

University of Wisconsin System Administration Military Leave Provisions

This information was prepared to assist benefits staff and employees in determining an employee's eligibility for military leave and addresses other issues that arise when an employee is called up from the Reserve Component Forces of the United States (including Reservists) for active military duty. These provisions are effective retroactively to January 1, 2003. This document also addresses benefits available to employees on inactive and active duty training, such as weekend drills and annual training.

Effective June 7, 2008: When the 2007-2009 contracts were settled for classified represented employees, many included the following provision: *"Employees on military leave without pay for duly authorized inactive duty training or active duty training shall continue to earn vacation, sick leave, and legal holiday credits"*. Previously, employees on inactive military duty were not eligible for any military leave related benefits. Also, if an employee exhausts the 30 day military leave benefit and attends some form of active duty training, he was not eligible for any military leave related benefits. Effective June 7, 2008, employees on an unpaid military leave of absence for inactive or active duty training will continue to accrue vacation, sick leave and legal holidays. Employees on inactive military duty are never eligible for military pay differential. This provision applies to classified represented employees represented by contracts that include this provision and all non-represented employees. Please refer to the employee's contract or to the OSER bulletin (OSER-0211-CLR) dated July 23, 2008, to confirm employee eligibility.

Background

The Office of State Employment Relations (OSER) Bulletin dated October 26, 2001 provides guidance regarding the rights and benefits of employees called up for active military duty. Eligible employees (see table on page 13) are entitled to 30 work days of military leave without loss of pay or benefits [§230.35(3)(a), Wis. Stats and ER 18.08, Wis. Adm. Code].

The OSER Bulletin of March 31, 2004 provides instructions for implementation of Wis. Act 162, which allows eligible employees to receive up to 179 calendar days of military leave without loss of pay or benefits [§230.315 and §230.32, Wis. Stats]. The 179-day benefit was expanded to two years for eligible employees. This extension is pursuant to Executive Order #50. In May 2006, Executive Order #156 extended active duty military leave for an additional two years. All pertinent State statutes, administrative code, OSER Bulletins and federal law are listed at the end of this document.

Note: Following the exhaustion of paid military leave, most employees are eligible for additional unpaid military leave (see the eligibility table on page 16). During the unpaid leave, employees may use accrued annual leave.

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Summary of Military Leave Benefits Available

<u>Features</u>	<u>30 Day Leave Benefit</u>	<u>4 Year Leave Benefit</u>
Length of Paid Leave	30 work days of military leave per calendar year	Up to four years of military leave on or after 1/1/03.
Employee Eligibility*	Employees in permanent status - classified permanent/project employees must no longer be in original probationary period.	All employees (including those in probationary period). Generally, LTE's not eligible.
Military Leave Eligibility*	Extended active duty, federal active duty (including annual active training) of 3+ consecutive days.	Applies to members of the Reserve Component of the US, including the National Guard, who are called to active state or federal military duty.
How days are counted	First 30 work days of qualifying military service every calendar year.	Duration of deployment, up to 4 years.
Order of Use	First 30 work days of military leave per calendar year.	Applies after the 30 day benefit is exhausted. Suspended at the start of each calendar year until the annual 30 day benefit is exhausted.
Differential Pay Benefit	Base state pay less base military pay. No loss of pay, pay advancement or performance awards.	State pay (may include non-base pay supplements) less base military pay and BAH (housing allowance). No loss of pay, pay advancement or performance awards.
Accrual of annual vacation while on paid military leave *	Continues to accrue while on active duty	
Accrual of annual vacation while on unpaid military leave *	Continues to accrue for inactive and active military duty	
Accrual of sick leave while on paid military leave*	Continues to accrue while on active duty	
Accrual of sick leave while on unpaid military leave*	Continues to accrue for inactive and active military duty	
Personal Holidays (including floating holidays)	Continues to accrue and may be carried over while on active duty	
Legal Holidays while on paid military leave	Eligible to accrue/use while on active duty	
Legal Holidays while on unpaid military leave*	Eligible to accrue/use for inactive and active military duty.	
Restoration or Reemployment Classified Employees and Faculty/Renewable Academic Staff	Same/similar position restored (including seasonal employees), if other than a dishonorable discharge. Must make application for reemployment/restoration within 180 days of discharge. Note: If employee is disabled while on duty, deadline may be extended up to 2 years under the Uniformed Services Employment and Reemployment Rights Act (USERRA).	Same as 30 day leave benefit; however, if the employer's intent is to not renew the appointment, incumbent should be notified of intent upon or before call to active military duty.
Maintaining Insurance Coverages	Military pay deducted from state pay may be reduced to allow benefit deductions. Employee can opt to prepay or let coverage lapse. Must reenroll in any lapsed benefits within 30 calendar days of return to work.	
Use of Accumulated Leave Before Return to Work	Not addressed	Upon discharge from active duty, employee is entitled to 180 days of unpaid leave before applying for reinstatement/restoration. Within the first 30 calendar days of military discharge, the employee may use 160 hours of accumulated leave (other than sick leave). Additional accumulated leave may be used during the remaining 150 days.
WRS Crediting	Employees must be "made whole" for WRS purposes. WRS account must be credited with service and earnings equal to what employee would have earned if not on inactive or active military leave.	

* Subject to Collective Bargaining Agreements

Questions and Answers

Eligibility for Military Leave Benefits

1. What is the difference between a paid and unpaid military leave?

An employee is eligible for paid military leave if the employee's military orders qualify the employee for the 30 day and/or 4 year military leave benefit AND the employee's state pay is higher than applicable military pay. The employee is eligible to receive the difference between state and military pay. If the employee's state pay is lower than applicable military pay, the employee does have the option to be placed on payroll at a level that will allow benefit deductions.

An unpaid military leave is an approved military leave for either inactive or active duty that does not qualify for the pay differential benefits under the 30 day and/or 4 year military leave benefit. An unpaid military leave may also occur if the employee's military pay is greater than state pay.

