

Civil Service Rules Amended May 17, 2005

Rule 2-14: Rights of Employees Absent Due to Service in the Uniformed Services

Rule 9-1: Definitions

## 2-14 Rights of Employees Absent Due to Service in the Uniformed Services

### 2-14.1 Basic Employment and Return-to-work Rights and Benefits

- (a) **Regulations.** The state personnel director shall issue regulations to provide employment and return-to-work rights and benefits for employees who are absent from a classified position due to service in the uniformed services. The regulations shall provide rights and benefits that are consistent with rights and benefits provided under applicable federal law, except where this rule provides supplemental or enhanced rights and benefits that exceed the minimum requirements of applicable federal law.
- (b) **Military leave of absence.** The regulations shall authorize a military leave of absence for an employee absent from a classified position due to service in the uniformed services, subject to the requirements of the regulation.
- (c) **Effect on federal rights and benefits.** The civil service rules and regulations shall not be applied or interpreted to limit, reduce, or eliminate any right or benefit under applicable federal law.
- (d) **Character of rights and benefits in the rules and regulations.** The rights and benefits granted in this rule and the regulations are granted solely under the authority of the civil service commission and the state personnel director and are not rights or benefits under federal law.

### 2-14.2 Eligibility for Supplemental Pay

An employee in a career appointment who is a member of a reserve or national guard unit and who is granted a military leave of absence under the applicable regulations is eligible for supplemental pay, as provided in this rule and the applicable regulations.

#### (a) Supplemental pay for training duty.

- (1) **Eligibility.** An employee in a career appointment who is a member of a reserve or national guard unit and is ordered to active or inactive duty training is entitled to

supplemental pay for each day of absence from scheduled employment in the classified service, unless prohibited in subsection (c).

- (2) **Limits.** Supplemental pay for training duty is payable for up to the equivalent of 15 scheduled workdays in any fiscal year.

**(b) Supplemental pay for emergency active duty.**

- (1) **Eligibility.** An employee in a career appointment who is a member of a reserve or national guard unit and (1) is ordered to emergency active duty by the governor or president or (2) volunteers for emergency active duty is entitled to supplemental pay, unless prohibited in subsection (c).

- (2) **Limits.** Supplemental pay is payable during the first 30 consecutive calendar days of service, unless otherwise extended under subsection (b)(3).

- (3) **Special pay provisions for active duty between September 11, 2001, and September 30, 2006.** Notwithstanding the 30-day limit in subsection (b)(2), an employee who enters emergency active duty after September 11, 2001, is eligible for supplemental pay for any period of active duty in the uniformed services between September 11, 2001, and September 30, 2006, except as further limited below:

**(A) Limited-term appointment without prior status.** If the employee has a limited-term appointment but does not have continuing status from a prior indefinite appointment, the supplemental pay expires on the earliest of (1) the employee's release from active duty in the uniformed services, (2) the expiration of return-to-work rights under this rule, (3) the expiration of the limited-term appointment in the classified service, or (4) September 30, 2006.

**(B) Indefinite appointment or limited-term appointment with prior status.** If the employee has an indefinite appointment or a limited-term appointment with continuing status from a prior indefinite appointment, the supplemental pay expires on the earliest of (1) the employee's release from active duty in the uniformed services, (2) the expiration of return-to-work rights under this rule, or (3) September 30, 2006.

- (c) **Disqualification.** Notwithstanding any other rule or regulation, an employee is not eligible for supplemental pay during any of the following periods:

- (1) Any period of unpaid service in a uniformed service.
- (2) Any period following discharge from a uniformed service and before returning to work in the classified service.
- (3) Any period of initial training in a uniformed service.

