

OVERVIEW OF MILITARY LEAVE OF ABSENCE

If you are a career classified employee who is absent from your state job to go on military duty, you have certain **basic rights and benefits** under federal law, the Uniformed Services Employment and Reemployment Rights Act of 1994 (“USERRA”).

In addition, if your military duty is for training or emergency active duty as a member of a National Guard or military reserve unit, you may be entitled to **supplemental pay and benefits** under the Michigan Civil Service rules and regulations.

For more information, see the following sections:

- [1 – Eligibility for Military Leave of Absence](#)
- [2 – Basic Federal Rights and Benefits](#)
- [3 – Supplemental Civil Service Pay and Benefits](#)
- [4 – Decompression Time and Return to Work](#)
- [5 – State Retirement Benefits](#)
- [6 – Documenting Military Service](#)
- [7 – Complaints by Employees](#)
- [8 – Applicable Laws, Rules, and Regulations](#)

Important Note: This website briefly summarizes employment and reemployment rights and benefits of state classified employees who are absent from their state job to serve in the uniformed services. It is not possible to capture all the details and complexities of the law in this limited space. For a more comprehensive review of these rights and benefits, you may review the federal law and the Michigan Civil Service rules and regulations. [See section [8 – Applicable Laws, Rules, and Regulations.](#)] If you are an exclusively-represented state employee, you should review your union’s collective bargaining agreement.

1 – Eligibility for Military Leave of Absence

If you are a career classified employee and go on duty in one of the uniformed services, you may be eligible for a military leave of absence from your state job.

You are eligible for an unpaid **Military Leave of Absence** if you meet **all** the following criteria:

1. You are absent from your state job due to service¹ in one of the uniformed services.²
2. You (or your uniformed service) have given your state department advanced oral or written notice of your absence.
3. Your cumulative, non-exempted absences for military service from your classified job do not exceed 5 years.

See [2 – Basic Federal Rights and Benefits](#)

If you are eligible for an unpaid military leave of absence, you may also be eligible for **Supplemental Pay and Benefits** if you meet **both** the following additional criteria:

1. You are a member of a National Guard or military reserve unit.
2. Your military duty is (a) active or inactive duty training or (b) emergency active duty in response to an emergency declared by the governor or president.

See [3 – Supplemental Civil Service Pay and Benefits](#)

¹ Service in the uniformed services includes active duty, training duty, full-time National Guard duty, fitness-for-duty examinations, and funeral-honors duty. Service in the uniformed service also includes service performed as an intermittent disaster response appointee upon activation of the National Disaster Medical System or participation in a related training program as authorized in 42 USC 300hh-11(e)(3)(A).

² The uniformed services include the Army, Navy, Marine Corps, Air Force, Coast Guard, Reserves, National Guard, and the Commissioned Corps of the Public Health Service.

2 – Basic Federal Rights and Benefits

If you leave your career classified job to serve in one of the uniformed services, you have the following basic rights and benefits under federal law:

1. A right to an **unpaid military leave of absence** from your state job.
 - You must give your state employer advance notice of your military duty. Your employer cannot deny you a military leave of absence.
 - Your leave of absence is unpaid, but you can use any accrued state annual, personal, compensatory, or banked leave time for this period.
2. A right to **continue state group medical, vision, and dental coverage** for yourself and your family.
 - For the first 31 days, your coverage continues under the same terms as when you were employed. After that, you can continue coverage for up to 2 years by paying 102% of the full premium cost.
3. A right to **return to work** in the classified service at the end of your military service with the seniority benefits that you would have had if continuously employed.
 - You have a right to return to work as long as (1) your total, non-exempted military service does not exceed 5 years, (2) you do not receive a disqualifying discharge from the military, and (3) you timely return to work after completing your service:
 - If your military service was **under 31 days**, you must report to work on the first regularly scheduled work period on the first full calendar day after completing the service, plus a period allowing safe return home, plus 8 hours.
 - If your service was **between 31 and 180 days**, you must return to work within 14 days after completing your service.
 - If your service **exceeded 180 days**, you must return to work within 90 days after completing your service. (Civil Service rules allow 6 months to return, with seniority credit for benefits under the Civil Service rules and regulations.)

These deadlines may be extended up to 2 years if you require hospitalization or convalescence from a service-connected injury or illness.

 - You must provide, upon request, documents establishing your right to reemployment.
4. **State seniority and retirement credit** for qualifying time you were on a military leave of absence.

See [5 – State Retirement Benefits](#).

If you are a member of a National Guard or reserve unit and on training duty or emergency active duty, you may also be entitled to supplemental pay and benefits.

For details, see [3 – Supplemental Civil Service Pay and Benefits](#).

3 – Supplemental Civil Service Pay and Benefits

Although eligible employees have basic rights and benefits under federal law, the federal law does **not** require the state to provide supplemental pay to employees on a military leave of absence. However, the Civil Service rules and collective bargaining agreements approved by the Civil Service Commission provide for **supplemental pay and benefits**.

