

REGULATION

Appointing Authority Letter Reference: SPDOC-	Effective Date: May xx, 2005	Index Reference: Military Leave of Absence	Regulation Number: 2.04 DRAFT Rev A (19-Apr-2005)
Issuing Bureau:	Rule Reference: Rules: 2-14 (Rights of Employees Absent Due to Service in the Uniformed Services)		Replaces: New
Subject: MILITARY LEAVES OF ABSENCE AND RETURN TO WORK			

TABLE OF CONTENTS

1. PURPOSE.....	2
2. CIVIL SERVICE COMMISSION RULE REFERENCE	2
3. DEFINITIONS	2
A. Definitions from the Civil Service Rules.....	2
4. STANDARDS.....	2
A. Prohibited Discrimination and Retaliation.....	2
B. Character of Service and Termination of Benefits	3
C. Military Leaves of Absence.....	3
D. Requirements for Returning to Work and Other Benefits.	4
E. Time Limits for Returning to Work.	7
F. Rights, Benefits, and Obligations.	8
G. Position on Returning to Work.....	9
H. State National Guard Duty.....	11
I. Discharge for Just Cause.	11
J. Enforcement of Employment and Return-to-Work Rights.....	11

May xx, 2005	<p style="text-align: center;">Reg. 2.04 DRAFT Rev A (19-Apr-2005): Rights of Employees Absent Due to Service in the Uniformed Services</p>	Page 3 of 13
--------------	--	--------------

1 prohibition in this standard applies with respect to a person regardless of
2 whether that person has performed service in the uniformed services.

3 **B. Character of Service and Termination of Benefits**

4 An employee's entitlement to the benefits under Rule 2-14 or this regulation
5 terminates if any of the following occur:

6 1. The employee is separated from a uniformed service (1) with a
7 dishonorable discharge, (2) with a bad conduct discharge, or (3) under
8 other than honorable conditions, as characterized by regulations of the
9 uniformed service.

10 2. The employee is a commissioned officer dismissed (1) by sentence of a
11 general court-martial, (2) in commutation of a sentence of general court-
12 martial, or (3) by order of the President in time of war, as permitted under
13 10 USC §1161(a).

14 3. The employee is a commissioned officer dropped from the rolls pursuant
15 10 USC §1161(b), due to (1) absence without authority for at least
16 3 months, (2) separation by reason of a sentence to confinement
17 adjudged by a court-martial, or (3) a sentence to confinement in a federal
18 or state penitentiary or correctional institution.

19 4. The employee knowingly provides written notice of intent not to return to
20 a position in the classified service at the end of service in the uniformed
21 service.

22 **C. Military Leaves of Absence**

23 1. **Eligibility for military leave of absence.** If an employee is absent from
24 a classified position due to service in the uniformed services, an
25 appointing authority shall place the employee on a military leave of
26 absence if both of the following criteria are satisfied:

27 a. **Notice.** The employee or an appropriate officer of the uniformed
28 service gives the appointing authority advance oral or written notice
29 that the employee will be absent due to service in a uniformed
30 service. This requirement is waived if notice is prevented by military
31 necessity or is otherwise impossible or unreasonable under all of the
32 circumstances.

33 b. **Five year limit.** The cumulative length of the employee's previous
34 absences from the employing department due to service in the

1 uniformed services does not exceed 5 years. The exclusions in
2 standard D(2) do not count toward the 5-year limit.

3 **2. Deemed to be on a military leave.** If an employee is absent from a
4 classified position due to service in the uniformed services but has not
5 been placed on a military leave of absence, the employee is nonetheless
6 deemed to be on a military leave of absence if the employee is qualified
7 under Rule 2-14 and this regulation. If an employee is deemed to be on a
8 military leave of absence, the employee is entitled to all rights and
9 benefits as though the employee had been granted a military leave of
10 absence.

11 **3. Applicable rules and regulations.** A military leave of absence is
12 governed exclusively by Rule 2-14 and this regulation. Rule 2-11 [Leave of
13 Absence with Pay] and Rule 2-12 [Leave of Absence without Pay] do not apply to
14 a military leave of absence.

15 **4. Unpaid leave.** Unless otherwise expressly authorized in the rules or
16 regulations, a military leave of absence is without pay.

17 **5. Use of accrued leave.** An employee is permitted to use any annual,
18 personal, compensatory, or banked leave time accrued before beginning
19 service in the uniformed services. An appointing authority cannot require
20 an employee to use annual, personal, compensatory, or banked leave
21 time during such period of service.

