

Military Pay Differential Guidelines

Overview

Texas Government Code, Section 661.9041, allows for state agencies to grant an employee emergency leave to provide a pay differential if the employee's military pay is less than the employee's state "gross" pay. The combination of emergency leave and military pay may not exceed the employee's actual state gross pay.

As required by Senate Bill 1345, 79th Regular Legislative Session, the State Classification Office of the State Auditor's Office established guidelines regarding the amount of emergency leave used as differential pay to grant to state employees on military leave. Senate Bill 1345 amends Section 661.9041 to exclude pay received for service in a combat zone, hardship duty pay, and family separation pay when computing military pay for the purposes of calculating differential pay.

Background Information

Texas state law allows for 15 days of annual paid leave for the purposes of military training and active duty deployments. In addition, the law entitles all deployed military members to an unpaid leave of absence from their state positions, with no loss of years-of-service accrual, and secures a return to their former positions upon return from duty. Under Section 661.9041, state agency heads are required to grant emergency leave to agency employees on unpaid military leave for the purposes of providing differential pay if the deployed military members' gross pay on active duty is less than their state pay.

Prior to the passage of Senate Bill 1345, state law mandated that state agencies consider the gross pay of deployed military members for the purposes of calculating a pay differential. This meant that hostile fire pay/imminent danger pay allowances, hardship duty pay, and family separation pay counted in the calculation that determined the gross pay amount.

Senate Bill 1345 strikes the gross payment language from the military pay calculation and adds language to specifically exempt **pay received while serving in a combat zone, hardship duty pay, and family separation pay** from the computation of military pay for the purposes of arriving at a differential pay amount. Senate Bill 1345 further provided that the State Auditor would establish uniform guidelines for state agencies in determining the amount of emergency leave to grant to deployed military members for the purposes of providing differential pay.

Definitions

Combat zone (CZ) – Any area the president of the United States designates by executive order as an area in which the U.S. Armed Forces are engaging or have engaged in combat. An individual serving in a designated combat zone area could receive hostile fire pay or imminent danger pay. These pays should be considered combat zone pay for the purpose of determining military pay differentials.

Emergency leave – State leave granted for situations that an agency head deems appropriate.

Family separation allowance (FSA) – Extra compensation paid during extended periods of family separation. The current amount of FSA is \$250 per month.

“Gross” pay – The sum of all money paid to an employee. It is the total amount of compensation earned before taxes are deducted.

Hardship duty pay (HDP) – Extra compensation paid to service members located where living conditions are substantially below those conditions in the continental U.S. The amount is based on the location.

Hostile fire pay/Imminent danger pay (HFP/IDP) – Paid to service members serving within an officially declared hostile fire/imminent danger zone. The current rate is \$225 per month. Members of a uniformed service may be paid this special pay for any month in which they were entitled to basic pay and in which they:

- Were subject to hostile fire or the explosion of hostile mines;
- Were on duty in an area in which they were in imminent danger of being exposed to hostile fire or explosion of hostile mines and in which, during the period they were on duty in that area, other members of the uniformed services were subject to hostile fire or explosion of hostile mines;
- Were killed, injured, or wounded by hostile fire, the explosion of a hostile mine, or any other hostile action; or
- Were on duty in a foreign area in which they was subject to the threat of physical harm or imminent danger on the basis of civil insurrection, civil war, terrorism, or wartime conditions.

Military Leave – Leave granted to state employees to attend authorized training or duty for the State’s military forces or any reserve branch of the U.S. Armed Forces. Other situations in which military leave are authorized include the activation of the State’s National Guard by the Governor and a national emergency activation for members of a reserve branch of the U.S. Armed Forces.

Military Pay – The pay and allowances of military personnel including base pay, special pays, and other allowances.

Pay differential – Pay used to supplement employees' military pay through the use of emergency leave. This differential allows employees to receive pay that is comparable to the pay received prior to military activation.

Determining Eligibility

Only state employees called to active duty in support of a national emergency (under U.S. Code, Title 10 or Title 32) and whose military pay is less than their gross state pay are eligible for differential pay. Emergency leave should not be granted under Texas Government Code, Section 661.9041, for normal military training or attendance at military schools.

To determine eligibility, request a copy of the employees' Military Leave and Earnings Statements (LES) and look at the total entitlement of military pay received by the service members. Exclude pay for time spent in a combat zone, hardship duty pay, and family separation pay from the military pay total.

The agency should request copies of each service member's LES each month that emergency leave is going to be granted. The service members' pay may change during the period of active duty because of a promotion or change in entitlements, an increase in their pay, or the reduction or ceasing of the need for state military differential pay.

Information on the LES is available at http://www.dod.mil/dfas/money/milpay/les_djms.pdf (see Field 20 Total Entitlements).

Determining Amount of Pay Differential

The agency should compute the number of emergency leave hours to be granted by:

1. Dividing the employee's monthly pay earned during **active duty** by the number of standard work hours in the month to determine the hourly rate for the month.
2. Dividing the employee's monthly pay earned from **state employment** by the number of standard work hours in the month to determine the hourly rate for the month.
3. Subtracting the difference in **military pay** (excluding pay received while assigned to a combat zone, hardship duty pay, and family separation pay) from **state pay** for the month to determine how many emergency leave hours, rounded to whole days, need to be given.

Example

- Employee earns \$2,000 per month on active duty (excluding pay provided while serving in a combat zone, hardship duty pay, and family separation pay).
- State pay is \$2,723 per month.

- In the month of September 2005, there are 176 work hours (22 workdays multiplied by 8 work hours).

Calculations

- The average hourly rate for his military pay is \$11.36 (\$2,000 divided by 176 hours).
- The average hourly rate for his state pay is \$15.47 (\$2,723 divided by 176 hours).
- The difference per month is \$723.
- The employee would be paid for 48 hours or six whole days of emergency leave to make up for the difference in pay. (\$723 divided by the state hourly rate of \$15.47)

Questions and Answers

Question: Should any other military pay or allowances be included as military pay in determining the pay differential?

Answer: For purposes of determining military differential pay, Texas Government Code, Section 661.9041, specifically excludes only pay received while serving in a combat zone, hardship duty pay, and family separation pay from the calculation used to determine the pay differential.

Question: What areas are currently considered combat zones?

Answer: According to the Office of the Secretary of Defense, members assigned to the Persian Gulf; the Red Sea; the Gulf of Oman; the part of the Arabian Sea that is north of 10°N latitude and west of 68°E longitude; the Gulf of Aden; or the total land areas of Iraq, Kuwait, Saudi Arabia, Oman, Bahrain, Qatar, the United Arab Emirates, and Afghanistan are currently considered to be in combat zones. A list of these zones can be found at the following links:

<http://www.irs.gov/newsroom/article/0,,id=108331,00.html> (Please copy and paste this link directly into your web browser.)

or

http://www.dod.mil/comptroller/fmr/07a/07a_10.pdf

Question: Are hostile fire pay and imminent danger pay considered combat zone pay?

Answer: Yes, if the agency determines that the employee serves in a combat zone, then hostile fire pay/imminent danger pay is considered combat zone pay and thus would be excluded when computing military pay for the purpose of calculating the differential pay.

Question: What other factors does an agency need to consider when granting an employee emergency leave to make up the difference between state and military pay?

Answer: If emergency leave is granted to state employees activated for military duty, those employees will accrue sick and vacation leave each month they receive pay from the state agency. The sick and vacation hours will be accrued but not posted until they return to full employment with the state agency (Texas Government Code, Sections 661.152[e] and [j] and 661.202[k]).

The agency should inform activated state employees of the agency's intent to use emergency leave to supplement their military pay to raise it to a rate comparable to the state pay received prior to activation.

Employees may have suspended their state health insurance during the military activation and should review their eligibility for continued state health and life insurance due to state emergency leave differential pay.

Question: Can an agency force employees to use their other leave accruals before granting them emergency leave to make up the difference in state and military pay?

Answer: No, an agency cannot force employees to use their annual and sick leave accruals. However, employees may choose to use all or some portion of annual leave or state compensatory time prior to going on leave without pay.

Helpful Web Sites

Military Site that Describes the Leave and Earnings Statement
http://www.dod.mil/dfas/money/milpay/les_djms.pdf

Military Site that Contains Military Pay Policy and Procedures
<http://www.dod.mil/comptroller/fmr/07a/index.html>

Employees Retirement System Site: Addresses Benefits While on Military Leave
<http://www.ers.state.tx.us/employees/militarydutyanders.htm>

Internal Revenue Service Site: Contains Tax Information for U.S. Armed Forces Members
<http://www.irs.gov/newsroom/article/0,,id=97273,00.html> (Please copy and paste this link directly into your web browser.)

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