In addition, all unused sick and annual leave that the employee had at the time of entering military service is restored, if not used during the absence.

Q3. Can an employee elect to use accrued annual leave before being placed on unpaid military leave?

A3. Yes. The employee is entitled to be granted accrued annual leave if the employee wishes to use this leave before being placed on unpaid military leave. Note that lump sum payments for accrued annual leave are not allowed because military leave is not a termination.

Q4. May an appointing authority require the use of accrued compensatory time?

A4. Yes. The FLSA allows appointing authorities to schedule the use of compensatory time. Otherwise, payment will be required in accordance with Chapter 3 of the Director's Rules.

Q5. Can an employee continue the State's group health insurance benefits while on unpaid military leave?

A5. Employees who enter military service automatically receive military health benefits and can enroll their dependents in TRICARE coverage with the U.S. Department of Defense.

The employee on unpaid military leave can also elect to continue group health insurance benefits by paying the entire premium amount - both employee and employer portions. Upon return to

employment with the State, the employee is immediately eligible to enroll in the State's health insurance program even if the return from military service does not coincide with the open-enrollment period.

Q6. Can an employee use one day per month of annual leave while serving in the armed forces to trigger the State's contribution to health insurance?

A6. Yes. The employee can use one or more days per month of annual leave while on military leave to pay the employee's portion of the premium and trigger the State's contribution to health insurance. Appointing authorities control the scheduling of such leave and departments are encouraged to adopt a consistent practice. For example, the department may schedule the day of annual leave for the first working day of a month because premium payments are due the first of the month. PERA and taxes, including applicable Medicare percentages, will also be deducted.

Q7. Can an employee's position be abolished or an employee bumped as part of the layoff process while the employee is on active duty?

A7. Yes. Because of the complexity of the layoff process, please contact the Division of Human Resources of the Department of Personnel & Administration if you encounter a layoff situation that will impact an employee on active duty.

Q8. Does military service count as state service for promotional examination purposes? For example, does a General Professional IV who is serving in the military as a Cook have the military service counted as professional service for a General Professional V position?

A8. No. Military service does not count as state service for promotional examination purposes if the military service does not directly relate to the position for which the person is applying.

Q9. Is an employee who voluntarily enlists in the National Guard granted military leave for the entire period of active duty even though the service is for training?

A9. Yes. Enlistment in the National Guard falls within the military leave provisions. The enlistment may be voluntary and simply for training. Because the military leave provisions do apply to this situation, an employee who voluntarily enlists receives full credit for the enlistment period in determining increased earning of annual leave and other service benefits. No adjustment is made for related unpaid leave when computing years of service.

Q10. Are we required to grant an employee's request to work part time while on leave for active military duty?

A10. No. An employer is not required to create alternative work arrangements. The department should contact the military unit to verify if outside employment (e.g., working for the State) is allowed while on active duty and obtain a written statement regarding their policy. It is not uncommon for the military to prohibit other employment for reasons such as divided loyalties. If the department has part-time positions and the military unit allows outside employment, active duty

cannot be used as a negative factor in filling the positions. Finally, the department should apply its own policy regarding outside employment from state jobs.

Q11. How does military leave affect the employee's retirement benefits?

A11. The Public Employees' Retirement Association (PERA) has a bulletin that explains military leave provisions for PERA members. A copy of this bulletin may be obtained by contacting PERA. For those participating in the State's Defined Contribution retirement plan, contact the Division of Human Resources for information.

Q12. Can an employee have more than one period of paid military leave?

A12. Yes. Because the 15 days of paid military leave is granted on a calendar year basis, it is possible to have more than one block of paid military leave depending on the length of service. For example, assume the employee was called to active duty on September 12, 2001 for one year and has five days of military leave remaining for 2001. On January 1, 2002, the employee would again be placed on military leave for 15 working days.

## **Administrative Leave and Leave Sharing**

This policy applies to those state employees who are called to military active duty in support of military operations designated by the President in the war against terrorism or other military operations. It does not apply to regular obligations such as training or annual encampment.

The state personnel system gives appointing authorities the discretion to grant administrative leave to state employees for reasons determined to be for the good of the State. Department heads are allowed to grant administrative leave to state employees called to active military service. In the case of military leave, administrative leave is granted to make the salaries of these employees "whole" for a period of 90 calendar days following the exhaustion of their paid military leave to help relieve some of the financial hardship.

