

MILITARY LEAVE OF ABSENCE

Employees are entitled to military leave under the Uniformed Services Employment and Reemployment Act of 1994. The Act applies to military service that began on or after December 12, 1994 or military service that began before December 12, 1994 if the employee was a reservist or National Guard member who provided notice to the employer before leaving work.

Reemployment rights extend to persons who have been absent from work because of "service in the uniformed services." The uniformed services consist of the following military branches: Army, Navy, Marine Corps, Air Force or Coast Guard, Army Reserve, Navy Reserve, Marine Corps Reserve, Air Force Reserve or Coast Guard Reserve, Army National Guard or Air National Guard, commissioned corps of the Public Health Service. Also, any other category of persons designated by the President in time of war or emergency.

"Service" in the uniformed services means duty on a voluntary or involuntary basis in a uniformed service, including:

- *Active duty
- *Active duty for training
- *Initial active duty for training
- *Inactive duty training
- *Full time National Guard duty
- *Absence from work for an examination to determine a person's fitness for any of the above types of duty.

The employee may be absent for up to five (5) years of military duty and retain reemployment rights. There are, however, exceptions which can exceed the five (5) year limit. Reemployment protection does not depend on the timing, frequency, duration or nature of an individual's service. There are protections for disabled veterans. Such situations are fact dependent and must be discussed with the employer and SDRS.

EMPLOYMENT PROTECTION

The returning employee is entitled to be reemployed in the job that they would have attained had they not been absent for military service, with the same seniority, status and pay, as well as other rights and benefits determined by seniority. If necessary, the employer must provide training or retraining that enables the employee to refresh or upgrade their skills so they can qualify for reemployment. While the individual is performing military service, he or she is deemed to be on a furlough or leave of absence and is entitled to the non-seniority rights accorded other individuals on non-military leaves of absence.

EMPLOYEE PAY

Employees of the School District who qualify as members of the armed forces reserve component will be granted military leave of absence from their employment in accordance with the USERRA and will be paid the difference in salary if their military pay is less than their average daily pay through the School District. Part-time employees will be paid proportionately.

HEALTH BENEFITS

Individuals performing military duty of more than 30 days may elect to continue employer sponsored health care for up to 18 months at the full premium cost plus normal increases in premium. For military service of less than 31 days, health care coverage is provided as if the individual had never left. After notification by the employee to the school district of military activation of more than 30 days, the school district shall inform the employee of the health benefits available under COBRA and furnish the employee with the enrollment forms for COBRA.

Upon entering active military duty for more than 30 days, the individual and dependents are covered by what the military calls "Tri-Care". There are several different plans that are offered which offer different levels of managed care. The most managed of the plans are at no cost to the service member. Not all medical costs are covered by "Tri-Care". It is not possible to make a recommendation in this document that will be best for every individual.

If an employee leaves and enters active duty for more than 30 day and discontinues health coverage for themselves and the employee's dependents, and the employee returns to the school district in the time frame stated in this document, they are entitled to have:

RETIREMENT BENEFITS

A participating SDRS member called to active duty will continue to earn credited service in the SDRS while serving in the armed forces if he or she meets the following requirements:

- *Secures authorization in advance from the District for a leave of absence for military service.
- *Returns to the employment of an SDRS participating unit within one year of discharge from the initial period of military service.
- *Remains in the employment of that same employer for at least one year upon return.
- *This credited service does not require a contribution from either the employer or employee.

SURVIVOR AND DISABILITY BENEFITS

If a member on leave of absence performing initial qualified military service dies while in service, the member shall be considered to have returned from the leave of absence on the

day prior to the member's death and become a contributing member for purposes of survivor benefits pursuant to SDCL 3-12-95, if the member has at least one year of credited service prior to the member's death, including the initial period of qualified military service.

If a member was contributing for additional survivor protection benefits immediately prior to the leave of absence, the member shall be considered to have resumed such contributions on the day prior to the member's death.

If a member on leave of absence performing initial qualified military service becomes disabled, the member shall be considered to have returned from the leave of absence on the day prior to the member's discharge date and become a contributing member for purposes of eligibility for disability benefits, if the member has at least three years of credited service including the period of initial qualified military service.

The member need not have been deemed to be a contributing member on the date of the member's disabling event.

DEFINING THE STATUS OF TEMPORARY REPLACEMENTS

To be a member of SDRS, an employee must be a "permanent full-time employee". SDCL 3-12-47 (54) specifies three criteria that must be met before an employee is considered permanent and full-time. He or she must:

- *be placed in a permanent classification
- *work 20 or more hours per week
- *work six months or more per year

In general, temporary replacements will not meet these criteria and, therefore, are not eligible for membership in SDRS. No one knows, however, how long any call-up will last. Consequently, it is possible that if the call-up is for an extended period of time, temporary replacements may become permanent employees as set forth in SDCL 3-12-47 (54). For temporaries working 20 or more hours per week, this point may come after six months of employment. As your temporary employees approach this length of service, please contact SDRS to discuss this situation.

Individuals must provide advance written or verbal notice to their employers for all military duty. Notice may be provided by the employee or by the branch of the military in which the individual will be serving. Notice is not required if military necessity prevents the giving of notice; or, the giving of notice is otherwise impossible or unreasonable.

Accrued vacation or annual leave may be used (but is not required) while performing military duty. The individual's timeframe for returning to work is based upon the time spent on military duty.

RETURN TO WORK OR APPLICATION FOR REEMPLOYMENT

Less than 31 days: Must return at the beginning of the next regularly scheduled work period on the first full day after release from service, taking into account safe travel home plus an eight (8) hour rest period.

More than 31 but less than 181 days: Must submit an application for reemployment within 14 days of release from service.

More than 180 days: Must submit an application for reemployment within 90 days of release from service.

The individual's separation from service must be under honorable conditions in order for the person to be entitled to reemployment rights. Documentation showing eligibility for reemployment can be required. The employer has the right to request that an individual who is absent for a period of service of 31 days or more provide documentation showing:

- *the application for reemployment is timely;
- *the five-year service limitation has not been exceeded; and,
- *separation from service was under honorable conditions.

If documentation is not readily available or it does not exist, the individual must be reemployed. However, if after reemploying the individual, documentation becomes available that shows one or more reemployment requirements were not met, the employer may terminate the individual, effective immediately. The termination does not operate retroactively.

Once the employee has made application for reemployment the employee is entitled to employment and benefits as if the employee had never left. For example, a teacher make application for reemployment on June 1 (after school is out). If you normally pay the single premium health for the other employees during the summer, you will need to reinstate the returning employee and pay the single premium. If the employee has family coverage, they are responsible for that payment.

Questions should be directed first to Employer Support of the Guard and Reserve for an informal resolution at 605-737-6785 and then to Veteran's Employment and Training Service, U.S. Department of Labor 605-626-2325.

Legal Ref.: SDCL 3-12-47 (54)
Uniformed Services Employment and Reemployment Act of 1994

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WEST CENTRAL SCHOOL DISTRICT