Eligibility for Supplemental Pay and Benefits. You are eligible for supplemental pay and benefits if you are a career classified employee absent from your state job for the following types of duty with the National Guard or a reserve unit:

- Active or inactive duty training. (This does not include initial training in a uniformed service.)
- Emergency active duty. (This is active duty in support of emergency operations during an emergency declared by the president or governor.)

Supplemental Pay. If eligible, the state will pay a supplement equal to **the difference between your base state wage and your basic military pay**. You are not entitled to supplemental pay (i) if your military service is unpaid, (ii) if your military pay exceeds your state pay, or (iii) for any time on leave before or after your military duty (decompression).

- To receive supplemental pay, you must submit your military Leave and Earnings Statement (LES) to your Human Resources Office, who will forward it to MCSC Office of Compliance & Compensation for processing. Supplemental pay is processed **after the period end date on the LES and after the state pay period** in which that date occurs.
- If a state holiday falls during a military leave for which you are eligible to receive supplemental pay, you will receive your full base wage for that holiday (not just the pay differential). Any period of leave before or after military (decompression) will not qualify for holiday pay. You will also receive your full annual longevity payment if any part of the year has been in military service.
- You may also use accrued annual, personal, compensatory, or banked leave time to receive your full gross state base wage instead of supplemental pay.

Limits on Supplemental Pay and Benefits.

- For training duty, eligible employees can receive supplemental pay for up to 15 scheduled workdays of training duty in each fiscal year.
- For emergency active duty, eligible employees receive supplemental pay for the duration of the emergency active duty.

(NOTE: AFSCME members' eligibility is based on the calendar year, not the fiscal year. MSPTA members are eligible for a combined total of 20 days of supplemental pay for training and emergency duty in a fiscal year).

Group Insurance Benefits. For the first 30 days of any military service, all employees may continue state group health, dental, and vision plan coverage by continuing to pay the regular employee's portion of the cost. After 30 days, employees not eligible for supplemental pay can continue coverage for up to 2 years by paying 102% of the cost; employees eligible for supplemental pay may continue coverage by paying only the employee's portion of the cost.

4 – Decompression Time and Return to Work

If you go on military duty, you may take time away from your career classified state job both before and after your military service.

Before Military Service Starts. If eligible for a military leave of absence, you may leave your state job so that you have enough time to travel safely to your military duty and arrive fit for duty. Before an extended military tour, you may take a reasonable amount of time off to put your affairs in order before beginning your active duty. This pre-duty time off is **unpaid** (even if you are eligible for supplemental pay and benefits), but you will get seniority credit for this time when you return to work after your military service. You may use annual, personal, or other paid leave credits to cover some or all of this absence.

After Military Service Ends (Decompression Time). After your military service ends, you may take some additional time off to “decompress” from your service before returning to your state job. All decompression time is **unpaid** military leave of absence (even if you were eligible for supplemental pay and benefits). You may use annual, personal, or other paid leave credits to cover some or all of this absence. The amount of decompression time you can take depends on the length of your service. You must report for work to your classified job (or give your appointing authority notice of your readiness to timely return to work) within the following limits:

1. **Less than 31 days of service.** If your military service was less than 31 days, you must report to work for the first full regularly scheduled work period on the first full calendar day after completing your military service, **plus** a period allowing safe transportation from the place of your service to your residence, **plus** 8 hours.
2. **31 to 180 days of service.** If your military service was more than 30 days but less than 181 days, you must report for work within **14 days** after the end of your service.
3. **181 or more days of service.** If your military service was more than 180 days, you must report for work within **6 months** after the end of your service.

If you cannot return to your state job within the applicable time limit due to a service-connected injury or illness, your deadline may be extended up to 2 additional years.

If you do not report for work (or give notice) within the applicable time limit, you may lose your right to return to work and all seniority and retirement benefits that would accrue upon your return to work.

5 – State Retirement Benefits

For state retirement purposes, your military leave time will be treated as not having been a break in state service. The state will give you retirement credit for qualifying military service time when you return to work in your classified job after you submit the appropriate documentation.

Defined Benefit Retirement Plan. If you are in the defined benefit plan, when you return to work in the classified service, your defined benefit retirement account will be updated to include credit for all eligible military leave time. Your appointing authority pays the cost.

Defined Contribution Retirement Plan. If you are in the defined contribution plan, your retirement account will be updated to include all eligible military leave time.

- The State will contribute an amount equal to 4% of the hypothetical state pay you would have received but for your military service.
- You may (but are not required to) make up your missed elective contributions to your 401(k) or 457 plan.
- If you make up any missed elective contributions, the State will match those contributions up to 3% of pay.

Elective Contributions under Either Plan. If you want to make up missed elective contributions to your 401(k) or 457 account, you must do so within a period equal to 3 times the length of your immediate past military service, but not longer than 5 years. For example, if you returned to work on May 1, 2007, after 1 year of military duty, you must make up any elective contributions within 3 years (by May 1, 2010).