Make whole is administrative leave granted in increments to make up the difference between the employee's military gross pay and the current state gross salary, excluding any pay differentials or premiums, for a period not to exceed 90 calendar days. The employee must furnish proof of military gross pay in order to receive this administrative leave.

The 15 days of paid military leave must be exhausted before administrative leave is granted. After exhaustion of this administrative leave, the employee can still elect to use accrued annual leave and compensatory time. Departments will be expected to comply with the reporting requirements of Rule 5-20 (A).

Cabinet officers and presidents of colleges and universities are also authorized to expand their annual leave-sharing programs to include the donation of annual leave for employees on active military service who face serious financial hardship. This additional leave may only be used after exhaustion of military leave, administrative leave, and any annual leave and compensatory time. Donation of



annual leave for military service may only be done within each department. Leave sharing is not an entitlement - whether to offer the option and the approval of applications is at the sole discretion of a department head. No appeals or grievances are permitted.

### **Determining Serious Financial Hardship**

Unlike leave sharing for other purposes, donated leave for military service cannot be transferred between departments and is on a “make whole” basis following the exhaustion of military, administrative, and any annual leave and compensatory time. The department may also want to consider other adjustments such as tracking the donated leave for military service separately from the regular donated leave, establishing the maximum amount of leave that will be granted for military service.

Hardship cases will vary greatly between different employees so each case should be evaluated on its individual merit; however, departments are encouraged to develop some guidelines or criteria for the review of applications. The following items may be helpful in reviewing applications for donated annual leave.

- The total amount of gross military pay and allowances received by the employee is compared to the previous gross state base salary, excluding any temporary pay differentials or premiums. Is the gross military pay significantly less than the gross state base salary?
- The impact on the total family income from all sources, especially for basic living necessities and the number of dependents. For example, can the family income be supplemented or expenses reduced temporarily?
- Extraordinary family expenses due to the absence of the military family member. For example, are there any extraordinary medical needs or any additional day care expenses due to the absence?
- Any financial constraints caused by something other than the call to active duty.
- Available support (e.g., money, housing, transportation, food, day care, etc.) from extended family members such as parents, grandparents, or other relatives.
- Any recent family status changes such as marriage, divorce, addition of immediate family members, or deaths that have aggravated the hardship situation.
- Accessibility to military benefits such as use of commissary and base exchange privileges, availability of uniformed services health care facilities, or the use of TRICARE medical programs for dependents (additional information at <http://www.tricare.osd.mil>).

While it may be difficult to discuss these topics and make decisions about families in stressful situations, the goal is to balance sensitivity to the employee’s family needs and the limited resources a department may have.

### **Questions and Answers on Administrative Leave and Leave Sharing**

Q1. How does the administrative leave work in conjunction with military leave, especially if it falls into a new calendar year?

A1. The employee only receives one period of administrative leave for up to 90 calendar days following the initial call up. Here is a sample timeline for an employee called to active duty for one year on September 12, 2001. Assume no military training leave was used in 2001 prior to September 12.

11/12/01 - call up	12/2/01	1/1/02	1/22/02
Military Leave 15 <i>working</i> days	Administrative Leave 30 <i>calendar</i> days	Military Leave 15 <i>working</i> days	Administrative Leave 60 <i>calendar</i> days

Q2. Does the administrative leave apply to those who are fulfilling their normal obligation, e.g., annual encampment or call up for other emergencies?

A2. No. Only those called to active duty in support of military operations designated by the President in the war against terrorism.

Q3. What is the purpose of leave sharing for military active duty?

A3. Some employees called to active duty may experience economic hardship while adjusting financially to their initial call-up. Leave sharing for military active duty gives state employees in a department the opportunity to voluntarily donate accrued annual leave and help provide a “make whole” situation for co-workers whose gross military pay is less than the employee's current gross base pay.

Q4. How does leave sharing for military active duty work?

A4. Each department can create or modify an existing leave-sharing program for its employees called to active military duty in support of military operations designated by the President in the war against terrorism or other military operations. The Department of Personnel and Administration’s leave-sharing technical assistance is also available on the DHR website at [www.colorado.gov/dpa/dhr](http://www.colorado.gov/dpa/dhr).

Q5. What are the significant features of a military leave-sharing program?