2. Is a classified permanent or project employee who has not completed his probationary period eligible for the 30 day or 4 year military leave benefits?

*Only employees who have attained "permanent status" are eligible for benefits under the 30 day leave provision. Per ER 1.02(28) of the WI Admin Code, "permanent status" means the employees has the rights and privileges attained upon successful completion of a probationary period required upon an appointment to a permanent or seasonal position. An employee who is in their **original** probationary period is not eligible for the 30 day leave benefit but is eligible for the 4 year military leave benefit for active duty. Upon return from active duty, the employee will be restored to the point of service in the probationary period as though there had been no interruption in state service.*

A project employee who previously attained permanent status and has been appointed to the project position without an interruption of continuous service, is eligible for the 30 day military leave benefit (ER 18.08).

3. Is an unclassified employee with a fixed terminal appointment eligible to receive benefits under both the 30 day and 4 year military leave provisions? Is the employee eligible for benefits after the contract ends?

If the employee is working in his 1st fixed terminal appointment and there is no intention of continued employment after the appointment end date, he is eligible for the 4 year benefit only. If the employee is working in a minimum of his 2nd consecutive fixed terminal appointment, he is eligible for both the 30 day and 4 year military leave provisions.

If the employment contract is not renewed, the employee's eligibility for the military leave benefit ends on the date the employment contract ends. However, if there is an established pattern of consecutive terminal appointments, the employer should make a reasonable determination of whether the employee would have received another consecutive terminal appointment if he or she were not on active duty and, if possible, renew the appointments prior to the beginning of the military leave.

In cases where the intent is not to renew the appointment in absence of the military duty, incumbents should be notified prior to reporting for active duty. If the incumbent has a back-up appointment, he or she should be placed in the backup appointment prior to military leave, if possible.

4. Are LTEs covered under the 4-year law?

Based on the following rationale, they are not eligible: §230.315(1), Wis. Stats., states that 3 conditions have to be met in order for someone to be eligible. One is that the employee has to receive a military leave or be eligible for reemployment under §45.50, Wis. Stat. Under §45.50, Wis. Stats., a person who is in a temporary position is not entitled to reemployment. An LTE would be a temporary position.

Additionally, §230.32(1), Wis. Stats., has always provided that only classified employees, except limited term employees, shall be restored upon completion of military service. Because of new 4-year military leave, §230.32(1) was amended to add "unless the employee qualifies to receive pay and benefits under §230.315..." The "employee" can only reference back to a "classified employee," which according to the statute does not include LTEs.

5. During the first 30 work days of a paid military LOA, the employee receives all benefits associated with the 30 day leave benefit. After the first 30 work days, the employee receives all benefits associated with the 4 year leave. When the next calendar year begins, does the 4 year benefit continue or is the employee eligible for the 30 day benefit again?

The employee should receive the 30 day benefit for the first 30 days of military service in each calendar year. The 4 year benefit is suspended until the annual 30 day benefit is exhausted. OSER changed its position on this topic. Please disregard information in OSER's March 31, 2004 bulletin (Section II, Part B #4) and refer to OSER's August 4, 2004 bulletin (Section III, Part B, #4)

6. How do I count 30 days for the 30 day military leave provision?

The 30 day military leave provision applies to the first 30 work days of military leave each year. If a legal holiday falls within the 30 day period, you do not count the legal holiday towards the 30 work days. The employee would be eligible for full state pay for any legal holidays that fall within these 30 days.

7. An employee uses 15 days for annual training. Later in the year, he is called for active duty. Does he get another 30 day military leave benefit?

The 30 day leave benefit is a calendar year benefit. He would use the remaining 15 days of the 30 day leave benefit before beginning the 4 year military leave benefit. If he is called up again in the following year, he'd be entitled to another 30 day leave benefit before a new 4 year benefit allotment begins.

8. An employee exhausted her 30 day military leave benefit and is released from active military duty while receiving benefits under the 4 year military leave provision. Later in the same year, the employee is again called up to active duty. Is she eligible for the 30 day or 4 year benefit again?

The employee is not eligible for another 30 day military benefit. If an employee is released from active service and later recalled within the same year, the employee receives a new 4 year military leave benefit.

9. If an employee is on sabbatical or LOA when called up for active duty, does she need to return to work before reporting to duty in order to receive military leave benefits?

No, but her sabbatical/LOA needs to be ended and she must be placed on official military leave before she can receive any benefits associated with either the 30 day or 4 year military leave provisions.

10. Under Wisconsin Statute §230.35(3)(a), weekend training drills are not eligible for coverage under the 30 day military leave benefit because it is inactive duty training and for less than 3 days. Only employees attending military school, annual field training, and annual active duty training, as well as any other state or federal tours of active duty are eligible for the 30 day benefit. What happens if the military duty happens to be more than 3 days, but it is not "active" per the orders?

Military service listed as "inactive" is not eligible for benefits under the 30 day and 4 year military provisions. Employees on inactive military duty are not eligible for any paid military leave benefits. The employee does have the option to take either take an unpaid military leave of absence or use accrued paid leave, except sick leave, to remain on payroll in this situation. As of June 7, 2008, the employee is eligible to accrue vacation, sick leave and legal holiday credits if he takes an unpaid military leave.

Inactive Duty for Training (IDT) usually comes in blocks of 4 or 5 with each 1/2-day segment counting as a Unit Training Assembly (UTA). For example, a Friday night, Saturday and Sunday would be a Multiple

Unit Training Assembly (MUTA) 5. It is rare, but not unheard of, to string a long series of MUTAs together. A guard or reservist typically is obligated to perform 48 UTAs per year with their unit at their "home station/site." Occasionally, a member will be asked to serve his UTAs at another location such as a subordinate military unit or "sister" unit. He may do this in a long block of UTAs.

11. When is an employee eligible to receive full WRS crediting for the time on military leave?

Under USERRA guidelines, employees who are on any service in the uniformed services, inactive or active duty in nature, are eligible for full pension crediting during their absence. Anyone on an approved military leave must be made whole for WRS service and earnings. For WRS purposes, the employee must be treated as if they were on payroll at their normal schedule during a military leave.