### 2-14.3 Types of Supplemental Pay

- (a) Pay differential.** An employee eligible for supplemental pay is paid a pay differential for each day of absence from scheduled employment in the classified service.
- (1) Computation of pay differential.** A pay differential equals the difference between the employee's (1) gross basic pay in the uniformed service and (2) gross base wage in the classified service on the employee's last day of work. No pay differential is paid for any period where the employee's gross basic pay in the uniformed service exceeds the employee's gross base wage in the classified service.
- (2) Base wage.** The employee's base wage in the classified service includes only the employee's base rate of pay. The following pay and premiums are not included in the employee's base rate of pay when computing a pay differential:
- (A)** Overtime pay [rule 5-4.2].
  - (B)** On-call pay [rule 5-4.3].
  - (C)** Callback pay [rule 5-4.4].
  - (D)** Shift differential premium [rule 5-4.5].
  - (E)** Prison duty premiums [rule 5-5].
  - (F)** Hazardous duty premium [rule 5-6.1].
  - (G)** Explosives duty premium [rule 5-6.2].
  - (H)** Out-of-state location premiums [rules 5-6.3, 5-6.4, and 5-6.5].
  - (I)** Emergency response compensation [rule 5-6.6].
  - (J)** Expense reimbursements [rule 5-7].
- (3) Increase in base wage.** During a military leave of absence, the employee's base wage is increased as if the employee had remained continuously employed in the classified service, including (1) any general wage increase approved by the civil service commission and (2) any step increase for which the employee would have been eligible.
- (b) Supplemental holiday pay.** An employee eligible for supplemental pay is paid the employee's base wage for a designated state holiday that occurs or is observed during a period of eligibility. Holiday pay is paid in full and is in addition to any pay differential.
- (c) Supplemental longevity payment.** An employee eligible for supplemental pay is paid the longevity payment authorized under rule 5-8 [Longevity Payment] if the pay date occurs during a period of eligibility.

- (d) **Supplemental leave accruals.** An employee eligible for supplemental pay is credited with annual, personal, and sick leave accruals as if the employee had remained continuously employed in the classified service, subject to the following limitations:
- (1) Accruals are credited only for the first 15 days of eligible training duty under rule 2-14.2(a).
  - (2) Accruals are credited only for the first 30 consecutive calendar days of eligible emergency active duty under rule 2-14.2(b).
  - (3) Notwithstanding the limitation in subsection (d)(2), an employee eligible for extended supplemental pay under rule 2-14.2(b)(3) on October 1 accrues 16 hours of personal leave.

#### 2-14.4 Payment of Supplemental Pay

(a) **Payment and documentation.**

- (1) **Requirements.** An appointing authority shall not pay any supplemental pay until an eligible employee submits official documentation indicating (1) the period during which the employee was paid for service in the uniformed services and (2) the amount of the employee's gross basic pay for that service.
- (2) **Optional requirements for first 30 days.** Notwithstanding subsection (a)(1), for the first 30 days of any qualifying service in the uniformed services, the appointing authority may continue the employee in full pay status, subject to the following:
  - (A) **Documentation required.** Within 28 calendar days after the date the employee returns to work, the employee must submit official documentation indicating (1) the period for which the employee was paid for service in the uniformed services and (2) the amount of the employee's gross basic pay for that period paid by the uniformed service.
  - (B) **Recovery of overpayment.** After receiving the official documentation, the appointing authority shall (1) determine the correct amount of supplemental pay properly due the employee for the period and (2) recover the amount of the overpayment resulting from keeping the employee in full pay status during that period. If an employee fails to timely submit official documentation adequate to determine either eligibility for supplemental pay or the amount of supplemental pay properly payable, the appointing authority shall promptly recover the amount of any state payments made to the employee for the period of the employee's absence from the classified service.

(b) **Deductions.** Supplemental pay is subject to deductions required by law.

(c) **Uniform method.** The state personnel director shall provide a uniform method of computing supplemental pay and recovering overpayments.

- (e) **Centralized review.** The state personnel director may require employees to submit requests for supplemental pay directly to the department of civil service for centralized review and approval. In such case, the department of civil service may exercise any of the powers or responsibilities granted in this rule or the regulations to an appointing authority.
- (f) **Prospective amendments.** An employee who becomes eligible for a benefit under this rule or the applicable regulations as a result of an amendment to the rules or regulations is entitled to the benefits prospectively from the effective date of the amendment and not retroactively.

#### 2-14.5 Supplemental Continuation of Group Health, Dental, and Vision Insurance

If an employee or eligible dependent is participating in a group medical, dental, or vision plan when the employee's absence due to service in a uniformed service begins, the employee may elect to continue coverage under the plan as provided in this rule and the regulations.