A5. This is a "make whole" program to assist employees called to active duty whose military pay is less than their current gross base pay, excluding any pay premiums or differentials. Additional features include the following.

- This program is NOT an entitlement - whether it is offered is discretionary with the department head. The approval of individual applications is also the sole discretion of the department head and declined applications are not a determination that the personal situation is not an emergency or hardship. Lack of donated annual leave by employees may suspend or restrict the program.
- Leave may NOT be transferred between departments.
- Employees applying must be permanent and have at least one year of state service credit.

- Applicants must have exhausted all unused compensatory time and applicable paid leave, i.e., paid military, annual, administrative.
- Each application will be evaluated on a case-by-case basis.
- If an employee is unable to make an application, an adult family member or other responsible party may make the application on his/her behalf.

Q6. Can state employees outside the state personnel system participate in the military leave-sharing program?

A6. Yes, if the department's program allows it.

Q7. What are the tax consequences of leave sharing?

A7. The recipient would be taxed on these amounts as normal earnings, the same as with all other paid leave arrangements.

## **LEAVE FOR INTERMITTENT DISASTER RESPONSE PERSONNEL**

The U.S. Congress passed the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 to coordinate preparedness for and response to bioterrorism and other public health emergencies. The act was signed into law on June 12, 2002. Under the act, the National Disaster Medical System (NDMS) may be activated by the Secretary of the Department of Health and Human Services to provide health services, health-related social services, other appropriate human services, and auxiliary services to respond to the needs of victims of a public health emergency or to be present at locations determined to be at risk for a public health emergency. Auxiliary services include mortuary services, veterinary services, and others determined by the Secretary.

The Act also expands the definition of "uniform service members" under Uniformed Services Employment and Reemployment Act (USERRA) to include official intermittent disaster-response members of the NDMS. Individuals appointed to NDMS positions to provide services or participate in response training under the NDMS have the same employment and reemployment benefits provided to uniformed personnel and have the same employment protection as other members of the "uniformed services" (e.g., National Guard and Reserves). State employees who provide documentation supporting their appointment to NDMS positions and who are activated when the Secretary activates the NDMS must be given time off. The type of leave given depends on individual circumstances and may include military training, military, annual, etc. Because of the nature of NDMS emergencies, notice of activation may be short or immediate and may be oral or written. Departments are encouraged to plan ahead by identifying employees who are part of the uniformed services and obtaining documentation of their affiliation up front.

NDMS employees are not eligible for veteran's preference in the selection and layoff processes. The Director's Rules (Chapter 5) on military and military training leave apply. Leave for NDMS service is one of the situations contemplated under Rule 5-2 where employees are not required to use paid leave before using unpaid leave; however, employees are not entitled to accrue sick or annual leave while on unpaid leave. Like absences due to military duty, these absences are not considered a break

in service.

Emergency response personnel under NDMS are entitled to return to employment upon completion of their assignment. Federal law sets specific time periods for return to work. In absences of 90 calendar days or less, the employee is entitled to return to the former position in the department where previously employed. If the absence is more than 90 calendar days, the employee returning from service is entitled to return to a position within the department in the same or comparable class in which previously employed. The employee must contact the department prior to return. Departments are responsible for establishing and communicating a point of contact, e.g., HR office or appointing authority.

## **PREFERENCE IN LAYOFF**

Chapter 7 of the Personnel Board Rules addresses veteran's preference in layoff. The technical assistance on separation (layoff) provides additional clarification of these rules. The veteran must first qualify for preference in the selection process or have earned preference after the initial hire date to qualify for preference in the layoff process. When a reduction in the state workforce becomes necessary, employees who are eligible for veteran's preference shall not be separated from employment before employees not eligible for veteran's preference within the same time band. Employees eligible for veteran's preference, except veterans with 20 or more years of military service, may receive service credit for retention purposes on a year-for-year basis for up to ten years of military service. The same applies to un-remarried widow(er)s of veterans. Veterans with 20 or more years' military service are not eligible to receive credit for this service for retention purposes.

Every attempt is made to keep this technical assistance updated. For more detailed information, refer to the Personnel Board Rules and Director's Administrative Procedures or contact your department human resources office. Subsequent revisions to rule or law could cause conflicts in this information. In such a situation, the laws and rules are the official

**TECHNICAL ASSISTANCE  
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