12. If the employee terminates employment and does not return to work after military leave, does he or she still receive benefits under the 30 day or 4 year military leave provisions?

The service member is entitled to these benefits through the end date of a contract even if he or she does not come back to work for the University. If there is no employment contract, the employee must be restored to active employment in order to receive benefits. The military leave benefits should be determined or adjusted once the employee returns to work. However, if any benefits were paid prior to the employee's expected return to work (RTW), the state does not recoup that money. It would be similar to an employee using sick leave during a LOA and not coming back - the state would not try to recoup anything. The RTW requirement is waived for any employee killed while on military duty.

13. If a returning employee is disabled due to an injury received while on military duty and cannot return to work, is he entitled to the military leave benefit?

The employer must make every reasonable effort to restore the employee back to state service to ensure that the employee receives all applicable military leave benefits. Reemployment of a disabled employee is subject to USERRA which states that:

A person who is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service in the uniformed services shall, at the end of the period that is necessary for the person to recover from such illness or injury, report to the person's employer or submit an application for reemployment with such employer. The period of recovery may not exceed two years. Such two-year period shall be extended by the minimum time required to accommodate the circumstances beyond such person's control which make reporting within the 2-year period impossible or unreasonable.

A person who fails to report or apply for employment or reemployment within the appropriate period specified in this subsection shall not automatically forfeit such person's entitlement to the rights and benefits but shall be subject to the conduct rules, established policy, and general practices of the employer pertaining to explanations and discipline with respect to absence from scheduled work. Section 4313(a)(3) of USERRA also requires the employer to make "reasonable efforts" to accommodate returning employees with a disability incurred or aggravated during military service. If the employee is suffering from a disability that cannot be accommodated by reasonable employer efforts, the employer must reemploy the person in some other position he or she is qualified to perform and which is the "nearest approximation" of the position to which the person is otherwise entitled, in terms of status and pay, with full seniority.

Note: *A disability need not be permanent to fall this under USERRA provision. For example, if a person breaks a leg during annual training, the employer may have an obligation to make reasonable efforts to accommodate the broken leg or to place the person in another position until the leg has healed.*

14. If an employee voluntarily goes on active duty from a reserve status, is he eligible to receive both the 30 day and 4 year military leave provisions?

Yes. An activation from a reserve status, either voluntary or involuntary, qualifies an employee for both the 30 day and 4 year military leave provisions.

15. If an employee enlists in the military (is not in reserve status at the time of enlistment), is he eligible to receive both the 30 day and 4 year military leave provisions?

No. An employee who enlists in the military is not eligible for any benefits under the 30 day or 4 year military leave provisions. The employee is eligible for full WRS crediting if he is restored to employment after his military leave of absence (per USERRA guidelines).

Accumulated Leave Usage & Rules During & After Military Leave

16. According to the June 23, 2008 OSER Bulletin entitled *Leave Accrual During Military Leave Without Pay*, there is a new provision effective June 7, 2008 that an employee on military leave without pay for authorized inactive or active duty training shall continue to earn vacation, sick leave and legal holiday credits. What has changed?

Previously, military service labeled "inactive" was not eligible service under either the 30 day or 4 year military leave benefit. If someone was on inactive duty, he was required to either use accumulated leave to remain on payroll or take an unpaid military leave of absence. Inactive military service is still not eligible for either benefit in regards to differential pay, but if an employee is on unpaid military leave and is on inactive duty, he will now continue to accrue vacation, sick leave and legal holiday hours as if he were in regular pay status. Please note that employees on unpaid military leave for either inactive or active duty are eligible for full WRS crediting for the time on unpaid leave.

This new provision also applies to employees on active duty who have exhausted the 30 day benefit but are not eligible for the 4 year benefit. Only employees called to active duty from a reserve status are eligible for the 4 year benefit. If an employee exhausts the 30 day benefit and is later required to perform active duty service (such as active duty training), the employee must use either accumulated leave to remain on payroll or take an unpaid military leave of absence. If the employee takes an unpaid leave of absence, he will now continue to accrue vacation, sick leave and legal holiday hours as if he were in regular pay status. He is also eligible for full WRS crediting for the time on unpaid leave.

17. If an employee is called for active duty and uses two weeks of paid leave for the first 10 work days, does the annual 30 day military leave benefit begin on the first day of active duty or is it delayed until after the 10 days of paid leave are used?

The 30 day benefit begins on the first day of active military duty. If the employee uses paid leave to stay on payroll, those days do count towards the 30 day military benefit. An employee may use paid leave, other than sick leave, while on military leave.

18. Upon release from military service, the employee has 180 days to return to employment (i.e., make application for restoration) under the 4 year military leave benefit. According to the OSER bulletin dated March 31, 2004, Section III, C, "The use of up to 160 hours of accumulated paid leave in the first 30 days after release from military service shall not be deemed as application for reemployment or restoration after military leave under state or federal law." What is the status of the employee during those 180 days?

Once the employee is formally discharged from the military, the military leave of absence ends. Upon military discharge, the employee can take up to a 180 day paid or unpaid personal leave of absence before returning to work. The employee remains an employee of the University while on military leave and while on a personal paid or unpaid leave of absence. The employee is considered restored upon return to work (RTW). State statutes allow an employee to use accumulated leave before RTW from military leave. He also earns WRS service during any paid leave and would be eligible for a WRS active employee death benefit.

19. How are agencies to treat employees who are not officially discharged by the military but are using accrued federal leave and have been restored back to state service?

It is OSER's interpretation that once an employee is restored back to state service (i.e., returns to work), he/she is no longer eligible to be coded as "military leave" despite not being discharged from the service. Service members accumulate federal paid leave while on active military duty and not officially

“discharged” until the leave is either cashed out or used. An employee can use federal paid leave when he/she returns to work (double-dipping). Once an employee returns to work, despite official military status, the employee is considered in regular non-leave pay status with the state.