- (a) **30 or fewer calendar days of service.** If the employee is absent for 30 or fewer calendar days of service during a fiscal year, the employee may elect to continue coverage by paying the employee's portion of the cost (if any) of continuing coverage.
- (b) **31 or more days of service.** If the employee is absent for 31 or more days, the employee may elect to continue coverage by paying the following share of the cost of continuing coverage, as appropriate:
  - (1) **Eligible for supplemental pay.** If an employee is eligible for supplemental pay, the employee pays only the employee's portion of the cost.
  - (2) **Not eligible for supplemental pay.** If the employee is not eligible for supplemental pay or is disqualified under rule 2-14.2(c), the employee may continue coverage by paying 102 percent of the full cost of the coverage. Such coverage expires on the earlier of the following:
    - (A) 24-months after the date that the employee's absence from the classified service began.
    - (B) The day after the last date for the employee to return to work or give notice of readiness to return to work, as determined under the regulations.
- (c) **Exclusions and waiting periods.**
  - (1) **No exclusions or waiting period on returning to work.** Except as provided in subsection (c)(2), an employee whose coverage under a group health plan was terminated by reason of service in the uniformed services cannot have an exclusion or waiting period imposed in connection with the reinstatement of the coverage upon returning to work under this rule. This subsection applies to the employee who

returns to work and to any dependent who is covered by the health plan by reason of the reinstatement of the coverage of the employee.

- (2) **Exception for service-connected injuries.** The prohibition in subsection (c)(1) does not apply to the coverage of any illness or injury incurred in or aggravated during a period of service in the uniformed services.

## 2-14.6 Supplemental Coverage for State National Guard Duty

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

## 2-14.7 Enforcement

### (a) Complaints.

- (1) **Grievance.** Except as provided in subsection (a)(2), an employee who is entitled under this rule or the regulations to return-to-work rights or benefits and who claims that an appointing authority has failed or refused, or is about to fail or refuse, to comply with the provisions of this rule or the regulations, may file a grievance and grievance appeal as authorized in the rules and applicable regulations.
- (2) **Technical complaint.** A person, whether or not a classified employee, who is entitled to employment or return-to-work rights or benefits under the regulations and has a complaint regarding a technical decision may file a technical complaint as authorized in the rules and the regulations.

- (b) **Stay of proceedings.** A grievance or technical complaint under this rule or the regulations concerning employment or return-to-work rights or benefits due to service in the uniformed services is automatically stayed if any of the following proceedings are initiated under applicable federal law concerning any of the same period of service in the uniformed services alleged in the grievance or technical complaint:

- (1) An investigation by the United States Secretary of Labor in response to a complaint filed by the employee.
- (2) A state or federal civil action filed by the employee against the State of Michigan or any of its departments, boards, or commissions.
- (3) A state or federal civil action filed by the United States on behalf of the employee against the State of Michigan or any of its departments, boards, or commissions.

- (c) **Summary dismissal of grievance.** If an employee receives a final judgment on a claim in a civil action brought against the State of Michigan or any of its departments, boards, or commissions under applicable federal law concerning employment or return-to-work

rights or benefits due to service in the uniformed services, a grievance or technical complaint under this rule or the regulations by the employee regarding any of the same period of service in the uniformed services may be summarily dismissed in whole or in part on the basis of claim preclusion or issue preclusion, as appropriate.

- (d) **No waiver.** This rule does not constitute a waiver of the sovereign immunity of the State of Michigan under the United States Constitution.

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## 9-1 Definitions

Unless the context clearly provides otherwise, the following terms in the civil service rules and regulations are defined as follows:

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### Emergency Active Duty

***Emergency active duty*** means active duty in a uniformed service in support of emergency operations during a national emergency declared by the president, state emergency declared by the governor, or war declared by the United States Congress.

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### Seniority

***Seniority*** means longevity in employment together with any benefits of employment which accrue with, or are determined by, longevity in employment.

### Service in the Uniformed Services

***Service in the uniformed services*** means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time national guard duty, a period for which an employee is absent from employment for the purpose of an examination to determine the fitness of the employee to perform any such duty, and a period for which an employee is absent from employment for the purpose of performing funeral honors duty as authorized under applicable federal law [10 USC §12503 or 32 USC §115].

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## Uniformed Services

*Uniformed services* means all of the following:

- (a) The armed forces of the United States, including the army, navy, marine corps, air force, coast guard, army reserve, naval reserve, marine corps reserve, air force reserve, and coast guard reserve.
  - (b) The army national guard and the air national guard when engaged in federal or state active duty for training, inactive duty training, or full-time national guard duty.
  - (c) The commissioned corps of the public health service.
  - (d) Any other category of persons designated by the president in time of war or national emergency.
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