



**DEPARTMENT OF HUMAN RESOURCE MANAGEMENT**

**POLICY 4.50 MILITARY LEAVE**

**APPLICATION:** Full-time, Quasi Full-time, and Part-time classified employees.

**PURPOSE:**

It is the policy of the Commonwealth to permit employees to take military leave, with or without pay, for active duty in the armed services of the United States, as well as permitting employees who are former and inactive members of the armed services, or current members of the reserve forces of any of the United States' armed services, or of the Commonwealth's militia, or the National Defense Executive Reserve to take military leave in accordance with federal and state law.

**POLICY SUMMARY:**

This policy provides guidelines and procedures for the administration of military leave with and without pay.

**AUTHORITY & INTERPRETATION:**

Title 2.2 of the Code of Virginia

The Director of the Department of Human Resource Management is responsible for official interpretation of this policy, in accordance with §2.2-1201 of the Code of Virginia. The Department of Human Resource Management reserves the right to revise or eliminate this policy.

**RELATED POLICIES:**

- Policy 1.30, Layoff
- Policy 3.10, Compensatory Leave
- Policy 3.15, Overtime Leave
- Policy 4.10, Annual Leave
- Policy 4.45, Leave Without Pay – Conditional/Unconditional
- Policy 4.55, Traditional Sick Leave
- Policy 4.57, Virginia Sickness and Disability Program

**POLICY HISTORY:**

EFFECTIVE DATE	DESCRIPTION
09-16-93	Policy Established
07-01-04	Policy Revised
2020	Policy reformatted and revised. Internet links updated, recognition leave added.
07-01-22	§§ 44-93 and 44-204 of the Code of Virginia amended to increase the number of days of paid military leave.



DEPARTMENT OF HUMAN RESOURCE MANAGEMENT

POLICY 4.50 MILITARY LEAVE

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PROCEDURES

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**ELIGIBILITY FOR MILITARY LEAVE**

General Provisions	Application
Eligibility for Military Leave	Employees are eligible for military leave when: <ul style="list-style-type: none"> <li>• called to required military training.</li> <li>• called into state or federal active military service.</li> <li>• called up by the Governor under <a href="#">§ 44-75.1</a> and <a href="#">§ 44-78.1</a> of the Code of Virginia to respond to threats, and natural or man-made disasters; or</li> <li>• voluntarily enters active service in any branch of the United States military, the Commonwealth’s Militia, or the National Defense Executive Reserve.</li> </ul>

**MILITARY LEAVE WITH PAY**

General Provisions	Application
21 Workdays per Federal Fiscal Year	<p>The employees listed below shall be granted up to 21 workdays of paid military leave. A workday shall mean 1/260 of the total working hours an employee is scheduled to work during the entire federal fiscal year.</p> <ul style="list-style-type: none"> <li>• Current members of the armed services, including members of the reserve forces of any of the United States' armed services, who are called to:               <ul style="list-style-type: none"> <li>○ participate in federally-funded military training duty or</li> <li>○ report for a tour of active federally-funded duty.</li> </ul> </li> <li>• Former members of the armed services who are called to report for active duty.</li> <li>• Members of the Commonwealth's militia who are engaged in training duty or state active duty approved by the Governor or their designee.</li> <li>• Members of the National Defense Executive Reserve who are senior executives called to service with the federal government or engaged in training approved by the Governor or their designee.</li> </ul> <p>Employees do not lose seniority or accrued leave balances during the 21 day period of military leave with pay.</p>
Access To Military Leave With Pay (21 Days)	<ul style="list-style-type: none"> <li>• An employee on Leave without Pay, including leave without pay-military, does not have access to the 21 days of paid military leave available to employees who go onto military leave from an active working status.</li> <li>• However, Military Leave with Pay is available when an employee returns from Military Leave without Pay and is re-deployed or required to attend military training up to the maximum allotment of 21 days per federal fiscal year.</li> </ul>
Physicals	<p>Employees are paid up to 8 hours per federal fiscal year for pre-induction and other physical examinations required for military service in addition to the 21 workdays of Military Leave with Pay.</p>
Military Leave For Emergency Service	<ul style="list-style-type: none"> <li>• The Governor may call the Commonwealth's Militia to respond to threats and natural or man-made disasters in Virginia or in another state.</li> <li>• Employees called to such emergency-response military duty are on military leave with pay.</li> <li>• This period of Military Leave with Pay is separate from and in addition to the 21 workdays of paid military leave per federal fiscal year available for military training or active military duty, as detailed above.</li> </ul>
Effects of Remaining on Paid Leave	<p><i>Employees' benefits are not affected during military leave with pay.</i></p> <ul style="list-style-type: none"> <li>• <i>Employees continue to accrue annual leave and traditional sick leave for 90 calendar days.</i></li> </ul>