20. Under the Annual Leave Option, eligible classified employees may opt to get a cash payout of unused vacation or may put up to 40/80 hours of unused vacation into sabbatical. This option is given on the November B payroll. If an employee is on active duty, does she get the option upon her return or does the employer need to attempt to contact the employee while she is on active duty in order to have that opportunity?

An eligible employee should be given 30 days to make the choice upon return to work.

21. Eligible unclassified employees who have completed ten years of qualifying service have the option to bank up to 40 hours of unused vacation in ALRA. This option is given on the July payroll. If an employee is on active duty, do they get the option upon their return or does the employer need to attempt to contact the employee while he or she is on active duty in order to have that opportunity?

The employee should be given 30 days to make the choice upon return to work.

22. A classified employee carries over 40 hours of unused vacation into the next calendar year and is given a 120 hour vacation allotment and 36 personal holiday hours on January 1st. The employee is then called to active military duty. Will the vacation carryover hours be lost if not used by June 30 (as happens with other leave that is carried over) or can they be carried over another year until the employee returns to work? What happens to the current year vacation and personal holiday allotment?

The University cannot allow employees to lose leave time because of military duty. Upon return to work, any unused accrued leave available to the employee prior to military activation plus the amount of accrued leave earned during an employee’s military leave will be available for use by the employee for a period of not more than 2 consecutive calendar years from the year of reinstatement. Leave time earned after the employee returns to work to subject to normal carryover provisions.

Example: *A classified employee is called to active duty from a reserve status on May 1, 2010. At activation, she has 120 hours of her 2010 vacation allotment, 40 hours remaining of her 2009 vacation allotment, and 36 hours of 2010 personal holiday. The employee returns to work on May 1, 2011.*

Upon RTW, the employee has 40 hours of her 2009 vacation allotment, 120 hours of her 2010 vacation allotment, 36 hours of 2010 personal holiday and 40 hours of her 2011 vacation allotment (for the first 4 months of 2011). The employee has a total of 236 hours of accrued leave. This leave can be carried over until December 31, 2013. Any new leave time earned after her RTW is used before the leave accumulated while on military leave because newly acquired leave is subject to regular carryover provisions.

23. Are personal/floating holidays carried over while on active duty or are they lost if not used in the year they are earned?

Personal holiday hours are treated like other accrued leave. See Question #22 for guidance. Disregard OSER Bulletin CLR/PP-216/MRS-220/OS 86, dated October 26, 2001 in regards to personal holiday hours. The provision outlined in that bulletin was superseded by Wisconsin Act 162.

24. During the 180 days that an employee has to return to work, what is the maximum amount of accumulated leave hours that the employee can use?

There is no maximum. The employee may use accumulated leave for all or part of the 180 day leave.

25. Under §230.32(2)(a), Wis. Stats., “Any employee with permanent status in class who leaves state service [to serve in the military] and who has used the yearly vacation in anticipation of a full year’s employment is presumed not to have interrupted employment as far as vacation pay is concerned and any portion of the vacation for which the employee was paid which is unearned at the time of being called to duty may be

made up upon return to state service. If the employee does not return to the state service, the employee shall within 2 years after termination of leave repay the state the amount not earned . . ." How should this be administered?

This situation is very unlikely because effective June 7, 2008, employees on any type of paid or unpaid inactive or active military duty will continue to accrue vacation, sick leave and legal holiday credits. If it does occur, agencies may allow a returning employee to repay the used vacation time by deducting the time from the new leave balance rather than having the employee reimburse the state by cash payment. When an employee is restored upon return from military leave, the time spent on active duty must be counted when determining years of service for purposes of annual leave earning level.

Benefits & Payroll Deductions While on Military Leave

26. In the past, employees could let insurance benefits lapse while on active duty and reenroll upon return to work. Section II, C., 4 of the March 31, 2004 OSER bulletin states that, "The amount of military pay deducted from the state paychecks may be reduced if necessary to allow for the deduction of state health insurance premiums, employee reimbursement accounts or other necessary payroll deductions." Should the employer automatically take those deductions unless the employee advises the employer to let the benefits lapse? We're concerned that any action by the employee to lapse coverage could be construed as cancellation and that would preclude the employee from reinstating upon to return to work.

OSER advises employers to perform any and all actions that will result in the least harm to the employee upon restoration. There is no law or OSER regulation requiring that deductions be taken and the benefit or drawbacks may vary from employee to employee. Keep in mind that the employee must be "made whole" for WRS credits. An employee has 30 days from his physical return to work to re-enroll in any lapsed benefits and for any benefits that had an open enrollment or change period during the military leave.

If the employee is using differential pay to maintain benefit deductions, you should put the employee on payroll at their normal earnings and then enter a negative gross adjustment for military pay received. This will allow accumulated leave to accrue correctly.

Attached is a form that can be used when there is the opportunity to counsel the employee prior to going on military leave. It may be modified to better meet your campus's needs.

27. What is the status of health insurance coverage for dependents if the employee chooses not to keep coverage in force while on military leave?

State health insurance premiums are paid two months in advance of coverage so dependents are covered for two months after the month in which the employee begins active duty. Dependents become eligible for TriCare, the health insurance coverage for military personnel and family, if the employee is called to active duty for at least 30 calendar days. If the employee allows his coverage to lapse, his dependents are not eligible for COBRA coverage because the employee is not losing eligibility for coverage or the right to the employer contributions towards the premium.

If the employee chooses to keep health insurance in force, the employer contribution towards the monthly premium continues for the period of military duty and the dependents will remain covered under the family policy.

28. Where can I find more details on continuation of insurance coverage while on active military duty?

See UW System's Military Leave Benefits page at: <http://www.uwsa.edu/hr/benefits/leave/military.htm> for information about continuing benefits under all UW benefit programs.

29. Is the employee obligated to pay union dues or other organizational dues or contributions (e.g., PROFS, SECC) while on military leave?