22 **6. Funeral honors duty.** An appointing authority shall grant an employee
23 who is a member of a reserve component a military leave of absence to
24 allow the employee to perform funeral honors duty as authorized by
25 10 USC §12503 or 32 USC §115.

26 **D. Requirements for Returning to Work and Other Benefits.**

27 **1. Entitlement.** An employee on a military leave of absence is entitled to
28 return to work and to the other rights and benefits of Rule 2-14 and this
29 regulation if all of the following occur:

30 **a. Notice.** The employee or an appropriate officer of the uniformed
31 service gave advance written or verbal notice of the service to the
32 employee’s appointing authority. This requirement is waived if notice
33 was prevented by military necessity or was otherwise impossible or
34 unreasonable under all of the circumstances.

35 **b. Five year limit.** The cumulative length of the absence and all
36 previous absences from a position with the employee’s principal

1 department due to service in the uniformed services does not exceed
2 5 years. The exclusions in standard D(2) do not count toward the
3 5-year limit.

4 **c. Return to work.** The employee gives written or oral notice of intent
5 to return to work before the military leave of absence expires.

6 **2. Five year limit; exclusions.** The following service is not counted toward
7 the 5-year limitation in standards C(1)(b) and D(1)(b):

8 **a.** Service that is required, beyond 5 years, to complete an initial period
9 of obligated service.

10 **b.** Service during which the employee was unable to obtain orders
11 releasing the employee from a period of service in the uniformed
12 services before the expiration of the 5-year period and such inability
13 was through no fault of the employee.

14 **c.** Service performed as required pursuant to 10 USC §10147 or
15 §502(a), 32 USC §503, or to fulfill additional training requirements
16 determined and certified in writing by the Secretary of the uniformed
17 service concerned, to be necessary for professional development, or
18 for completion of skill training or retraining.

19 **d.** Service performed by a member of a uniformed service who is
20 ordered as follows:

21 (1) Ordered to or retained on active duty under 10 USC §688,
22 §12301(a), §12301(g), §12302, §12304, or §12305, or under
23 14 USC §331, §332, §359, §360, §367, or §712.

24 (2) Ordered to or retained on active duty (other than for training)
25 under any provision of law because of a war or national
26 emergency declared by the President or the Congress, as
27 determined by the Secretary of the uniformed service concerned.

28 (3) Ordered to active duty (other than for training) in support, as
29 determined by the Secretary of the uniformed service concerned,
30 of an operational mission for which personnel have been ordered
31 to active duty under 10 USC §12304.

32 (4) Ordered to active duty in support, as determined by the
33 Secretary of the uniformed service concerned, of a critical
34 mission or requirement of the uniformed services.

35 (5) Called into federal service as a member of the national guard
36 under 10 USC §§331, et seq. or §12406.

- 1 **3. Documentation for returning to work.**
- 2 **a. Required documentation.** An employee returning to work after a
- 3 military leave of absence shall, upon request of the employee's
- 4 appointing authority, provide documentation to establish each of the
- 5 following:
- 6 (1) The employee's return to work is timely under standard E.
- 7 (2) The employee has not exceeded the 5-year service limitation
- 8 (subject to the exclusions in standard D(2)).
- 9 (3) The employee's entitlement to the benefits has not been
- 10 terminated pursuant to standard B.
- 11 **b. Lack of documentation.** The failure of an employee to provide
- 12 documentation that satisfies standard D(3)(a) is not a basis for
- 13 denying return to work if the failure occurs because the
- 14 documentation does not exist or is not readily available at the time of
- 15 the request of the appointing authority. If, after the employee returns
- 16 to work, documentation becomes available that establishes that the
- 17 employee does not meet one or more of the requirements referred to
- 18 in standard D(3)(a), the appointing authority may terminate the
- 19 employment of the employee and the provision of any rights or
- 20 benefits afforded the employee under this regulation.
- 21 **c. Limit on demand for documents.** An appointing authority may not
- 22 delay an employee's return to work by demanding documentation
- 23 that does not then exist or is not then readily available.
- 24 **4. Return to work not required; standards.** An appointing authority is not
- 25 required to return an employee to work under this regulation if any of the
- 26 following occur:
- 27 **a.** The employer's circumstances have so changed as to make such
- 28 return to work impossible or unreasonable.
- 29 **b.** The employee has a disability incurred in, or aggravated during,
- 30 service in the uniformed services, and the employee's return to work
- 31 would impose an undue hardship on the employer.
- 32 **c.** The position which the employee left to serve in the uniformed
- 33 services was for a brief, nonrecurrent period and there is no
- 34 reasonable expectation that state employment would continue
- 35 indefinitely or for a significant period. Typically, this includes a non-
- 36 career position or a limited-term position that was not expected to be
- 37 renewed.

1 **5. Timing, frequency, and duration of service not to be considered.** In
2 any determination of an employee's rights to protection under this
3 regulation, the timing, frequency, and duration of the employee's training
4 or service, or the nature of such training or service in the uniformed
5 services (including voluntary service), cannot be a basis for denying
6 protection of this regulation so long as the military service does not
7 exceed the 5-year limit in standard D(2), the employee gave the advance
8 notice required in standard C(1)(a), and the employee gave the return-to-
9 work notice required in standard E.

10 **E. Time Limits for Returning to Work.**

11 **1. Time limits to returning to work.** After completion of a period of service
12 in the uniformed services, an employee must report to work or give notice
13 of readiness to return to work with the appointing authority, as follows:

14 **a. Less than 31 day's absence or fitness exam.** If the period of
15 service was less than 31 days or was for a service fitness
16 examination, the employee must report to work not later than the
17 beginning of the first full regularly scheduled work period on the first
18 full calendar day following:

- 19 (1) the completion of the period of service (or fitness examination),
20 plus
21 (2) a period allowing for the safe transportation from the place of the
22 service (or examination) to the employee's residence, plus
23 (3) eight hours.

24 If reporting within the required period is impossible or unreasonable
25 through no fault of the employee, then the employee must report as
26 soon as possible after the expiration of the 8-hour period.

27 **b. 31 to 180 days absence.** If the period of service was more than
28 30 days but less than 181 days, the employee must report for work or
29 give notice not later than 14 days after the completion of the period of
30 service. If reporting for work or giving notice within the 14-day period
31 is impossible or unreasonable through no fault of the employee, the
32 employee must report or give notice no later than the first full
33 calendar day when it becomes possible.

34 **c. 181 or more day's absence.** If the period of service was for more
35 than 180 days, the employee must report for duty or give notice not
36 later than 6 months after the completion of the period of service.

- 1 **2. Time limits extended for medical reasons.**
- 2 **a. Extension of time limits.** An employee who is hospitalized for, or
- 3 convalescing from, an illness or injury incurred in, or aggravated
- 4 during, service in the uniformed services shall, at the end of the
- 5 period that is necessary for the person to recover from the illness or
- 6 injury, return to work or give notice of readiness to return to work.
- 7 Except as provided in standard 2(b), the period of recovery may not
- 8 exceed 2 years.
- 9 **b. Further extension of period.** The 2-year period in standard 2(a)
- 10 shall be extended by the minimum time required to accommodate the
- 11 circumstances beyond the employee's control which make reporting
- 12 or giving notice within the period specified in standard 2(a)
- 13 impossible or unreasonable.
- 14 **3. No automatic forfeit.** An employee who fails to return to work or give
- 15 notice of readiness to return to work within the appropriate period
- 16 specified in this standard E shall not automatically forfeit the employee's
- 17 entitlement to the rights and benefits provided in Rule 2-14 or this
- 18 regulation but shall be subject to the rules, policy, and general practices
- 19 pertaining to explanations and discipline for absence from scheduled
- 20 work established in the Civil Service rules or regulations or the appointing
- 21 authority's work rules.

22 **F. Rights, Benefits, and Obligations.**

- 23 **1. Seniority-based rights.** An employee who returns to work under this
- 24 regulation is entitled to the rights and benefits determined by seniority
- 25 that the employee had on the day the employee began the military leave
- 26 plus any additional seniority-based rights and benefits that the employee
- 27 would have attained if the employee's continuous service with the state
- 28 had not been interrupted by the military leave.
- 29 **a. Seniority-based rights.** On returning to work, the following service
- 30 and work hour counters are adjusted to include an employee's time
- 31 on a military leave of absence:
- 32 (1) Employment preference.
- 33 (2) Eligibility for annual leave accruals.
- 34 (3) Eligibility for severance pay.
- 35 (4) Eligibility for longevity payment.
- 36 (5) Eligibility for family and medical leave.

- 1 (6) Eligibility for parental leave.
- 2 (7) Step in a pay range with steps (if in satisfactory status at the
- 3 beginning of the military leave).
- 4 **b. Nonseniority-based rights.** By way of example only, the following
- 5 are not seniority-based and are not adjusted as a result of an
- 6 employee's service in the uniformed services:
- 7 (1) Eligibility for lump sum or base salary increase (if in a
- 8 performance pay plan). Performance pay awards are based on
- 9 evaluations of actual job performance, not on seniority.
- 10 (2) Eligibility for reclassification. Eligibility for reclassification is
- 11 based on actual job performance, not on seniority.
- 12 (3) Length of a follow-up rating period [Rule 2-3.4]. A follow-up rating
- 13 period is suspended during a military leave of absence. When
- 14 the employee returns to work, the follow-up rating period picks
- 15 up at the point where the military leave of absence began.
- 16 (4) Length of a probationary period [Rule 3-6.2]. A probationary
- 17 period is suspended during a military leave of absence. When
- 18 the employee returns to work, the probationary period picks up at
- 19 the point where the military leave of absence began.

20 **G. Position on Returning to Work.**

21 An eligible employee who returns to work after a military leave of absence is

22 returned to work in the classified service as follows:

- 23 **1. Less than 91 days.** An employee whose period of service in the
- 24 uniformed services was less than 91 days is returned to work in the
- 25 position the employee occupied before beginning service in the uniformed
- 26 services.
- 27 **2. More than 90 days.** An employee whose period of service in the
- 28 uniformed services was more than 90 days is returned to work in either
- 29 (1) the position the employee occupied before beginning service in the
- 30 uniformed services or (2) a position in the same classification level.
- 31 **3. Abolishment of position or RIF.**
- 32 **a.** If, while an employee is on a military leave of absence, the
- 33 employee's position is abolished or affected by a reduction in force,
- 34 the employee is treated as though the employee is at work on the
- 35 day of the abolishment or reduction in force. For example, the

1 employee may be demoted, laid off, placed on recall, or otherwise
2 affected by the application of employment preference in the same
3 manner as if the employee was present.

4 b. When the employee returns to work from the military leave of
5 absence, the employee is placed in the same circumstance the
6 employee would have been in if the employee's continuous
7 employment with the state had not been interrupted by a military
8 leave of absence, including, for example, a demotion, layoff, recall, or
9 other personnel action.

10 **4. Effect of disability.**

11 a. **Service-connected disability.** If an employee has a disability
12 incurred in, or aggravated during, military service and is not qualified
13 due to the disability to return to work in the position required under
14 standard G(1) or G(2) after reasonable efforts by the appointing
15 authority to accommodate the disability, the employee is returned to
16 work in the following order:

17 (A) In any other position with equivalent seniority, status, and pay,
18 the duties of which the employee is qualified to perform or would
19 become qualified to perform (as determined by the Department
20 of Civil Service) with reasonable efforts by the appointing
21 authority.

22 (B) If the employee cannot be returned to work under subsection (A),
23 then in a position which is the nearest approximation to a
24 position referred to in subsection (A) in terms of seniority, status,
25 and pay, consistent with circumstances of the employee's case.

26 b. **Nonservice-connected disability.** In the case of a employee who is
27 not qualified due to the disability to return to work in the position
28 required under standard G(1) or G(2) for any reason (except a
29 disability incurred in, or aggravated during, service in the uniformed
30 services) and cannot become qualified with reasonable efforts by the
31 employer, then the employee is returned to work in any other position
32 that the employee is qualified to perform.

33 **5. Ties.** If two or more employees are entitled to return to work to the same
34 position, the employee who left the position first has the prior right to
35 return to that position.

1 **H. State National Guard Duty.**

2 An employee who is a member of a national guard unit and is ordered to
3 active state duty by the governor or volunteers for such duty is entitled to the
4 employment and return-to-work rights and benefits provided in rule 2-14 and
5 this regulation even if the employee is not entitled to similar rights or benefits
6 under federal law.

7 **I. Discharge for Just Cause.**

8 Notwithstanding any other rule or regulation that may permit discharge for
9 reasons other than just cause, an employee in an indefinite position who
10 returns to work under this regulation is subject to the following:

11 1. **31 to 180 days service.** If the employee's period of service in the
12 uniformed services before returning to work was more than 30 days but
13 less than 181 days, the employee may not be discharged within 180 days
14 after returning to work except for just cause.

15 2. **More than 180 day's service.** If the employee's period of service in the
16 uniformed services before returning to work was more than 180 days, the
17 employee may not be discharged within one year after returning to work
18 except for just cause.

19 **J. Enforcement of Employment and Return-to-Work Rights**

20 1. **Complaints.** As authorized in Rule 2-14.7, an employee who is entitled
21 to employment or return-to-work rights or benefits and who claims that an
22 appointing authority has failed or refused, or is about to fail or refuse, to
23 comply with Rule 2-14 or this regulation may file a grievance or technical
24 complaint, as appropriate.

25 2. **Grievance and Grievance Appeal; Procedures and Burdens of Proof.**
26 A grievance or grievance appeal under Rule 2-14 and this regulation is
27 conducted as provided in Rule 8-1 [Grievances], Rule 8-2 [Grievance Appeals],
28 and Regulation 8.01 [Grievance and Grievance Appeal Procedures], except that
29 the burden of proof shall be as follows:

30 a. **General.** Except as provided below in standards J(2)(b) through (g),
31 the employee has the burden of proving by a preponderance of the
32 evidence that the appointing authority discriminated against the
33 employee or otherwise failed to comply with a rule or applicable
34 regulation and, as a result, the employee has suffered or will suffer a
35 tangible adverse employment action.

May xx, 2005	<p style="text-align: center;">Reg. 2.04 DRAFT Rev A (19-Apr-2005): Rights of Employees Absent Due to Service in the Uniformed Services</p>	Page 12 of 13
--------------	--	---------------

- 1 **b. Discrimination.** In a grievance alleging discrimination under
2 standard A(1):
- 3 (1) The grievant first has the burden of proving by a preponderance
4 of the evidence that the grievant's (1) membership,
5 (2) application for membership, (3) service, (4) application for
6 service, or (5) obligation for service in the uniformed services
7 was a motivating factor in the appointing authority's action.
- 8 (2) If so, the appointing authority then has the burden of proving by a
9 preponderance of the evidence that the challenged action would
10 have been taken in the absence of such membership, application
11 for membership, service, application for service, or obligation for
12 service.
- 13 **c. Retaliation.** In a grievance alleging retaliation under standard B(2):
- 14 (1) The grievant first has the burden of proving by a preponderance
15 of the evidence that the grievant's (1) action to enforce a
16 protection afforded any person under this regulation,
17 (2) testimony or making of a statement in or in connection with
18 any proceeding under this regulation, (3) assistance or other
19 participation in an investigation under this regulation, or
20 (4) exercise of a right provided for in this regulation, was a
21 motivating factor in the appointing authority's action.
- 22 (2) If so, the appointing authority then has the burden of proving by a
23 preponderance of the evidence that the challenged action would
24 have been taken in the absence of the grievant's enforcement
25 action, testimony, statement, assistance, participation, or
26 exercise of a right.
- 27 **d. Impossibility of returning to work.** In a grievance involving return
28 to work in which the appointing authority claims under standard
29 D(4)(a) that circumstances have so changed as to make returning to
30 work unreasonable or impossible, the appointing authority has the
31 burden of proving such impossibility or unreasonableness by a
32 preponderance of the evidence.
- 33 **e. Undue hardship.** In a grievance involving return to work in which
34 the appointing authority claims under standard D(4)(b) that a required
35 accommodation, training, or effort is an undue hardship, the
36 appointing authority has the burden of proving such undue hardship
37 by a preponderance of the evidence.
- 38 **f. Brief employment.** In a grievance involving return to work in which
39 the appointing authority claims under standard D(4)(c) that the

May xx, 2005	Reg. 2.04 DRAFT Rev A (19-Apr-2005): Rights of Employees Absent Due to Service in the Uniformed Services	Page 13 of 13
--------------	--	---------------

1 employment from which the employee left was for a brief,
2 nonrecurrent period and there was no reasonable expectation that
3 such employment will continue indefinitely or for a significant period,
4 the appointing authority has the burden of proving by a
5 preponderance of the evidence the brief or nonrecurrent nature of the
6 employment and that there was no reasonable expectation of the
7 employment continuing indefinitely or for a significant period.

8 **g. Notice of intent not to return.** In a grievance involving return to
9 work under standard B(4), the appointing authority has the burden of
10 proving by a preponderance of the evidence that the employee
11 knowingly provided clear written notice of intent not to return to work
12 after service in the uniformed service and, in doing so, was aware of
13 the specific rights and benefits to be lost.

14
15
16 **CONTACT**

17 Questions regarding this regulation should be directed to the Department of Civil Service,
18 P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone, at 517-
19 373-3048 or 1-800-788-1766; or by e-mail to MDCS-BHRS@michigan.gov.

20
21 **NOTE:** Regulations are issued by the State Personnel Director, under authority granted in the *State of Michigan Constitution* and the *Michigan Civil Service Commission Rules*. Regulations that implement Commission Rules are subordinate to those Rules.