Forms. For employees returning from military leave to obtain intervening retirement service credit and missed employer 401(k) contributions:

- Complete a military service credit application and forward that to ORS along with a copy of your DD214 and/or LES.
- Defined Contribution plan employees (DC or 40 plan) should use the *new* form R0717G, available at the ORS web site
http://www.michigan.gov/documents/orsstatedc/R717G_DC_Military_LOA_209572_7.pdf
- Defined Benefit Plan employees (DB or 04 plan) should use form R81G:
http://www.michigan.gov/documents/R81G_129584_7.pdf
- Submit this with a copy of your military papers to: Office of Retirement Services, PO Box 30171, Lansing MI 48909.

Questions about state retirement credit should be directed to the ORS at (800) 381-5111.

6 – Documenting Military Service

You must provide the state with official documentation of your military service for the state to properly credit your military time.

Before You Go. To qualify for a military leave of absence, you must give your department advance notice of your absence. We suggest that you give a copy of your written duty orders or drill schedules to your supervisor and your department's Human Resources Office as soon as they are available.

While You Are Away. If you are on an extended military leave of absence with a National Guard or reserve unit and are eligible, you can receive periodic payment of your supplemental pay by arranging for the submission of your military Leave and Earnings statements. If you fail to provide these during your absence, reconciliation for any supplemental pay due will occur upon your return to work.

When You Get Back. When you return to your state job (after the end of your military service), you must provide documents establishing your right to reemployment to your Human Resources Office, such as copies of previously unsubmitted military Leave and Earnings statements and any DD-214. You should also apply for retirement credit with the Office of Retirement Services after returning from an extended leave.

Delayed Return. If your return to your state job is delayed due to a duty-related injury or illness, you must submit information from the Veterans' Administration or military to document your injury or illness and convalescence.

7 – Complaints by Employees

Complaint to U.S. Department of Labor. If you believe that you have been or are about to be denied any **basic employment or reemployment right or benefit** available to you under USERRA (the federal law),* you should follow this procedure:

1. Talk to your supervisor or Human Resources Office first. There may be a misunderstanding that can be corrected quickly and easily.
2. If you cannot resolve the problem at Step 1, you may file a USERRA complaint with the Veterans' Employment and Training Services (VETS) of the U. S. Department of Labor. A complaint form is available at www.dol.gov/elaws/vets/userra/1010.asp.

Civil Service Complaint. If you believe that you have been denied any **basic employment or reemployment right or benefit** under Civil Service Regulation 2.04,* or any **supplemental right or benefit** under Civil Service Rule 2-14, you should follow whichever of the following procedures is appropriate:

1. **Grievance.** If you are complaining about a decision by your **department**, you may file a grievance with your department. A grievance must be filed within 14 calendar days after you knew of, or should have known of, the circumstances giving rise to your grievance. If you do not agree with your department's final grievance decision, you may appeal to the Civil Service Commission, Hearings Division. If you are exclusively represented by a union, you should contact your union. [If you are complaining about a decision that only the Civil Service Commission has the authority to make, you must file a technical complaint. See below.]
2. **Technical Complaint.** If you are complaining about a decision by the staff of the **Civil Service Commission**, you may file a technical complaint with the Civil Service Commission. A technical complaint must be filed within 14 calendar days after the date of the staff decision.

Note: Civil Service Regulation 2.04 provides a set of basic employment and reemployment rights and benefits that are intended to be the same as those provided in the federal law, USERRA. Thus, an employee with a complaint about basic rights and benefits may file either a USERRA complaint with VETS or a Civil Service complaint under the Civil Service rules and regulations.

The supplemental pay and benefits are provided only under the Civil Service rules and regulations, not USERRA. Therefore, complaints to enforce rights to supplemental benefits based on Civil Service rules and regulations cannot be filed with VETS.

8 – Applicable Laws, Rules, and Regulations

If you want to read the federal law or the Civil Service rules and regulations for more detailed information regarding your rights and benefits, please see the following:

Basic Rights and Benefits

Federal Law:

- The Uniformed Services Employment and Reemployment Rights Act of 1994 ([USERRA](#)).
- [Federal Regulations for USERRA](#).

Civil Service Regulations:

- [Civil Service Regulation 2.04](#), Military Leaves of Absence and Return to Work: Basic Rights. [Regulation 2.04 provides for basic rights and benefits that are intended to be largely the **same** as those provided in the federal law, USERRA.]

Supplemental Pay and Benefits

For Nonexclusively Represented Employees [NEREs]:

- [Civil Service Rule 2-14](#), Rights of Employees Absent Due to Service in the Uniformed Services. [Rule 2-14 provides supplemental rights that **exceed** the minimum requirements provided in the federal law, USERRA.]

For Exclusively Represented Employees:

- You may contact your union. Your union's collective bargaining agreement is available from your union or the website of the [Office of State Employer](#).