It is a general practice to stop union dues deductions for an employee called to active duty from a reserve status (those eligible for the 4 year military leave benefit). Specific questions should be directed to the applicable union/organization.

30. How will garnishments (including wage assignments) be handled? It may make a difference if the garnishment is a percentage of earnings or a flat dollar amount.

If the employee is receiving University pay sufficient to cover the deductions, they will continue to be deducted. However, the employee has a personal obligation to make timely payment regardless of whether the garnishment is deducted.

Benefits Upon Release from Active Military Duty

31. If an employee uses 160 hours of accumulated leave after discharge from active military duty and then decides to take unpaid leave of absence before returning to work, when are enrollment opportunities for benefits? Will the employee have to prepay his share of the benefits? Is the employee eligible to receive the employer share of health insurance premiums during the unpaid leave?

If coverage has lapsed, benefit enrollment is only available when the employee returns to work. The health insurance contract says the 30 day enrollment period is within 30 calendar days of "resumption of eligible employment." If the employee is discharged and immediately takes leave, it would be difficult to consider that to be resumption of employment. Therefore, per Bill Kox at ETF, the 30 day reenrollment period begins when the employee actually resumes work.

If coverage has not lapsed, the employee must prepay his portion of the premium (as in any other leave situation). Employees are eligible for the employer contribution towards their health insurance during military leave and when using accumulated leave to remain on payroll during a paid leave. Once an employee begins an unpaid leave of absence, he is eligible for the employer contribution towards his health insurance for the first 3 months of the leave only.

Scenario 1:

Employee released from military service on 7/1/10 and let benefits lapse while on leave. The employee has 180 days to return to work (must return by 12/28/10). Employee has 80 hours of available vacation and will return to work immediately following use of his 80 hours of vacation. 7/1/10 through 7/15/10, employee uses vacation and receives holiday pay for July 4.

Per Bill Kox of ETF, the benefit enrollment period will begin with the first day back at work (NOT the first day on payroll if using accumulated leave to go back on payroll). The employee has 30 calendar days from 7/16/10 to reenroll in any applicable benefits.

Scenario 2:

Employee released from military service on 7/1/10 and let benefits lapse while on leave. The employee has 180 days to return to work (must return by 12/28/10). Employee will use 80 hours of vacation and then go on an unpaid leave of absence until his return to work on 12/28/10.

Per Bill Kox of ETF, the employee has 30 calendar days from the return to work (RTW) date of 12/28/10 to reenroll. Even though the employee returns to payroll through use of accumulated leave, he is not eligible to enroll in benefits until he physically returns to work. If the employee needs coverage by the first of certain month, he must RTW and complete an application to reenroll by that date.

Scenario 3:

Employee released from military service on 7/1/10. The employee has 180 days to return to work (must return by 12/28/10). Employee will take an unpaid personal leave of absence until his return to work on 12/28/10.

For WRS death benefit purposes, the employee is considered active during the unpaid leave. For benefit purposes, the employee is eligible to reenroll in any applicable benefits when he returns to work on 12/28/10. He has 30 days from RTW to reenroll in benefits.

32. Employees on military leave may maintain ICI coverage and may have a valid ICI claim if the disability is not the result of war or an act of war. If coverage lapses while on military leave, do they have re-enrollment rights when they return to work? What if the employee is not enrolled but accumulates enough sick leave while on active duty to be eligible for deferred enrollment?

The Group Insurance Board approved an amendment to the ICI contract to allow for ICI reenrollment within 30 days of return to work if coverage lapses or is cancelled due to active military duty. Upon reenrollment, the ICI premium and coverage level will remain the same unless there has been a premium or eligible salary adjustment during the leave. If the military pay exceeds state pay, only the state earnings are reported to the WRS to determine ICI premium and coverage level.

If the employee is not enrolled in ICI upon military leave activation, but accumulates enough sick leave while on active duty to be eligible for a deferred enrollment, he or she may enroll within 30 days of return to work.

33. If the employee is on active duty during the ERA enrollment period, *It's Your Choice* period and any open enrollment/change periods, will he have another enrollment opportunity upon return to work?

Yes, the employee may enroll/change any applicable benefits within 30 calendar days of returning to work.

Determining Pay Differential

34. From the military pay vouchers that we have seen, the employee is paid twice a month. The first pay period is the 1-15th of the month and the second pay period is from the 16th through the end of the month. Should we calculate different military daily rates for the 1st -15th pay period and then the 16th-30th, 31st (or 28th)?

Yes, you should be calculating different military daily rates for those pay periods. Please see Section IX of bulletin CLR/PP-216/MRS-220/OS-86, dated October 26, 2001 for calculations. Only Base Pay and BAH (Housing Allowance) are used to determine the military daily rate of pay. Do not include any additional military pay for such things as hostile fire pay, separation allowance or BAH II. See pages 13 and 14 for sample calculations.

Example:

Base Pay (1st – 15th) = \$1050.00 & BAH: \$805.00 Total: \$1855.00 /15 days = \$123.67/day
Base Pay (16-31st) = \$1050.00 & BAH: \$805.00 Total: \$1855.00/16 days = \$115.94/day

The daily rate deducted over the month may vary according to the number of days in the month.

35. The March 31, 2004 OSER Bulletin says that the 30-day pay differential uses the state base rate to determine differential pay. Under the 4-year benefit, the employee's state salary, including non base pay supplements are included. What does non base pay include? Does it include weekend differentials, add-ons for CPAs and architects or bonuses?

Per OSER, the rate includes add-ons and bonuses, but not differentials as the employee would have to be actually working the designated shift to receive any differentials. For example, additional pay received for weekend, evening or holiday hours is typically not considered base pay. Unless the employee has regularly scheduled hours that qualify for the differential, the differentials should not be factored in.

36. How do I determine the state daily pay rate for classified employees? The 4 year military leave provision is based on calendar days but classified pay is based on a 5-day work week. Do we pro-rate the state salary over a 7-day period to compare the weekly military pay to the weekly state pay?