General Provisions	Application
	<ul style="list-style-type: none"> <li>• <i>VSDP leave is credited if the employee is on paid leave on January 10, and VSDP balances are retained during leave with pay; unused leave (sick, family and personal) is lost on January 9.</i></li> <li>• <i>Retirement contributions continue.</i></li> <li>• <i>The state contribution to health insurance premiums continues, and life insurance coverage is not changed.</i></li> </ul>

**OPTIONS FOR USING ACCRUED LEAVE AT BEGINNING OF MILITARY LEAVE**

General Provisions	Application
<p>Use of Leave – General</p> <p>Refer to the <a href="#">Policy Guide – Use of Accrued Leave During Military Duty</a> regarding the use of sporadic leave to cover for holidays.</p>	<ul style="list-style-type: none"> <li>• In addition to the 21 workdays for training or active duty and 8 hours of paid military leave for a physical examination, employees on military leave may remain in a paid status by using all or part of their accrued leave balances except sick leave.</li> <li>• In the provisions below relating to annual, compensatory, overtime, and recognition leave employees who choose to be paid for some or all of their accrued balances may elect to receive payment either (a) in a lump sum or (b) on the agency’s regular payroll schedule.</li> <li>• Employees who choose to use some or all of their accrued balances to remain in active status must use the leave consecutively. Sporadic use of paid leave is not permitted.</li> <li>• Employees may elect during military leave to amend their original instructions and receive a lump sum payment for any retained leave balances that qualify to be paid.</li> </ul>
<p>Annual Leave</p>	<p>At the employee’s option, all or part of annual leave balances held at the beginning of active military duty may be:</p> <ul style="list-style-type: none"> <li>• applied to the period of absence due to military service.</li> <li>• paid up to the allowable payment limit at the time of placement on leave without pay; and/or</li> <li>• retained until reinstatement from military leave without pay.</li> </ul>
<p>Compensatory Leave</p>	<p>At the employee’s option, all or part of compensatory leave balances held at the beginning of active military duty may be:</p> <ul style="list-style-type: none"> <li>• applied to the period of absence due to military service.</li> <li>• paid as allowed by policy at the time of placement on leave without pay; and/or</li> <li>• retained until reinstatement from military leave without pay.</li> </ul> <p>Retained compensatory leave will be available for use for one year following reinstatement.</p>
<p>Overtime Leave</p>	<p>At the employee’s option, all or part of overtime leave balances held at the beginning of active military duty may be:</p> <ul style="list-style-type: none"> <li>• applied to the period of absence due to military service.</li> <li>• paid up to the allowable accrual limit at the time of placement on leave without pay; and/or</li> <li>• retained until reinstatement from military leave without pay.</li> </ul>

General Provisions	Application
	<p>Overtime leave balances are paid at the employee's regular rate of pay or the average rate received by the employee during the last three years of employment, whichever is higher.</p>
<p>Recognition Leave</p>	<p>At the employee's option, all or part of recognition leave balances held at the beginning of active military duty may be:</p> <ul style="list-style-type: none"> <li>• applied to the period of absence due to military service.</li> <li>• paid as allowed by policy at the time of placement on leave without pay; and/or</li> <li>• retained until reinstatement from military leave without pay.</li> </ul> <p>Retained recognition leave will be available for use for one year following reinstatement.</p>
<p>Traditional Sick Leave</p>	<p>Employees participating in the Traditional Sick Leave program under <a href="#">Policy No. 4.55, Sick Leave</a>, may select from below options for their accrued sick leave balances:</p> <ul style="list-style-type: none"> <li>• employees with less than five years of continuous state service at the beginning of military leave without pay retain their sick leave balances, which are reactivated upon reinstatement to state service.</li> <li>• employees with five or more years of continuous state service at the beginning of military leave without pay may: <ul style="list-style-type: none"> <li>○ retain their entire sick leave balances to be reactivated upon reinstatement to state service, or</li> <li>○ be paid for 25% of their sick leave balances up to \$5,000. If paid, the remaining 75% of the balance lapses and will not be restored upon their reinstatement to state service.</li> </ul> </li> </ul>
<p>Leave Awarded by the Virginia Sickness and Disability Program (VSDP)</p>	<p>At the employee's option, family and personal leave balances under VSDP may be applied to the period of absence due to military service.</p> <ul style="list-style-type: none"> <li>• Any unused balance of VSDP sick leave and family personal leave held at the beginning of military leave without pay will be retained pending the employee's return.</li> <li>• If the employee remains on leave without pay at the end of the leave year (January 9), these balances will expire. When the employee returns to state service, new balances are provided in accordance with VSDP policy.</li> </ul>
<p>Military Bank Leave</p>	<ul style="list-style-type: none"> <li>• A full-time employee who is a member of the organized reserve forces of any of the armed services of the United States or of the Virginia National Guard may carry forward all excess accrued annual leave hours to be retained as Military Bank leave (MB). <ul style="list-style-type: none"> <li>○ When the yearly carry-over adjustments to annual leave are made on January 10 of each year, the amount of leave in excess of the allowable carry-over amount shall be added to the employee's MB category if that employee has a Military Reserve (MR) or National Guard (NG) designation in the HR</li> </ul> </li> </ul>

General Provisions	Application
	<p>Management System and has authorized accrual of MB leave through their agency.</p> <ul style="list-style-type: none"> <li>Hours over the normal carryover limits retained as Military Bank leave may be used only during active military duty as provided by the <a href="#">Code of Virginia, §2.2-2903.1</a>.</li> <li>In accordance with <a href="#">Policy 4.20, Annual Leave</a>, Military Bank leave may not be paid out or credited in any other form to the employee. It is either used during active military duty or it lapses upon separation, retirement, or death.</li> <li>An employee on active military duty may choose to retain all or part of their Military Bank leave. The balance will remain available for use only during future periods of active military duty.</li> </ul>
Using Military Bank Leave	<ul style="list-style-type: none"> <li>An eligible full-time employee whose excess annual leave has been retained as Military Bank leave may apply any such banked leave at the beginning of active military duty.</li> <li>Employees beginning active military duty should indicate their request to use Military Bank leave, and other accrued leave, on their <a href="#">Military Leave Worksheet</a>.</li> <li>To continue to have excess annual leave retained as Military Bank leave, the employee must complete the <a href="#">Application for Military Leave Bank</a> by December 1 of each year.</li> <li>Military Bank leave may be applied to the period of absence due to active military duty in the same way that other accrued leave is applied. Regular payroll deductions continue.</li> <li>Sporadic use of MB leave is not permitted.</li> </ul>

***MILITARY LEAVE WITHOUT PAY***

General Provisions	Application
Overview	<ul style="list-style-type: none"> <li>Employees shall be granted military leave without pay for the duty indicated in their military orders that is not covered by military leave with pay or by the employee's use of their annual, military bank, compensatory, overtime, recognition, or family and personal leave balances.</li> <li>Periods of military leave without pay do not interrupt state service for the purpose of computing seniority, determining annual leave accrual rates and VSDP credits, or establishing eligibility for sick leave payment upon termination.</li> </ul>
Active Military Supplement  Refer to <a href="#">Resources and Information for Employees Called to Active Military Duty</a> for additional information on	<ul style="list-style-type: none"> <li>Classified employees called to active duty military service in the Armed Forces of the United States and who are on Leave Without Pay-military and whose gross military salary plus allowances is less than their base state salary are eligible to receive the <a href="#">Active Military Supplement</a>.</li> <li>Employees need to provide to their agency Human Resource office a current military Leave and Earnings Statement (LES) when they begin active duty and when any change in their salary or allowances occurs so that their agencies can confirm</li> </ul>

General Provisions	Application
the Active Military Supplement.	their eligibility for the supplement and can calculate the amount due.
Exempt Employees  Refer to Resources and Information for Employees Called to Active Military Duty for additional information on the Active Military Supplement.	<ul style="list-style-type: none"> <li>• FLSA exempt employees' salaries may not be reduced as a result of a partial workweek absence on military leave. However, agencies may count employees' military pay for the week toward their salaries. Thus, if an employee's military pay is equal to or higher than the employee's weekly salary, the agency is not required to pay the employee any salary for that week.</li> <li>• If an employee's military pay is less than their salary, but the military pay is supplemented in accordance with the Active Military Supplement, then the agency's obligation to the employee for the partial workweek will have been met.</li> </ul>
Layoff	<ul style="list-style-type: none"> <li>• Employees on Leave Without Pay-Layoff are considered to be on leave from state service. Thus, if they are called to active military duty during layoff, they will be placed on Military Leave Without Pay.</li> <li>• Employees will retain layoff and severance benefits until released from active military duty. At that point, they will return to LWOP- Layoff status and continue for the remaining period of layoff for which the employee was eligible prior to LWOP-military.</li> </ul>
Temporary Workforce Reduction	<ul style="list-style-type: none"> <li>• An employee who remains on the payroll by using accrued leave while on active military duty may be subject to Temporary Work Force Reduction (TWFR) if their position would otherwise have been affected by the reduction.</li> <li>• Unpaid leave will be substituted for paid leave for the time affected by the TWFR.</li> <li>• An employee on Military Leave Without Pay is generally not subject to TWFR.</li> </ul>

### ***BENEFITS DURING MILITARY LEAVE WITHOUT PAY***

General Provisions	Application
Annual Leave	Employees do not accrue annual leave when they are in a leave without pay status.
Sick Leave– Traditional	Employees will not accrue traditional sick leave when in leave without pay status.
VSDP Leave	Unused balances of VSDP sick leave and of family and personal leave lapse if the employee remains on military leave on January 9. New balances are credited in accordance with VSDP policy when the employee returns to state service.
Health And Related Benefits During LWOP Military  Refer to the <a href="#">Quick Reference Guide –</a>	<ul style="list-style-type: none"> <li>• Coverage will continue through the end of the month in which the leave without pay begins. If the employee returns from leave the following month and works at least one-half of the workdays in the month, coverage will not lapse.</li> </ul>

General Provisions	Application
<a href="#">Impact of Leave on Basic Benefits – Classified Employees</a> for additional information.	<ul style="list-style-type: none"> <li>• Coverage for Active Military Duty/Leave Without Pay for more than 14 days:               <ul style="list-style-type: none"> <li>○ Refer to the <a href="#">Military Leave Fact Sheet</a> for more detailed information.</li> </ul> </li> </ul>
Life Insurance  Refer to the Quick Reference Guide – Impact of Leave on Basic Benefits – Classified Employees for additional information.	The state shall continue to provide basic group life insurance coverage at no cost to the employee for a maximum of 24 months from the date military leave without pay begins. After 24 months, an employee may convert to an individual life insurance policy and pay the entire premium.
Holidays	Employees will not be granted or paid compensatory leave for holidays occurring during periods of military leave without pay
Retirement Contributions	If employees earn any pay in the months in which military leave without pay begins or ends, agencies shall make retirement contributions based on the employees' full monthly base salaries. Contributions will be discontinued for the remaining time employees are on military leave without pay.

**GUIDELINES FOR REINSTATEMENT TO STATE SERVICE**

General Provisions	Application
Eligibility for Reinstatement	<ul style="list-style-type: none"> <li>• Reemployment rights extend to persons who have been absent from a position of employment because of duty in the uniformed services.</li> <li>• The cumulative length of service that causes a person's absences from a position may not exceed five years.</li> </ul>
Exceptions	<p><a href="#">USERRA</a> lists eight categories of service that are exempt from the five-year limitation. These include:</p> <ul style="list-style-type: none"> <li>• service to complete an initial period of obligated service.</li> <li>• service from which the employee through no fault of their own cannot obtain a release within the five-year limit (e.g., a service member on deployment at sea when the five year limitation expires);</li> <li>• required training for reservists and National Guard members.</li> <li>• service under an involuntary order for active duty during domestic emergency or national security related situations.</li> <li>• service on active duty because of a war or national emergency declared by the President or Congress (other than training).</li> <li>• active duty by volunteers supporting “operational missions” for which Reservists have been ordered to active duty without their consent (other than for training).</li> <li>• service by volunteers 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; and</li> </ul>



General Provisions	Application
	<ul style="list-style-type: none"> <li>• 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.</li> </ul>
Duration of Eligibility for Reinstatement	<p>Employees remain eligible for reinstatement to previous positions for a cumulative period of up to five years of active duty. (Note the eight categories of service exempt from the five-year limitation listed above). That eligibility may be extended for up to two additional years only when:</p> <ul style="list-style-type: none"> <li>• extension of active military service is requested by and for the convenience of the federal government.</li> <li>• a longer state active duty period is fixed by the Governor; or</li> <li>• hospitalization resulting from active duty continues after discharge.</li> </ul>
Placement into position	<ul style="list-style-type: none"> <li>• Policies and procedures for reinstatement are consistent with USERRA, except where state law confers a greater benefit.</li> <li>• Veterans must be placed in positions they would have attained if they had remained continuously employed.</li> </ul>
Requests for Reinstatement	<ul style="list-style-type: none"> <li>• Employees must request reinstatement within 90 calendar days of the day after release from active duty. Employees remain on Military Leave Without Pay during the permitted period of time between discharge from active military duty and reinstatement to active state employment.</li> <li>• Requests for reinstatement must be made to the agency either orally or in writing. They should state that the person is seeking reinstatement to their former employment upon return from military service.</li> <li>• These requests should include certificates or release orders that confirm satisfactory completion of military service and provide the date of discharge.</li> <li>• The state is not obligated to reinstate an employee who has not satisfactorily completed military service or training. Eligibility for reinstatement must be evaluated on an individual basis, taking into consideration the employee's military record and work history with the state.</li> <li>• An employee may not return to their classified position prior to the date of discharge shown on the official discharge documents.</li> </ul> <p><u>Disability incurred or aggravated</u></p> <ul style="list-style-type: none"> <li>• The reporting or application deadlines are extended for up to two years for persons who are hospitalized or convalescing because of a disability incurred or aggravated during the period of military service.</li> <li>• This period will be extended by the minimum time required to accommodate a circumstance beyond an individual's control that would make reporting within the two-year period impossible or unreasonable.</li> </ul>

General Provisions	Application
Effective Date of Reinstatement	Employees are to be reinstated within a reasonable period of time after notification to the employer, normally considered to be within 5 to 10 workdays. However, agency circumstances may require longer periods.
Escalator Principle	<ul style="list-style-type: none"> <li>• Employees are qualified for pre-service positions or for positions to which they are entitled under the <a href="#">"escalator principle."</a> That is, they will step back on the seniority escalator at the salary they would have held had they kept their positions continuously during military service.</li> <li>• The purpose of the reemployment statute is to place veterans in the positions they would have attained if they had remained continuously employed, such as progression achieved through apprenticeship or career ladders provided the employee meets the qualifications.</li> </ul>
Same Or Comparable Position Within the Agency	<ul style="list-style-type: none"> <li>• Employees will be reinstated to their previous positions or to comparable positions in terms of pay, status, and location when they meet the minimum qualifications for the position.</li> <li>• If employees no longer meet the minimum qualifications of their former positions because of changes in job duties, they must meet the changed requirements within a reasonable time after reemployment or be offered positions requiring skills comparable to those required in former jobs with like seniority, status, pay, and location.</li> <li>• Before being placed in other positions, employees should be offered training to increase their ability to perform the jobs, if such training would have been available to them if no military service had occurred.</li> </ul>
Change In Agency Business Needs	<p>When an agency's circumstances have changed, thereby making it impossible or unreasonable to reinstate the employee, it may take one of the following actions:</p> <ul style="list-style-type: none"> <li>• Comparable position available – If employees' formerly-held positions have been abolished, they shall be placed in positions comparable in Pay Band and pay to those previously held. <ul style="list-style-type: none"> <li>○ NOTE: If the nature and level of duties of a current position are substantially similar to those of the returning employee's pre-service position, a change of title does not justify the conclusion that the pre-service position has been abolished.</li> </ul> </li> <li>• Comparable position not available – If comparable positions are not available, employees shall be considered affected by a reduction in force, and the provisions of <a href="#">Policy 1.30, Layoff</a>, shall apply.</li> </ul>
Military Service Disability	When employees become disabled during military service and cannot perform duties of their previous positions, and reasonable accommodations are not possible without undue hardship to the agency, efforts must be made to place them in the most closely comparable positions for which they qualify with no loss of seniority.

### **LEAVE BENEFITS UPON REINSTATEMENT**

General Provisions	Application
Overview	<ul style="list-style-type: none"> <li>• Military Leave Without Pay is not considered a break in state service for returning employees.</li> <li>• Thus, periods of military leave without pay do not interrupt state service for the purpose of computing seniority, determining annual leave accrual rates and VSDP credits, or establishing eligibility for sick leave payment upon termination.</li> </ul>
Annual Leave	<ul style="list-style-type: none"> <li>• Employees' periods of military leave without pay will be included as state service when determining their rates for accruing annual leave.</li> <li>• If an employee chose to receive pay for accrued annual leave when going on Leave Without Pay-military and then returns to state service within 180 days, they may buy back the annual leave for which they were paid by reimbursing the full amount received to the paying agency.</li> </ul>
Compensatory, Recognition, and Overtime Leave	<ul style="list-style-type: none"> <li>• Retained <u>compensatory leave</u> will be available for use during the year following reinstatement. Any unused compensatory leave retained from before military leave will expire one year after reinstatement.</li> <li>• Retained <u>recognition leave</u> will be available for use during the year following reinstatement. Any unused recognition leave retained from before military leave will expire one year after reinstatement.</li> <li>• Retained <u>overtime leave</u> does not expire and will remain until the employee uses the time or separates from state employment and receives payment.</li> </ul>
Traditional Sick Leave	<ul style="list-style-type: none"> <li>• An employee who returns from military leave to state service within 180 calendar days may buy back any sick leave for which they were paid by reimbursing the full amount received to the paying agency.</li> <li>• The remaining 75% that could not be paid will be restored when the purchase is complete.</li> <li>• Employees who repurchase sick leave upon their return do not have to serve another five-year period eligibility period for payment of sick leave upon separation.</li> </ul>
VSDP Sick Leave and Family and Personal Leave	<ul style="list-style-type: none"> <li>• If the employee is reinstated within the same leave year (January 10-January 9), the VSDP leave balances they had when called to duty will be reactivated.</li> <li>• If reinstatement occurs in a new leave year, the employee will receive a new allotment of sick leave and family and personal leave based on months of service, as described in <a href="#">Policy 4.57, Virginia Sickness and Disability Program</a>.</li> </ul>

General Provisions	Application
Family Medical Leave (FMLA)	Time spent on military leave with or without pay counts toward an employee's eligibility for FMLA.

**HEALTH AND RELATED BENEFITS UPON REINSTATEMENT**

General Provisions	Application
Health Insurance Coverage  Refer to the <a href="#">Military Leave Fact Sheet</a>	<ul style="list-style-type: none"> <li>• When the employee returns to state service, the employee may make health benefits elections to enroll in a plan and select a membership level if the employee was gone for more than 30 days.</li> <li>• If the employee returning from military leave without pay was gone less than 30 days, the employee <u>must</u> return to the same plan and membership level in which they were enrolled prior to the leave.</li> <li>• Benefits coverage will become effective either on the first day of the month of their reinstatement to active state employment, or on the first day of the month following the date of their reinstatement to active state employment, provided that the employee submits the appropriate paperwork within 31 days of reinstatement from military leave without pay.</li> </ul>
Flexible Reimbursement Account  Refer to the <a href="#">Military Leave Fact Sheet</a>	<ul style="list-style-type: none"> <li>• If the employee returning from military leave without pay was gone less than 30 days, the employee <u>must</u> return to the reimbursement account(s) elections they had prior to the leave.</li> <li>• If the employee returning from military leave without pay was gone more than 30 days, the employee may make new elections for both the Medical and Dependent Care Accounts provided that the employee submits the appropriate paperwork within 31 days of reinstatement from military leave without pay. The account(s) will be effective the first of the month following the receipt of the completed paperwork.</li> </ul>
Life Insurance	When an employee is reinstated to active state employment following military leave without pay, the employee's basic group life insurance coverage will continue or resume, as appropriate.
Retirement Credit	Employees reinstated to state service after active military duty are entitled to retirement service credit for periods of military LWOP as stipulated in Virginia Retirement System guidelines.
Probationary Period	Probationary employees who take military leave with or without pay for more than 14 calendar days will have their probationary periods extended for the length of the leave.
Compensation	<ul style="list-style-type: none"> <li>• Employees returning to their previous positions from military leave shall be reinstated at the same salary as when they were placed on military leave status, or the salary they would have attained had they kept their positions continuously during military service (escalator principle) as follows:</li> </ul>

General Provisions	Application
	<ul style="list-style-type: none"> <li>○ any salary changes that affected all other agency employees who occupy positions in the employees' Roles (such as Re-Banding, statewide salary increases, or Role Changes) must be applied to the returning employees.</li> <li>● When employees return to positions other than those held prior to taking military leave, their salaries shall be determined in accordance with <a href="#">Policy 3.05, Compensation</a>.</li> </ul>

**EMPLOYEE RESPONSIBILITIES**

General Provisions	Application
Documentation	<ul style="list-style-type: none"> <li>● Employees shall provide to agency heads or their designees copies of orders documenting dates and types of required military training, physical examination, or active duty from appropriate military officials, including discharge documentation to include any updates to their active duty orders.</li> <li>● Employees must also provide other required documentation as requested by their agencies. For example, an employee on military leave without pay must submit a current and updated Leave and Earnings statement (LES) to receive the Active Military Supplement.</li> </ul>
Requesting Military Leave	<ul style="list-style-type: none"> <li>● Employees must request military leave, indicating the type of military leave for which they are applying. For example, they must indicate leave with or without pay.</li> <li>● If leave with pay, they should designate the type of leave, including whether and how any accrued leave is to be applied.</li> <li>● The <a href="#">Military Leave Worksheet</a> should be used.</li> </ul>
Use of Military Bank Leave	Employees requesting to use Military Bank leave must certify that they were eligible to accrue Military Bank leave. The <a href="#">Application for Military Bank Leave</a> form should be used.
Emergency Orders	In case of emergency orders to military service, employees must notify supervisors as soon as possible, and complete leave request forms when feasible, or upon return.
Reinstatement to State Employment	Employees seeking reinstatement to state employment after a period of active military duty must make their requests in accordance with USERRA and other requirements given in this policy.

**AGENCY RESPONSIBILITIES**

General Provisions	Application
Communication	Agencies should inform employees who are called to active military service of their rights, status, and obligations to the state during and after their period of active duty.
Guidelines	<ul style="list-style-type: none"> <li>• Agencies should establish guidelines for employees to follow for submitting requests for military leaves of absence and for monitoring such leaves to ensure that no more than 21 workdays (168 work hours) with pay are granted for military training and active duty in a federal fiscal year.</li> <li>• Agencies may also need to collect and maintain information related to employees' military status, earnings, or other data. For example, agencies must verify an employee's eligibility for the Active Military Supplement and calculate the amount of supplement due by reviewing the employee's military Leave and Earnings Statement.</li> </ul>
Employee Records	<p>Agencies should update employee records in the HR Management Information System to reflect:</p> <ul style="list-style-type: none"> <li>• membership in the National Guard (NG) or Military Reserves (MR);</li> <li>• leave with or leave without pay-military status.</li> <li>• receipt of the Active Military Supplement; or</li> <li>• reinstatement or separation.</li> </ul>
Forms	Agencies must develop appropriate forms and procedures for recording the employee's request to carry over excess annual leave as Military Bank leave, must verify the employee's eligibility for Military Bank leave, and must ensure that correct leave records are maintained.
Termination from Military Leave	<ul style="list-style-type: none"> <li>• The termination report of an employee on paid Military Leave who resigns or is terminated from state service will show the last day of paid leave as the separation date.</li> <li>• If an employee on Military Leave Without Pay resigns or is terminated, the termination report will show the separation date as the date the notification of resignation is received, or the date of the termination action.</li> </ul>

## GLOSSARY

Active Military Supplement

Amount paid by the state to classified employees who are reservists or in the National Guard on Leave Without Pay–Military whose gross military salary plus allowances is less than their base state salary. These employees will receive payment equal to the difference between the two amounts. Employees remaining on the state payroll by using any paid leave are not eligible for this supplement. Authorized by Executive Order 44 (2003) and valid unless rescinded. See the Policy Guide for Calculating the Active Military Supplement.

Active Military Duty

Federal

Federally funded military duty as (a) a member of the armed forces of the United States on active duty pursuant to Title 10 of the United States Code, or (b) a member of the Virginia National Guard on active duty pursuant to either Title 10 or Title 32 of the United States Code.

State

State-funded military duty pursuant to a call-up of the militia, including the National Guard, by the Governor of Virginia as provided by the Code of Virginia, §44-75.1 and §44-78.1

Commonwealth's Militia	The militia of the Commonwealth of Virginia consists of the National Guard, which includes the Army National Guard and the Air National Guard; the Virginia State Defense Force; and the naval militia.
Escalator Principle	USERRA provides that returning service members are reemployed in the job that they would have attained had they not been absent for military service (escalator principle), with the same seniority, status and pay, as well as other rights and benefits determined by seniority.
Federal Fiscal Year	October 1 - September 30.
Military Bank Leave	Leave time that full-time employees who are members of the military reserves (MR) or National Guard (NG) may choose to bank for use during active military duty in order to remain in full pay status. The source of this leave time is annual leave hours above the carryover maximum.
Military Leave With Pay	A period of approved absence for military duty during which full state pay and benefits continue. Includes paid time granted by statute and time during which an employee has elected to apply their accrued leave as permitted by policy.
Military Leave Without Pay	A period of approved absence during which employees' regular pay is discontinued by the state while they are engaged in active military duty or state- or federally-funded military training duty.
Military Training	Federally-funded training duty for members of any reserve component of the armed forces of the United States as listed above, and state-funded training duty for members of the Commonwealth's Militia and National Defense Executive Reserve.
National Defense Executive Reserve	Composed of persons of recognized expertise from various segments of the private sector and from government (except full-time federal employees) for training for employment in executive positions in the Federal Government in the event of an emergency that requires such employment.

## USERRA

The Uniformed Services Employment and Re-employment Rights Act of 1994. Under USERRA, employees who leave work to serve in the armed forces hold certain reemployment rights as long as they comply with notification and other requirements.

NOTE: State employees (for example, hourly, faculty, "at-will") not covered by this policy may have reinstatement rights under USERRA.