No. You follow the calculation as explained in Section IX of bulletin CLR/PP-216/MRS-220/OS-86, dated October 26, 2001. In order to calculate a classified employee's state pay daily rate, multiply the employee's scheduled hours of work in a 2 week pay period by the employee's base wage rate and divide by 10. All employees are considered to be on a standard 8 hr/5 day work week for calculation purposes.

It is generally not necessary to calculate an employee's state daily rate to determine military pay differential. As long as you know the employee's base pay that would have been received if the employee were not on leave, you only need to calculate the military pay received (see the example for determining a negative gross adjustment for a classified employee on page 13) and enter a negative gross adjustment for that amount. When someone is on military leave and state pay is higher than military pay, you should put the employee on payroll at their regular base salary level and enter a negative gross adjustment for military pay received during that pay period.

Example of how to determine state daily rate for classified employee: Employee has 100% appointment and is scheduled to work 80 hours/pay period. Her hourly rate is \$21.755.

$\$21.755 \times 80 \text{ hours} = \$1740.40 / 10 \text{ working days in pay period} = \$174.04/\text{day in state earnings.}$

37. Do I follow the same state daily rate pay calculation outlined in #36 for unclassified employees?

No, it is not necessary to calculate the state daily rate for unclassified employees. Unclassified staff is paid on a monthly basis and they receive the same base pay regardless of work days within the month. You only need to calculate the military pay received (see the example for determining a negative gross adjustment for an unclassified employee on page 14) and enter a negative gross adjustment for military pay received. When someone is on military leave and state pay is higher than military pay, you should put the employee on payroll at their regular base salary level and enter a negative gross adjustment for military pay received during that pay period.

38. When someone is receiving military pay differential, how do I treat legal holidays?

You should not deduct military earnings from legal holiday pay. When you are calculating a negative gross adjustment for a pay period, you do not count the legal holiday as a work day. The employee should receive full state pay for the legal holiday. For example, if a classified employee is on paid military leave during the pay period that includes Thanksgiving, you would only deduct 9 days of military pay from state pay.

39. For permanent part-time employees, please clarify how military pay should be pro-rated. If the employee works 80% of full-time, do we compare the state salary at 80% to 80% of the military pay?

No. Military pay differential is determined by the employee's base salary minus the total military base pay plus military BAH (only include BAH during the 4 year military leave provision) You follow the same calculation as explained in Section IX of bulletin CLR/PP-216/MRS-220/OS-86, dated October 26, 2001.

Please note that this a policy change from the August 2007 Military Leave FAQ.

40. Per OSER Bulletin dated October 26, 2001, "Rights and Benefits of Employees Called Up for Active Military Duty," Section IX, under Procedure, "All full-time employees are considered to be on a standard 8 hour/5 day workweek schedule during the period of military duty." Per the 2007-2009 WSEU contract, "If state pay is selected, the amount of base military pay exclusive of allowances for the actual number of workdays lost shall be deducted from the state pay. The actual number of workdays granted an employee as military leave shall correspond to the number of workdays he/she is absent from his/her work station."

The average work week for a UW police office is a 4 day week, 10 hour days so he/she would be absent from his/her workstation for only 4 days/week (WSEU contract), but the OSER bulletin says that everyone should be considered to be on a 5 day/40 hour work week.

Adjust the employee's work schedule to a 8 hour/5 days a week work week. Per Brian Fusie at OSER, you use the calculation set forth in CLR/PP-216/MRS-220/OS-86, dated October 26, 2001. John

Wieseman of OSER confirmed this again on 8-11-08. If you have a draft of Chapter 800 of the WI Human Resources Handbook, please disregard the section about non-traditional work schedules.

41. An employee was on a 10% medical LOA when she was called up to active military duty. Her department paid her under the 30 day leave benefit, but they paid her at 90% of her wages. She then fell out of pay status on 4/6/07 and was placed on a 100% military LOA. When she returned to work, she again returned to a 10% LOA for personal reasons. Since she was on a 100% military LOA, does she receive her wages at 90% or at 100% during her military LOA (30 day and 4 year benefit)?

The employee should be considered full-time while on military leave for the purpose of benefits and wages.

42. One of our employees on active military duty is able to work some hours for his department – he is in IT and can remotely manage information. When I calculate his negative gross adjustment, how do I compensate for hours worked?

You should calculate the gross pay that the employee would have received for those hours worked. The negative gross adjustment owed for that pay period should be reduced by the gross pay for hours worked.

43. If an employee returning from military leave does not provide the necessary documentation to adjust his wages, leave and WRS accounts, what is the employer's obligation in obtaining the documentation? Is there a time frame during which the documentation must be submitted?

It is the employee's responsibility to provide the documentation to the employer, and he has incentive to do so if he has benefits due him. The employer should contact the employee and tell him what is needed. A follow-up a few weeks later is appropriate. The employer is not obligated to do more to obtain the documentation. There is no time limit for submitting the documentation, but it makes sense to follow the deadlines set forth for reinstatement. However, should an employee submit documentation more than 180 days after release from service, there is no statutory basis to refuse to credit the employee for the time served.

WRS & Leave Crediting if on Unpaid Military Leave of Absence

44. An employee returned from an unpaid leave of absence. How do I update his leave records and his WRS service and earnings?

Campus payroll staff should be able to manually adjust accumulated leave balances. WRS service and earnings are adjusted by the UW Service Center, who is responsible for all WRS reporting. The campus should report the corrected WRS service and earnings directly to the UW Service Center.

45. An employee returns from active duty and indicated that his military pay was much higher than his state pay so he doesn't want to provide copies of his military pay statements during his time in active duty. Can we give him his paid leave benefits and WRS earnings and service credit without the military pay statements? We have a copy of his DD-214 and call up orders so have proof of his service dates. He is not owed any differential pay, and we know what his state service earnings would have been during his active military duty. He did not receive any benefits under either provision during his leave of absence. Can we credit his record without the military pay statements?

As long as you have proof of the active military dates (the DD-214) and the employee was on an approved military LOA, you can credit the employee's account with the proper paid leave benefits. ETF advised that all they need is a copy of the DD-214 or other documentation as proof of service dates. They do not need copies of the military pay statements. You only need copies of the military pay statements when the state pay is higher than the military pay and the employee is owed the difference.

Example of determining negative gross for a classified employee:

Employee is called to active duty from May 1, 2008 – January 31, 2009

Basic Pay: \$1050/2 week military pay period & BAH: \$800/2 week military pay period

Military Daily Rate (30 day benefit) = Basic pay / # of days on military pay statement

Military Daily Rate (4 year benefit) = (Basic pay + BAH) / # of days on military pay statement

State Pay: \$21.50/hour – works a normal schedule

30 day leave benefit for 2008: May 1 – June 12 (do not count Memorial Day)

4 year leave benefit: June 13 – December 31

30 day leave benefit for 2009: January 1 – January 31, 2009

Pay Period (30 day benefit)		Military Daily Rate 1st-15th	Military Daily Rate 16th-EOM	Workdays 1st-15th	Workdays 16th-EOM	Neg Gross	Legal Holidays
4/27/2008	5/10/2008	\$70.00		7	0	\$490.00	
5/11/2008	5/24/2008	\$70.00	\$65.63	4	6	\$673.75	
5/25/2008	6/7/2008	\$70.00	\$65.63	5	4	\$612.50	1
6/8/2008	6/21/2008	\$70.00		4		\$280.00	
<i>(add 2 neg gross for 6/8-6/21)</i>							

Pay Period (4 yr benefit)		Military Daily Rate 1st-15th	Military Daily Rate 16th-EOM	Workdays 1st-15th	Workdays 16th-EOM	Neg Gross	Legal Holidays
6/8/2008	6/21/2008	\$123.33	\$123.33	1	5	\$740.00	
6/22/2008	7/5/2008	\$123.33	\$115.63	3	6	\$1,063.75	1
7/6/2008	7/19/2008	\$123.33	\$115.63	7	3	\$1,210.21	
7/20/2008	8/2/2008	\$123.33	\$115.63	1	9	\$1,163.96	
8/3/2008	8/16/2008	\$123.33	\$115.63	10	0	\$1,233.33	
8/17/2008	8/30/2008	\$123.33	\$115.63	0	10	\$1,156.25	
8/31/2008	9/13/2008	\$123.33	\$123.33	9	0	\$1,110.00	1
9/14/2008	9/27/2008	\$123.33	\$123.33	0	10	\$1,233.33	
9/28/2008	10/11/2008	\$123.33	\$115.63	8	2	\$1,217.92	
10/12/2008	10/25/2008	\$123.33	\$115.63	3	7	\$1,179.38	
10/26/2008	11/8/2008	\$123.33	\$115.63	5	5	\$1,194.79	
11/9/2008	11/22/2008	\$123.33	\$123.33	5	5	\$1,233.33	
11/23/2008	12/6/2008	\$123.33	\$115.63	5	4	\$1,079.17	1
12/7/2008	12/20/2008	\$123.33	\$115.63	6	4	\$1,202.50	
12/21/2008	1/3/2009	\$123.33	\$115.63	5		\$616.67	3
<i>(Add 2 neg gross for 12/21-1/3)</i>							

Pay Period (30 day benefit)		Military Daily Rate 1st-15th	Military Daily Rate 16th-EOM	Workdays 1st-15th	Workdays 16th-EOM	Neg Gross	Legal Holidays
12/21/2008	1/3/2009	\$70.00	\$65.63	1	0	\$70.00	1
1/4/2009	1/17/2009	\$70.00	\$65.63	9	1	\$695.63	
1/18/2009	1/31/2009	\$70.00	\$65.63	0	9	\$590.63	1

Note: As long as you know the employee's state salary is higher than military pay, you do not need to track the employee's daily state rate. You should enter the employee's full time salary and the negative gross adjustment on the payroll system.

Example of determining negative gross for an unclassified employee:

Employee is called to active duty from May 1, 2008 – January 31, 2009
 Basic Pay of \$1050/2 week military pay period & BAH of \$800/2 week military pay period
 Military Daily Rate (30 day benefit) = (Bi-weekly basic pay x 2) / # of days within month
 Military Daily Rate (4 year benefit) = (Bi-weekly basic pay + bi-weekly BAH x 2) / # of days within month

State Pay: \$4000/month - works normal full-time schedule

30 day leave benefit for 2008: May 1 – June 12 (do not count Memorial Day)

4 year leave benefit: June 13 – December 31

30 day leave benefit for 2009: January 1 – January 31, 2009

Pay Period		Military Daily Rate 30 day benefit	Military Daily Rate 4 year benefit	Workdays in month	Legal Holidays	Neg Gross
5/1/2008	5/31/2008	\$67.74		21	1	\$1,422.58
6/1/2008	6/30/2008	\$70.00	\$123.33	21		\$2,110.00
7/1/2008	7/31/2008		\$119.35	22	1	\$2,625.81
8/1/2008	8/31/2008		\$119.35	21		\$2,506.45
9/1/2008	9/30/2008		\$123.33	21	1	\$2,590.00
10/1/2008	10/31/2008		\$119.35	23		\$2,745.16
11/1/2008	11/30/2008		\$123.33	19	1	\$2,343.33
12/1/2008	12/31/2008		\$119.35	20	3	\$2,387.10
1/1/2009	1/31/2009	\$67.74		20	2	\$1,354.84

If the bi-monthly military pay statements are the same during the month, you can determine the negative gross adjustment on a monthly basis. If the military pay changes during the month, you will have to do multiple calculations for that month.

Note: As long as you know the employee's state salary is higher than military pay, you do not need to track the employee's daily state rate. You should enter the employee's full time salary and the negative gross adjustment on the payroll system.

MILITARY LEAVE REFERENCES

[§230.35](#) (3)(a)-(b), Wis. Stats: 30 days paid military leave

[§230.35](#) (3)(e), Wis. Stats: Specialized disaster relief service

[§230.315](#), Wis. Stats., Differential pay, sick leave, and annual leave for state employees activated into certain federal service.

[§230.32](#), Wis. Stats: Restoration after military leave for classified employees

[§40.05](#) (4g), Wis. Stats: Payment of health insurance premiums for employees activated for military duty

[ER 18.08](#) (1), WAC,: Project employee eligibility for annual military leave

U.S. Code Title 38, Ch.43: Employment and reemployment rights of military service members

[DER Bulletin CLR/PP-216/MRS-220/OS-86](#), dated October 26, 2001

[DER Bulletin CLR/PP-216/MRS-220/OS-86 ADDENDUM](#), dated March 28, 2002

[OSER Bulletin OSER-0019-CLR/LR](#), dated March 31, 2004

[OSER Bulletin OSER-0046-CLR/LR](#), dated August 4, 2004

[OSER Bulletin OSER-0211-CLR](#), dated July 23, 2008

Executive Order #50 – Extends leave up to two years.

Executive Order #156 – Extends leave for two additional years, for a total of four years.

Prepared by UW System Office of Human Resources

Every effort has been made to ensure that the information in this brochure is accurate. If the information should conflict with State Statutes, statutes must be followed.

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If you have questions about the content of this document, please contact Nicole Zimm at nzimm@uwsa.edu or at (608) 265-5088.

Eligibility by Appointment Type

IMPORTANT NOTE: Eligibility for military leave benefits ends when the employment contract ends unless the employee would have received another consecutive appointment if not on active military duty. If there is an established pattern of consecutive terminal appointments, the employer should make a reasonable determination of whether the employee would have received another consecutive terminal appointment if he or she were not on active duty and, if possible, renew the appointments prior to the beginning of the military leave.

In cases where the intent is not to renew the appointment in absence of the military duty, incumbents should be notified prior to reporting for active duty. If the incumbent has a back-up appointment, he or she should be placed in the backup appointment prior to military leave, if possible.

Appointment Type	Eligible for 30-days of military leave with no loss of pay?	Eligible for duration of deployment, up to 4 years with no loss of pay or benefits?
Classified Permanent Represented	Yes	Subject to collective bargaining agreement. Currently, applies to all eligible represented employees.
Class Permanent Non-represented	Yes	Yes
Classified Permanent (rep or non-rep) during probation	No	Yes (Statute does not require the employee to be permanent)
Classified Project w/o Permanent Status	No	Yes
Classified Project w/ Permanent Status	Yes	Yes
Limited (e.g., Chancellors, Deans, Directors)	Yes	Yes
Faculty	Yes	Yes
Academic Staff w/ renewable appt.	Yes	Yes
Academic Staff working in 1 st terminal appt w/ no intention of continued employment	No	Yes
Academic Staff working in minimum of 2 nd consecutive terminal appointment	Yes	Yes
Teaching Assistant/PA (under TAA)	Yes	Yes
MGAA	Yes	Yes
Limited Term Employee	No	No
Non-represented Graduate Ass't	No	Yes
Student hourly	No	No
Research Assistant	No	No
Employees in Training (employees) w/ renewable appt.	No	Yes
Employees in Training (employees) w/ terminal appt.	No	No
Employees in Training (not employees)	No	No

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**EMPLOYEE BENEFIT CHECK-LIST
UPON ACTIVATION FOR MILITARY SERVICE**

I, _____, have been ordered to report for active military service on _____.
(Name)
_____. My expected duration of active duty is _____.
(Date)

I understand that I may elect to continue my deductions (if sufficient University pay is received while on active duty) or prepay my benefit deductions to keep my insurance and other benefits in force. I may also allow coverage to lapse and re-enroll within 30 calendar days of my return to work. I do not have any interim re-enrollment opportunities.

I understand that if I have any garnishments (including wage assignments) deducted from my paycheck, I have a *personal obligation* to make timely payment. If I am receiving University pay sufficient to cover the deductions, they will continue to be deducted while I'm on military leave.

I have completed and attached a *Health Insurance Election for Military Personnel* form (ET-2350), <http://etf.wi.gov/publications/et2350.pdf>. Yes No

Benefit Program	Benefit payable while on duty?	Monthly employee cost	Continue while on leave?	Prepay or/ Deductions
State Group Health Insurance	Excludes injury or illness resulting from war or act of war			
State Group Life Insurance	Life benefit payable for loss resulting from an act of war; AD&D is <i>not</i> covered			
Income Continuation Insurance*	Benefit NOT payable if disability is due to war or act of war.			
Individual & Family Life Insurance	Benefit payable for loss due to act of war			
UW Employees, Inc. Life Insurance	Benefit NOT payable if loss is due to act of war			
UIA Life Insurance (<i>required to continue</i>)	Benefit payable for loss due to act of war			
Accidental Death and Dismemberment	Benefit NOT payable if loss is due to act of war			
EPIC Benefits+	No benefits payable if loss is due to act of war			
Dental Wisconsin	No benefits payable if loss due to any military action			
Anthem Dental (<i>classified rep only</i>)	Benefit NOT payable if loss is due to act of war			
Union Dental	Check with your union			
VSP Vision	Can receive services out of network			
ERA	Reduced annual contributions will impact benefits available			
TSA	May continue payroll deduction			
Deferred Comp	May continue payroll deduction or "made up" upon return to work.			
SECC	May continue payroll deduction			
Other deductions	May continue payroll deduction			
Parking	Discontinue			

* *Employees on military leave may still have a valid ICI claim if the disability is not the result of war or an act of war.*

I understand that I must make application for reemployment/ restoration within 180 days of release from service. (Note: If employee is disabled while on duty, deadline may be extended up to 2 years under USERRA).

I may take up to 160 hours of accumulated paid leave in the first 30 calendar days after release from military service. I may then take paid or unpaid leave for the remainder of the 180-day period immediately following discharge from military service.

Name: _____

Signature: _____

Date: _____

If available, email and/or address at which I can be contacted during leave:

