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**MEMORANDUM #047-15HR**

**TO:** Agency Administrators

**FROM:** Carolyn Horwich, J.D., Director of Human Resources

**THROUGH:** Rip Colvin, Executive Director

**SUBJECT:** Military Leave Materials

**DATE:** December 9, 2015

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Attached please find a compilation of materials regarding military leave. Although the compilation is extensive, there are two "At-A-Glance" Charts that will assist you in determining benefits eligibility. The charts are particularly useful in identifying the different statuses of military personnel as they relate to leave and benefits.

Also, please note that your Payroll Coordinator is well versed in these materials and can provide you with assistance at any time.

Thank you.



Department of Management Services  
 Division of Human Resource Management

# PROGRAM GUIDELINES

<b>SUBJECT:</b>	
<b>Military Leave for Salaried Employees</b>	
<b>STATUTORY/RULE REFERENCE:</b>	<b>EFFECTIVE DATE:</b>
20 CFR Part 1002, Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994 Section 110.219, Florida Statutes (F.S.), Attendance and leave; general policies. Section 115.08, F.S., Definitions. Section 115.09, F.S., Leave to public officials for military service. Section 115.14, F.S., Employees. Section 250.01, F.S., Definitions. Section 250.341, F.S., Cancellation of health insurance. Section 250.48, F.S., Leaves of absence. Section 250.482, F.S., Troops ordered into state active service; not to be penalized by employers and postsecondary institutions. Rule 60L-33.002(3), Florida Administrative Code (F.A.C.), General Principles. Rule 60L-33.003(2), F.A.C., Status Upon Appointment. Rule 60L-34.0041(4)(a), F.A.C., Annual Leave. Rule 60L-34.0052, F.A.C., Leaves of Absence Without Pay Rule 60L-34.0062(1), (2), and (3), F.A.C., Military Leave. Rule 60P-2.012(2), F.A.C., Leave Without Pay. Rule 60P-2.012(8), F.A.C., Military Leave. Rule 60P-3.015(2), F.A.C., Leave without pay. Rule 60P-3.015(8), F.A.C., Military leave.	May 4, 2007 Revised: August 22, 2012 Revised: March 7, 2014 Revised: June 9, 2015
<b>FORMS</b>	
<b>ADDITIONAL REFERENCE MATERIAL:</b>	
Cabinet Resolution dated September 25, 2001; DMS Memorandum dated September 28, 2001; Governor Bush's Executive Order Dated September 12, 2003; Uniformed Services Employment and Reemployment Act of 1994 (USERRA); and U.S. Department of Labor Employment Law Guide for USERRA <a href="http://www.dol.gov/compliance/guide/userra.htm">http://www.dol.gov/compliance/guide/userra.htm</a> U.S. Department of Defense Employer Support of The Guard and Reserve (ESGR) <a href="http://www.ESGR.mil">www.ESGR.mil</a> Management Advisory 15-003 (REVISED) issued May 18, 2015, by the Division of State Group Insurance (DSGI)	

**I. SCOPE AND PURPOSE**

These guidelines clarify administration of military leave with pay or military leave without pay (LWOP) for salaried employees of the State Personnel System (SPS), i.e., in the Career Service (CS), Selected Exempt Service (SES), and Senior Management Service (SMS), pursuant to applicable federal and state provisions, including the supplementary proclamations and directives issued by the Executive Office of the Governor or the Cabinet and still in effect. The military leave procedures contained in these guidelines address both individuals who volunteer or who are called to active military service. Unless otherwise referenced herein, all previous Department of Management Services (DMS) issued memoranda are hereby superseded by this guideline.

**Note:** Military leave provisions for eligible employees paid from Other Personal Services (OPS) funds are addressed separately in the program guideline titled *Military Leave Without Pay Provisions for Eligible Other Personal Services Employees*.

**II. DEFINITIONS**

For the purposes of this document, the terms below are defined as follows:

**Active Military Service** - State active duty as a Florida National Guard member or federal active duty in service or training, as specified in section 115.08(1), F.S. **Note:** The term “active duty” and “active military duty” as used in Chapter 115, F.S., Chapter 250, F.S., and Rule 60L-34.0062, F.A.C., have the same meaning as active military service.

**Florida National Guard Member** - A state official or employee who is a member of the Florida National Guard and who, when called to state active duty, has reinstatement rights under Chapter 250, F.S., is entitled to his or her full state regular rate of pay for the first 30 calendar days, pursuant to section 250.48, F.S., and may continue employer subsidized health insurance coverage for the duration of military LWOP under the provisions of section 250.341, F.S.

**Military Pay Supplement** – A payment authorized by section 115.14, F.S., for reservists on military LWOP that makes up any difference between military compensation (that is, military base salary, not including allowances for quarters, rations, variable housing allowances, or other special pay) and civilian salary (that is, state regular rate of pay) as needed when the military compensation is less than the civilian salary and the public employing authority elects to pay it. **Note:** For brevity, this document also uses the term “supplement” to mean the military pay supplement.

**National Guard Member** – A state official or employee who is a member of the Air National Guard or Army National Guard of any state (including Florida) or U.S. territory, as defined in section 250.01 (2) and (6), F.S., respectively, and who, when called to federal active duty, serves on the same basis as any other member of a reserve component of the U.S. Armed Forces. Such individual has reinstatement rights under USERRA; is entitled to full state salary for the first 30 calendar days pursuant to either section 115.09 or section 115.14, F.S., respectively; is entitled (when needed) to the military pay supplement pursuant to the prevailing September 12, 2003 Governor’s Executive Order; and may continue employer subsidized health insurance coverage for the duration of military LWOP under the provisions of section 250.341, F.S., or the DMS Memorandum issued September 28, 2001, as applicable.

**Non-Reservist** - A state official or employee who is neither a member of the National Guard or the military reserves but, as a result of being drafted or volunteering to serve in the armed forces of the United States, has reinstatement rights under USERRA; is entitled to his or her full state regular rate of pay for the first 30 calendar days pursuant to section 115.14, F.S., and may continue employer subsidized health insurance coverage for the duration of military LWOP pursuant to the DSGI

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Management Advisory 15-003 (REVISED) issued May 18, 2015.

**Period of Active Military Service** – The continuous interval during which the employee is in active military service, as specified in section 115.08(2), F.S., and which, regardless of how many times the employee receives new or amended orders before being released by the military and returning to work, shall constitute a single period of authorized military leave for purposes of remaining in pay status for the first 30 days of active military service, as contemplated by Chapter 115, F.S., and Chapter 250, F.S.

**Positive Pay** – The method of payment whereby a timesheet recording hours of work and/or paid leave must be submitted and approved (in the People First System) in order for the employee to receive any salary payment (other than the military pay supplement, if eligible) for the pay period in question.

**Reservist** – A state official or employee who is a member of a reserve component of one of the armed forces of the United States. Such individual, when called into federal active duty, has reinstatement rights under USERRA; is entitled to his or her full state regular rate of pay for the first 30 calendar days pursuant to sections 115.09 and 115.14, F.S., respectively; is entitled (when needed) to the military pay supplement pursuant to the prevailing September 12, 2003 Governor's Executive Order; and may continue employer subsidized health insurance coverage for the duration of military LWOP under the provisions of section 250.341, F.S., or the DMS Memorandum issued September 28, 2001, as applicable.

**Note:** For brevity, the term 'Reservist' used in this document also refers to National Guard members who have been called to federal active duty, inasmuch as they have the same rights and benefits under federal and state law, as described herein.

**State Active Duty** – Full-time service in the Florida National Guard when ordered by the Governor or Adjutant General of the State of Florida as specified in section 250.01(21), F.S. (Also termed "Active State Duty" in statute.)

**State Regular Rate of Pay** – The pay that is composed of the employee's base rate of pay plus all recurring incentive payments and salary additives, with the exception of on-call.

### **III. POLICY**

1. Employees in the CS, SES, and SMS who volunteer or are drafted and serve in active military service (non-reservists); who are members of the reserves or the National Guard and are called to federal active duty (reservists); or who are Florida National Guard members called to state active duty; shall be placed on military leave in accordance with Chapter 115, F.S., or Chapter 250, F.S., as applicable, and will have reemployment rights and benefits in accordance with the provisions of USERRA or of the Florida Uniformed Servicemembers' Protection Act in Chapter 250, F.S., as applicable.
2. State officials and employees who are reservists and non-reservists shall be placed on military leave as provided in Chapter 115, F.S., for federal active duty and such military leave shall be one continuous period of active military service. This leave commences upon receipt of their initial orders for federal active duty and ends no more than 30 days following their release or discharge from the Military or upon return to work, whichever occurs first. If the employee chooses to exercise their USERRA rights and requests to extend their leave beyond the 30 days allotted in statute before returning to work, they will continue on military leave without pay for the additional 30 to 60 days, as applicable under USERRA.

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3. Pursuant to the provisions of sections 115.09 and 115.14, F.S., the Cabinet Resolution dated September 25, 2001, and Governor Bush's Executive Order dated September 12, 2003, agencies are to implement the provisions of section 115.14, F.S., whereby they supplement the pay of reservists whose military pay is less than their state regular rate of pay. However:
  - a. At no time shall the combination of employees' military pay supplement and military base pay exceed their state regular rate of pay for the pay period;
  - b. At no time shall the combination of the employees' compensation from the State (i.e. military pay supplement and/or paid leave) exceed their state regular rate of pay for the pay period;
  - c. The employee must provide documentation to their agency indicating their current military rate of pay and contact information for verification of rate of pay when any change occurs affecting their military rate of pay; and
  - d. Pursuant to section 115.14, F.S., and instructions initially provided to the agencies via the DMS memorandum dated September 28, 2001, implementation of state supplemental pay policies applies only to non-OPS reservists called to federal active duty. After the first 30 calendar days of paid leave, such employees are placed on "military leave without pay" (that is, military leave with or without the supplement) and are entitled to leave accruals and state insurance contributions, regardless of the amount of the state military supplemental pay or the total offset of the state military supplemental pay by the amount of the military pay.
4. Rule 60L-33.002(3), F.A.C., provides that employees who are granted military leave shall be treated as if they had been continuously employed for purposes of status, pay, and other benefits consistent with the terms applicable to the type of authorized leave that is granted. This provision comports with the "escalator principle" of the USERRA law, which ensures that all employees on military leave (regardless of whether they are reservists or non-reservists) retain the perquisites of their seniority (i.e., all seniority-tied personnel actions such as increases in annual and sick leave accrual rates, pay adjustments based on legislatively granted across the board increases, continued access to group insurance coverage, etc., are not impacted by the employee's absence). This principle also applies to Florida National Guard Members, pursuant to Chapter 250, F.S.
5. Upon exhaustion of the paid leave provisions in Chapter 115, F.S., for reservists and non-reservists and in Chapter 250, F.S., for Florida National Guard members, and in all cases where the employee does not qualify for the supplement provided in section 115.14, F.S., the remainder of the military leave shall be leave without pay (LWOP). However, all employees on LWOP during military service are permitted to use accrued leave, subject to the same conditions as any other employee on LWOP, and consistent with USERRA.
6. Although USERRA provides that employees in active military service have the right to continue health insurance coverage for up to 24 months and may be required to pay no more than 102% of the full premium, greater benefits are provided under the state group insurance program to all employees on military leave without pay, as described in the following:
  - a. Reservists of any branch of the U.S. armed forces engaged in federal active duty qualify for **continuation of their existing health insurance coverage for the duration of their leave** pursuant to section 250.341, F.S. and Rule 60P-2.012(8), F.A.C. Additionally, section 250.341, F.S., provides that the coverage shall be **at the same contribution level they paid prior to federal active duty**, notwithstanding Rule 60P-2.012(8), F.A.C. However, although the premium contribution provisions of section 250.341, F.S., only apply to Florida residents,

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the employer contribution shall be paid **regardless of Florida residency**, pursuant to the DMS Memorandum issued September 28, 2001.

Likewise, members of the Florida National Guard engaged in state active duty (are not covered by USERRA) qualify for continuation of their existing health insurance coverage for the **duration of their leave and at the same contribution level** that the employee paid prior to state active duty pursuant to section 250.341, F.S.

- b. Reservists of any branch of the U.S. armed forces and members of the Florida National Guard engaged in recurring reserves/guard training have health insurance provisions as described separately in the program guideline titled "*Military Leave for Recurring Reserve or National Guard Training for Salaried Employees*".
  - c. Non-reservists engaged in federal active duty qualify for **continuation of their existing health insurance coverage for the duration of their federal active duty** and, notwithstanding Rule 60P-2.012(8), F.A.C., **at the same contribution level they paid prior to federal active duty**, pursuant to DSGI Management Advisory 15-003 (REVISED) issued May 18, 2015.
  - d. Members of the National Guard called up by another state are placed on authorized leave with or without pay, as a matter of SPS policy. As with any authorized leave granted for general purposes, they will qualify for **continuation of their existing health insurance coverage for the duration of their authorized leave** pursuant to Rule 60P-2.012(2)(a), F.A.C. Notwithstanding the premium contribution provisions of Rule 60P-2.012(2)(a), F.A.C., the coverage will be **at the same contribution level they paid prior to their authorized leave**, pursuant to DSGI Management Advisory 15-003 (REVISED) issued May 18, 2015.
7. Employees in active military service who are enrolled in the state's basic term life plan, optional life plan, or any of the state group supplemental plans may continue coverage for the duration of their military leave, or they may cancel coverage and reenroll upon returning to work, pursuant to Rule Chapter 60P, F.A.C., If coverage is continued:
- a. Reservists engaged in federal active duty and Florida National Guard members in state active duty will continue to receive the state contribution for the basic term life plan, even while on leave without pay, pursuant to the DMS Memorandum issued September 28, 2001.
  - b. SMS and SES reservists and non-reservists engaged in federal active duty, and SMS and SES Florida National Guard members in state active duty will continue to receive the state contribution for the SMS/SES disability income plan, even while on leave without pay, pursuant to SPS policy (consistent with intent of the DMS Memorandum issued September 28, 2001).
  - c. Non-reservists will be responsible for paying the full contribution for the basic term life plan, while on leave without pay, pursuant to Rule 60P-3.015(8), F.A.C.
  - d. Members of the National Guard called up by another state will be responsible for paying the full contribution for the basic term life plan (and, if applicable, SMS/SES disability income plan) while on leave without pay, pursuant to Rule 60P-3.015(8), F.A.C.
8. The military leave provisions addressed in this program guideline are intended to comply with the reinstatement provisions of state law (applicable only to state active duty in the Florida National Guard) or the reinstatement provisions of federal law (USERRA). However, inasmuch as state active duty is usually of short duration whereas federal active duty can extend to several months

or years, it is realistic to assume that circumstances for the employee or the agency could change during federal active duty, thus impacting the employee's right to reinstatement. Consequently, the agency is responsible for periodically monitoring every employee who has been placed on military leave for federal active duty and ensuring that correct and timely action is taken during or following military service, as provided by federal law. Agencies are urged to consult the [USERRA law](#) or contact the ESGR ([www.ESGR.mil](http://www.ESGR.mil) or 1-800-336-4590) if at any point during or after military service there is uncertainty regarding the agency's obligation to reinstate an employee under the federal provisions.

For a general overview of USERRA eligibility criteria for reinstatement, see Section IV. C. of this program guideline.

#### **IV. POLICIES AND PROCEDURES FOR PLACING AN EMPLOYEE ON MILITARY LEAVE**

##### **A. PERSONNEL ACTION REQUESTS (PARs) AND ATTENDANCE AND LEAVE ADMINISTRATION**

###### **1. How is an employee placed on a military leave of absence?**

Upon inspecting the employee's official military orders, a Personnel Action Request (PAR) must be processed to place the employee in the appropriate pay status.

###### **a. RESERVISTS OR FLORIDA NATIONAL GUARD – ACTIVE DUTY**

###### **(1) First 30 calendar days**

- **PAR Action Type:** "LOA with Pay" (Leave of Absence) and

If the employee is a reservist (including any National Guard member in federal active duty), use

- **PAR Action Reason:** "Active Military" (69)

or

If the employee is a Florida National Guard Member in state active duty, use

- **PAR Action Reason:** "National Guard" (61)

**Timesheet:** Enter the applicable leave type of 0069 (Admin-Active Military) or 0061 (FL National Guard) for the first 30 calendar days.

**Personnel File:** The agency will dictate the method for receiving and placing orders in the personnel file.

**Impact:** The employee will continue full pay and all related benefits (such as full leave accruals and state premium contributions) for the first 30 calendar days (i.e., all work days that fall within the first 30 calendar days), pursuant to Chapter 115, F.S., or Chapter 250, F.S., as applicable.

###### **(2) After 30 calendar days**

- **PAR Action Type:** "LOA Without Pay" and

- **PAR Action Reason:** “Military Leave With Pay Supplement” (82) or “Military Leave Without Pay Supplement” (83), whichever is applicable

**Timesheet:** If the employee has chosen to use annual, regular or special compensatory leave for a portion of the pay period, the timesheet will need to be completed indicating the appropriate leave types. (**Note:** If the employee elects accrued leave rather than LWOP, the agency may require the use of special compensatory leave in lieu of other accrued leave, pursuant to current rule and any applicable collective bargaining agreement. This practice is consistent with USERRA law provided that the same substitution requirements are imposed for other similarly situated employees.)

The remainder of the timesheet should be completed indicating the applicable leave type of 0082 – “LWOP Active Military with Pay Supplement” (for reservists in federal active duty who will receive a supplement due to military pay being less than their state pay) or 0083 – “LWOP Active Military without Pay Supplement” (for reservists in federal active duty whose military pay exceeds their state pay, or for Florida National Guard members on state active duty).

**Note:** Reservists using hours type 0082 will receive pay every pay period as provided by the military pay supplement, whereas reservists using hours type 0083 will not receive pay from the State unless:

- There is a state holiday during the period and/or
- A timesheet indicating annual, regular or special compensatory leave has been submitted.

Timesheets should be submitted and approved each pay period, even if the employee has elected not to use accrued leave. (Timesheets may be submitted and approved in advance of the applicable pay period.) Additionally, if the employee has chosen to use accrued leave during a particular pay period, the timesheet must be approved before the payroll cutoff in order for the employee to receive additional pay on their regularly scheduled pay date.

**Personnel File:** Agency will dictate the method for receiving and placing orders in the personnel file.

**Impact:** Once the appropriate PAR is completed, those reservists who meet the eligibility criteria (federal active duty with military pay less than state pay) will receive a military pay supplement and all reservists will continue to earn leave credits and holiday pay during their leave of absence. (Leave accruals, holiday pay, and employer health premium contributions will be handled by the system.) In addition, if a timesheet indicating annual, regular or special compensatory leave is approved for the pay period, then the hours indicated on the timesheet will be paid. **Note:** For any calendar month in which the employee will be completely off the payroll, the employee must make arrangements with the People First Service Center to timely pay the employee contribution for health insurance and any other pre-tax supplemental coverage the employee wishes to maintain. Also, the agency will need to manually process the state contribution for basic term life and, if applicable, the SMS/SES Disability Plan. To maintain products or services offered through post-tax payroll deductions, the employee must make payment(s) directly to the company associated with the deduction.

### b. RESERVE OR NATIONAL GUARD TRAINING

Procedures for military leave granted to employees engaged in active or inactive training under federal provisions as stipulated in section 115.07, F.S., are addressed in the program guideline titled “*Military Leave for Recurring Reserve or National Guard Training for Salaried Employees*”.



**c. NON-RESERVISTS – ACTIVE DUTY**

**(1) First 30 days**

- **PAR Action Type:** “LOA Without Pay”
- **PAR Action Reason:** “Active Military” (69)

**Timesheet:** Enter leave type 0069 (Admin-Active Military) for the first 30 calendar days.

**Personnel File:** The agency will dictate the method for receiving and placing orders in the personnel file.

**Impact:** The employee will continue full pay and all related benefits (such as full leave accruals and state premium contributions) for the first 30 calendar days (i.e., all work days that fall within the first 30 calendar days), pursuant to the applicable statutory and rule provisions.

**(2) After 30 days**

- **PAR Action Type:** “LOA Without Pay”
- **PAR Action Reason:** “ Authorized Leave Without Pay” (58)

**Timesheet:** If the employee has chosen to use annual, regular or special compensatory leave for a portion of the pay period, a timesheet will need to be completed indicating the appropriate leave types. Timesheets may be submitted in advance of the applicable pay period.

**Note:** If the employee elects accrued leave rather than LWOP, the agency may require the use of special compensatory leave in lieu of other accrued leave, pursuant to current rule and any applicable collective bargaining agreement. This practice is consistent with USERRA law provided that the same substitution requirements are imposed for other similarly situated employees.

If the employee elects not to use accrued leave for a pay period, the submitted and approved timesheet will indicate hours leave type “0058 – LWOP - Authorized” for the pay period.

Timesheets should be submitted and approved each pay period, even if the employee has elected not to use accrued leave. Additionally, if the employee has chosen to use accrued leave during a particular pay period, the timesheet must be approved before the payroll cutoff in order for the employee to receive pay on their regularly scheduled pay date.

**Personnel File:** Agency will dictate the method for receiving and placing orders in the personnel file.

**Impact:** By SPS policy, employees who voluntarily enlist in the armed forces are placed on an authorized leave of absence without pay in order to administer their reemployment rights under USERRA, but (as with any other non-military leaves of absence without pay), no leave credits shall accrue for CS employees and no holidays shall be paid to any employees unless the employees use their own accrued leave to continue in pay status. However, SES/SMS employees will still receive their annual and sick leave credits on their anniversary date, notwithstanding their unpaid leave status, as this benefit is not contingent on pay status. Additionally, for any calendar month in which the employee will be completely off the payroll, the employee must make arrangements with the People First Service Center to timely pay the

employee contribution for health insurance and any other pre-tax supplemental coverage the employee wishes to maintain. Employer health insurance premium contributions will continue, pursuant to DSGI Management Advisory 15-003 (REVISED) issued May 18, 2015. To maintain products or services offered through post-tax payroll deductions, the employee must make payment(s) directly to the company associated with the deduction.

**d. NATIONAL GUARD MEMBERS – MILITARY SERVICE FOR ANOTHER STATE**

**PAR Action:** “LOA Without Pay”

**PAR Action Reason:** “Authorized Leave” (58).

**Personnel File:** The agency will dictate the method for collecting and placing copies of all military orders in the personnel file.

**Timesheet:** The employee may use accrued leave. Otherwise, the employee will be on regular leave without pay and must record hours type 0058 on the timesheet.

**Impact:** As with any other non-military leaves of absence without pay), no leave credits shall accrue for CS employees and no holidays shall be paid to any employees unless the employees use their own accrued leave to continue in pay status. However, SES/SMS employees will still receive their annual and sick leave credits on their anniversary date, notwithstanding their unpaid leave status, as this benefit is not contingent on pay status. Additionally, for any calendar month in which the employee will be completely off the payroll, the employee must make arrangements with the People First Service Center to timely pay the employee contribution for health insurance and any other pre-tax supplemental coverage the employee wishes to maintain. Employer health insurance premium contributions will continue, pursuant to DSGI Management Advisory 15-003 (REVISED) issued May 18, 2015. To maintain products or services offered through post-tax payroll deductions, the employee must make payment(s) directly to the company associated with the deduction.

**2. How is an employee returned from their military leave of absence?**

An employee remains on military leave until whichever one of the following occurs first in accordance with section 115.08(2), F.S.:

- The employee returns to work immediately following discharge,
- The employee returns to work within 30 days following discharge, or
- The employee’s death.

Additionally, USERRA authorizes discharged employees to take an extended period of time (beyond 30 days) before returning to work, the duration of which is based on their length of military service. Please refer to the USERRA guideline to determine the amount of time allowed in relation to the employee’s request.

Employees who are discharged but elect to utilize the extended period of time authorized by USERRA should remain on Military Leave Without Pay (and may substitute accrued leave credits for leave without pay hours) until they return to work. This is because they remain entitled to military leave benefits during this time. However, all salary supplements will be discontinued upon the effective date of discharge as the employee will no longer be receiving military pay.

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Following are instructions on how to return employees discharged from active military duty to payroll, if under the terms of the leave and for federal active duty the requirements of USERRA have been met (see Section IV.C., below):

- a. Employee on Military Leave **Without Pay Supplement** is discharged and:
  - (1) returns within first 30 days –
    - No PAR or timesheet change required until employee returns.
    - Upon return, process PAR “Return from LOA Without Pay” and use Action Reason: “Return from LOA Without Pay”.
  - (2) elects to remain on leave for up to 90 days following discharge under his/her USERRA rights –
    - No PAR or timesheet change required until employee returns.
    - Upon return, process PAR “Return from LOA Without Pay” and use Action Reason: “Return from LOA Without Pay”.
  
- b. Employee on military leave **With Pay Supplement** is discharged and:
  - (1) returns within the first 30 days –
    - Complete a PAR “LOA Without Pay” and use Action Reason: “Military Leave Without Pay Supplement”. The pay supplement must be removed effective the discharge date as the employee is no longer receiving military pay.
    - Timesheet should be completed indicating leave type “0083 – LWOP Active Military”.
    - Upon return, process PAR “Return from LOA without Pay” and use Action Reason: “Return from LOA Without Pay”.
  
  - (2) elects to remain on leave beyond the 30 days for up to 90 days following discharge under his/her USERRA rights –
    - Complete a PAR “LOA Without Pay” and use Action Reason: “Military Leave Without Pay Supplement”. The pay supplement must be removed effective the discharge date as the employee is no longer receiving military pay. The employee remains on military leave without pay until their return to work or the end of the 90 days whichever occurs first.
    - Timesheet should be completed indicating leave type “0083 – LWOP Active Military”.
    - Upon return, process PAR “Return from LOA Without Pay” and use Action Reason: “Return from LOA Without Pay”.

**Note:** If the employee elects to use accrued leave while on “LOA Without Pay”/“Military Leave Without Pay Supplement”, the agency may require the use of special compensatory leave in lieu of other accrued leave, pursuant to current rule provisions and any applicable collective bargaining agreement. This practice is consistent with USERRA law provided that the same substitution requirements are imposed for other similarly situated employees. The remainder of the timesheet should be completed indicating leave type “0083 – LWOP Active Military”. Timesheets may be submitted and approved in advance of the applicable pay period.

- c. Employee elects to remain on leave beyond the 90 days authorized under USERRA. Once the employee has exhausted their leave under USERRA, it is the agency’s discretion whether to approve this leave based on agency need.
  - (1) If the agency approves the additional leave:
    - Complete a PAR “LOA Without Pay” and use Action Reason: “Authorized Leave”.
    - Timesheet should be completed indicating leave type “0058 – LWOP Authorized”
    - Upon return, process PAR “Return from LOA Without Pay” and use Action Reason: “Return from LOA Without Pay”.

**Note:** If the employee elects to use accrued leave while on “LOA Without Pay”/“Authorized”, the agency may require the use of special compensatory leave in lieu of other accrued leave, pursuant to current rule provisions and any applicable collective bargaining agreement.

- (2) If the agency does not approve the additional leave:
- Complete a PAR “LOA Without Pay” and use Action Reason: “Unauthorized Leave”.
  - Timesheet should be completed indicating leave type “0059 – LWOP Unauthorized”.

**3. If an employee on active military leave has more than the maximum number of hours of annual leave on the date of their scheduled annual leave rollover (e.g. December 31<sup>st</sup> for CS employees or SES/SMS employee’s leave accrual date) may the employee request that the excess annual leave remain in annual leave and not roll over into sick leave?**

No. Based on Rule 60L-34.0041(4)(a), F.A.C., there is no authority to allow employees to carry over excess annual leave hours.

**4. May an employee on active military leave use accrued annual or any form of compensatory leave to cover payroll deductions?**

Yes. The above referenced leave types, which are available under any form of authorized leave without pay, may be used when requested by the employee and approved by the agency. However, the amount of leave charged, (in combination with any military pay supplement received), may not exceed the employee’s state regular rate of pay for the pay period.

**Note:** Due to fiscal impact, if the employee elects accrued leave rather than LWOP, the agency may require the use of special compensatory leave in lieu of other accrued leave, pursuant to current rule provisions and any applicable collective bargaining agreement. This practice is consistent with USERRA law provided that the same substitution requirements are imposed for other similarly situated employees.

In such cases, the employee shall be entitled to accumulate all benefits granted under paid status.

**5. May an employee on active military leave use accrued sick leave to cover payroll deductions?**

No. As with any other employee on LWOP, the use of accrued sick leave must be consistent with the type of LWOP granted (for example, a medical leave). Military service is not an authorized purpose for using sick leave (although the employee may have been placed on some form of temporary medical leave by the military, the employee’s military leave status with the state has not changed).

However, in the event that an employee, *who has been discharged*, defers returning to work until after the grace period allotted under USERRA for reinstatement purposes has expired, the employee’s LWOP status will no longer be military leave. In this scenario, the employee may use accrued sick leave for any authorized purpose that occurs while under the new LWOP status that precedes return to work.

**6. May the amount of leave used exceed what is actually needed to cover payroll deductions?**

Yes. In recognition of the financial obligations of affected employees during these extraordinary events, the employee may elect to use any amount of leave, provided that the total amount of leave charged (in combination with military pay supplement, if applicable) does not exceed the employee’s state regular rate of pay for the pay period.

**Note:** As noted in Question 4 above, if an employee requests the use of accrued leave rather than LWOP, the agency may require the use of special compensatory leave in lieu of other accrued leave, unless specifically prohibited by collective bargaining agreements.

**7. Under what circumstances do employees who are called to active military duty and placed on leave without pay (Military Leave With or Without Pay Supplement) continue to accrue leave credits and receive pay for state holidays?**

If the employee is a reservist or a National Guard member of any state who is now serving in federal active duty, they will continue to qualify for holiday pay and accrue full annual and sick leave credits in accordance with the rules applicable to their position (regardless of paid or unpaid leave status). This policy also applies to Florida National Guard members in state active duty if they are placed on leave without pay (Military Leave Without Supplement). The agency must be sure to use the appropriate PAR Action Type and Action Reason (Military Leave With or Without Pay Supplement) as stated above.

**Note:** If the employee uses leave intermittently, such leave use may not be necessary or may be reduced during a holiday work period, since the employee will be receiving holiday pay.

Additionally, if the employee is receiving a military pay supplement, the People First system will reduce the military supplemental pay by the number of holiday hours in the pay period. If no military supplemental pay or leave is being used, the employee will simply be paid for holiday hours.

**8. How is leave accrual and holiday pay handled for employees who are non-reservists?**

During the period of federal active duty that follows their initial 30 calendar days of military leave, CS employees who are non-reservists will only accrue annual and sick leave credits to the extent that they use accrued leave to remain in pay status. Otherwise, they will be placed on Authorized Leave Without Pay (0058) and will not accrue leave credits nor earn holiday pay. However, SES and SMS employees who are non-reservists will continue to receive their annual and sick leave credits on their anniversary date as their leave is always credited (as a lump sum and not an accrual) on their anniversary date and therefore not impacted by LWOP status. Nonetheless, SES and SMS employees must also use their accrued leave to qualify for holiday pay.

**B. PAYROLL ADMINISTRATION**

**Note:** When feasible, the agency should convert employees who are being placed on a military leave of absence to a standard work schedule to minimize any payroll administrative issues associated with flexible work schedules.

**1. When are employees eligible for a military pay supplement?**

Section 115.114, F.S., authorizes the payment of a military supplement to account for the difference between the employee's state salary (regular rate of pay for the pay period) and their military base pay (exclusive of allowances for quarters, rations, variable housing allowances or any other special pay) to employees who are members of a reserve component of the U.S. Armed Forces (reservists) and who are called to federal active military duty. When National Guard members are called to federal active duty they too are serving as reservists and eligible for the supplement.

The State currently operates under the September 25, 2001, Cabinet Resolution directing all agencies to supplement the pay of reservists who are called to active duty due to the events of September 11, 2001. Military pay supplements to eligible employees shall continue until further notice and are not at the discretion of agencies.

**2. How is an employee's military supplemental pay calculated?**

An employee's military pay supplement shall be calculated as follows:

An employee was called to active duty with an effective date of orders of September 20, 2011. On September 19, 2011, the employee was receiving a biweekly regular rate of pay of \$1,000. Employee's military base rate of pay on September 20, 2011 was \$1,200 per month.

First, annualize employee's state regular rate of pay.

\$1,000 biweekly times 26 biweekly pay periods	\$26,000.00
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Next, annualize employee's military base pay.

\$1,200 monthly times 12 monthly pay periods	\$14,400.00
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The starting annual military pay supplement is the difference between these amounts.	\$11,600.00
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The bi-weekly military pay supplement is the annual amount divided by 26.	\$ 446.15
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This is the amount to be paid to the employee biweekly.	\$ 446.15
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**3. What are the methods for verifying the employee's military base pay?**

- a. Obtain a copy of the employee's monthly military Leave and Earnings Statement (LES) indicating current military base pay.
- b. Contact the employee's unit of assignment to request verification of military base pay. The address is on the front of the active duty orders.
- c. Request assistance from the Employer Support of the Guard and Reserve (ESGR) office at 1-800-336-4590.

**4. What is the employee's responsibility regarding advising the agency of changes in his/her military pay?**

The employee or his/her power of attorney should be advised that they must notify the agency of any change in the employee's military base pay. Keep in mind that pay changes could result from a change in rank or from regular pay increases. The federal fiscal year is from October through September and military pay tables are posted at <http://www.dfas.mil/>.

**5. If an employee is called to active duty and wants to work intermittently for the State within the first 30 calendar days, is the 30 calendar days extended based on hours worked?**

No. Based on current statutory language, the employee would receive full pay and benefits for the first thirty (calendar) days, regardless of the hours worked.

**6. What salary additives should be continued while on military leave?**

In accordance with section 115.14, F.S., all salary additives, with the exception of on-call, that the employee received prior to being called to active duty shall be continued while the employee is on military leave. Section 115.114, F.S., states: “Notwithstanding the provisions of section 115.09, the employing authority may supplement the military pay of its officials and employees who are reservists called to active military service after the first 30 days in an amount necessary to bring their **total salary**, inclusive of their base military pay, to the level earned at the time they were called to active military duty” (emphasis added).

**7. Should perquisites be continued for employees on a military leave of absence?**

No, perquisites should be discontinued while employees are on military leave. Upon the employee’s return from the leave of absence, perquisites that the employee had been receiving prior to the leave of absence should be reinstated, if applicable.

**8. Are educational incentive payments (i.e. Criminal Justice Incentive Pay (CJIP) and Firefighter Supplemental Compensation continued while an employee is on military leave?**

Yes. CJIP and Firefighter Supplemental Compensation will continue since they are not additives but incentive pay for additional education completed by law enforcement officers and firefighters.

**9. When an employee is ordered to active duty (including active duty training under federal orders), does he/she receive 30 days of paid leave with each set of orders received?**

No. The employee is on one continuous period of active military service as defined in section 115.08 (2), F.S., regardless of the number of new or extension orders the employee may receive during that period.

Agencies should place the employee on a leave of absence for active military service which does not conclude until the employee’s death or 30 days following release or discharge from the active service unless the employee returns from such service prior to the conclusion of the 30 day period (this period may be extended based on USERRA rights of the employee for up to 90 days). Employees are eligible for an additional 30 days of paid leave only if, after returning to work (or having been removed from active military leave status) they are subsequently ordered back into active military duty, in which case the agency shall grant a **new** authorized leave of absence.

The employee must be discharged and return to work for a minimum of one work day (use of leave does not qualify as a return to work) before additional orders will be considered “new” for purposes of receiving the first 30 days as paid administrative leave.

**10. How is pay handled for employees who are members of the Florida National Guard and are activated into a state disaster (i.e. hurricanes, tornadoes, floods)?**

If the official orders reflect activation for state active duty in accordance with section 250.48, F.S., the employee shall receive full pay not to exceed 30 calendar days at a time, but is not entitled to a military pay supplement. Each time the employee receives orders for a new event as established by executive order, the employee will be eligible for 30 calendar days of full pay.

**11. How is pay handled for employees who are reservists in the National Guard of another state?**

The official orders will need to be reviewed in order to make this determination.

If employees are called to active duty under Title 32 or Title 10, U.S.C., as members of the National Guard (of any state) pursuant to sections 115.09 or 115.14, F.S., they are reservists in federal active duty and therefore eligible for the first 30 calendar days full pay status and the supplement thereafter pursuant to the Sept. 25, 2001 Resolution. The official orders will reflect activation pursuant to Title 10 or Title 32, U.S.C. However, if the official orders reflect activation (a call up) issued by another state, the employee shall not receive full pay for the first 30 calendar days, nor the military pay supplement. Such employee should immediately be placed on a leave of absence without pay (complete PAR Action Type "LOA Without Pay" and use Action Reason "Authorized Leave without Pay").

**12. If an employee voluntarily enlists in the federal reserves or National Guard and is required to report for four (4) months for basic recruit and/or advanced individual training, is the employee eligible to receive a military pay supplement?**

No. However, the employee shall be placed on a military leave of absence and is entitled to the first 30 calendar days of full pay.

**13. If an employee voluntarily enlists in the federal reserves or National Guard, completes their training, returns to work and is subsequently called to federal active duty, will the employee be eligible for supplemental pay?**

The official orders will need to be reviewed in order to make this determination.

- a. If the federal reservist or member of the National Guard is activated pursuant to Title 10 or Title 32, U.S.C., the answer is **Yes**. The employee shall be eligible for the first 30 calendar days of full pay and the supplement thereafter.
- b. If the employee is activated for state active duty in accordance with section 250.48, F.S., the employee shall receive full pay not to exceed 30 calendar days at a time. However, unless activated for federal active duty, the employee is not entitled to the supplement.

**14. If an employee voluntarily enlists in one of the military services, is the employee eligible for supplemental pay?**

No. An employee who enlists into active military service is a non-reservist and is not eligible for the supplement. The employee is now full-time active military personnel and not eligible to return to state employment until such time as they are discharged from military service. At no time should an enlisted employee return to work between the end of their basic training and the duty assignment as the employee would be on military leave and has not been discharged from the military.

**15. Are employees eligible to receive legislatively approved pay increases while on a military leave of absence?**

Yes. Pursuant to USERRA and Rule 60L-33.002 (3), F.A.C., employees on a military leave of absence are eligible to receive legislatively approved pay increases in accordance with the provisions of the General Appropriations Act (GAA).



**16. How are legislatively approved pay increases handled for state employees who are on a leave of absence for active duty when the pay increase takes effect?**

Pay increases for employees on a leave of absence are not automatically processed as part of the mass load in the People First system. The pay increase for any employee on a leave of absence must be handled through the PAR process.

- Complete a PAR Action Type “*Pay Change*”
- Use Action Reason “*Legislative Mandate*”

For employees receiving a military supplement, agencies should verify the employee’s military pay to determine how much to adjust the military supplement paid by the State.

It is recommended that the PAR is processed for all employees on a leave of absence, indicating the statewide effective date of the pay increase so that, in the event that the employee uses accrued leave on the timesheet, it is paid appropriately.

**Note:** After processing the PAR for the pay increase, a second PAR must be processed in order to place the employee back on the appropriate form of leave without pay.

<p><b>C. COMPLIANCE WITH THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA)</b></p>
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**1. What is the Uniformed Services Employment and Reemployment Rights Act?**

USERRA protects the job rights of individuals who voluntarily or involuntarily leave employment positions to undertake military service or certain types of service in the National Disaster Medical System. USERRA also prohibits employers from discriminating against past and present members of the uniformed services and applicants to the uniformed services.

**2. Who is covered under the provisions of USERRA?**

USERRA covers CS, SES, and SMS employees, including part-time and probationary employees, who are reservists, non-reservists, and members of the National Guard in federal active duty or training for any of the active components of the Armed Forces or of the National Disaster Medical System. (Some OPS employees may also be covered based on the nature of their employment. For military leave provisions specific to eligible OPS employees, see the program guideline titled *Military Leave Without Pay Provisions for Eligible Other Personal Services Employees.*)

**Notes:**

Although Florida Guard members engaged in state active duty are not covered by USERRA, the provisions of the Florida Uniformed Servicemembers’ Protection Act in Chapter 250, F.S., provide comparable protections. Therefore, for purposes of managing the military leave and reinstatement of Florida National Guard members in state active duty, the USERRA provisions and the benefits administration provisions described herein shall apply.

Neither USERRA nor Chapter 250, F.S., covers employees who are National Guard members called up by another state. However, to the extent that such employees are eligible for authorized leave without pay, the terms and conditions of section 110.219(3), F.S., and Rule 60L-34.0052, F.A.C., shall apply.

**3. What are the basic provisions and requirements of USERRA?**

The pre-service employer must reemploy service members returning from a period of service in the uniformed services if those service members meet all five criteria:

- a. The person must have held a civilian job;
- b. The person must have given notice to the employer that he or she was leaving the job for service in the uniformed services, unless giving notice was precluded by military necessity or otherwise impossible or unreasonable;
- c. The cumulative period of service must not have exceeded five years;
- d. The person must not have been released from service under dishonorable or other punitive conditions; and
- e. The person must have reported back to the civilian job in a timely manner or have submitted a timely application for reemployment.

USERRA establishes a five year cumulative total in military service with a single employer, with certain exceptions allowed for situations such as call-ups *during emergencies, reserve drills and annually scheduled active duty for training*. (See Question 6, below, for further information.)

**4. What re-employment provisions are granted under USERRA?**

Employees have the right to be reemployed with their agency if they leave that job to perform service in the uniformed service and they:

- a. Provide the agency with advance written or verbal notice of service;
- b. Have five years or less of cumulative service in the uniformed services while with that particular employing agency;
- c. Return to work or apply for reemployment in a timely manner after conclusion of service; and
- d. Have not been separated from service with a disqualifying discharge or under other than honorable conditions.

Employees who are reservists called to active military service must notify the agency within a specific time period from the date of discharge from active service based on the length of military service duty. The employee or his/her power of attorney is responsible for notifying the agency of the last day of active duty.

To be eligible for protection under USERRA, the service member must report back to work or apply for reemployment within the following guidelines:

- 1-30 days of service – Report next scheduled work day after safe travel and 8 hours rest
- 30-180 days of service – Apply within 14 days after completion of service
- 181+ days of service – Apply within 90 days after completion of service

**5. What are the reemployment rights provided under the provisions of USERRA for an employee whose position is slated for lay-off or a workforce reduction, but who is called to active military duty prior to the lay-off?**

Section 4312(d)(1)(A) of Title 38, U.S.C., Changed Circumstances provides:

Reemployment of a person is excused if an employer's circumstances have changed so much that reemployment of the person would be impossible or unreasonable. A reduction-in-force that would have included the person would be an example.

**6. How long do agencies need to hold the jobs or guarantee reemployment of employees who take a leave of absence for active duty service in the military forces?**

The cumulative length of service that causes an employee's absence from a position of employment may not exceed five years, subject to a number of exceptions set forth below.

Most types of service will be cumulatively counted toward the five year period; however, there are eight categories of service that are exempt from the five year limitation. These include:

- a. Service required beyond five years to complete an initial period of obligated service (Title 38, USC, Section 4312(c)(1)). Some military specialties, such as the Navy's nuclear power program, require initial active service obligations beyond five years.
- b. Service from which a person, through no fault of the person, is unable to obtain release within the five year limit (Title 38, USC, Section 4312(c)(2)). For example, the five year limit will not be applied to members of the Navy or Marine Corps whose obligated service dates expire while they are at sea.

Nor will it be applied when service members are involuntarily retained on active duty beyond the expiration of their obligated service date, as was experienced by some persons who served in Operations Desert Shield and Storm.

- c. Required service performed to fulfill periodic National Guard and Reserve training requirements as prescribed by 10 U.S.C. 10147 and 32 U.S.C. 502(a) and 503, and required training for reservists and National Guard members (Title 38, USC, Section 4312(c)(3). The two week annual training sessions and monthly weekend drills mandated by statute for reservists and National Guard members are exempt from the five year limitation. Also excluded are additional training requirements certified in writing by the Secretary of the applicable military branch to be necessary for individual professional development.
- d. Service under an involuntary order to, or to be retained on, active duty during domestic emergency or national security related situations (Title 38, USC, Section 4312(c)(4)(A)).
- e. Service performed in a uniformed service if the employee was ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary of the applicable military branch (Title 38, USC, Section 4312(c)(4)(B)).
- f. Service performed in a uniformed service if the employee was ordered to active duty (other than for training) in support of an operational mission for which personnel have been ordered to active duty under 10 U.S.C. 12304, as determined by a proper military authority (Title 38, USC, Section 4312(c)(4)(C)).
- g. Service performed in a uniformed service if the employee was ordered to active duty in support of a critical mission or requirement of the uniformed services as determined by the Secretary of the applicable military branch (Title 38, USC, Section 4312(c)(4)(D)).
- h. Service performed as a member of the National Guard if the employee was called to respond to an invasion, danger of invasion, rebellion, danger of rebellion, insurrection, or the inability of the President with regular forces to execute the laws of the United States (Title 38, USC, Section 4312(c)(4)(E)).

**7. What would disqualify an employee from their reemployment rights under the provisions of USERRA?**

Title 38, USC, Section 4304, lists four circumstances when service would be disqualifying:

- a. Separation from the service with a dishonorable discharge or bad conduct discharge.
- b. Separation from the service under other than honorable conditions. Regulations for each military branch specify when separation from service would be considered “other than honorable.”
- c. Dismissal of a commissioned officer in certain situations involving a court martial or by order of the President in a time of war (Section 1161(a), Title 10).
- d. Dropping an individual from the rolls when the individual has been absent without authority for more than three months or is imprisoned by a civilian court (Section 1161(b), Title 10).

**8. Where can I find more information regarding the provisions of USERRA?**

Further information regarding USERRA can be found on the Department of Labor’s website at <http://www.dol.gov/compliance/laws/comp-userra.htm>. Additional information is available at [www.ESGR.mil](http://www.ESGR.mil) or 1-800-336-4590 or, Florida employers may access <http://www.esgr.mil/florida>.

**D. STATE GROUP INSURANCE BENEFITS**

**Health/life/supplemental insurance benefits**

**1. What happens to an employee’s State group benefits when they are called to military active duty?**

Pursuant to USERRA, an employee in active duty is eligible to continue coverage for a specified period of time in any benefit plans the employee was enrolled in at the time of reporting for active duty, unless coverage is cancelled. However, pursuant to state law and SPS policy, employees are placed on formal military leave and may retain their state group benefits, including health insurance coverage, for the duration of their military service. Additionally, the employer will continue to pay the State share of the premiums for health and basic term life insurance coverage for the duration of any military LWOP, pursuant to DSGI Management Advisory 15-003 (REVISED) issued May 18, 2015.

In addition, the employer will continue to pay the State disability insurance premiums for SES and SMS employees on military LWOP, pursuant to DSGI Management Advisory 15-003 (REVISED) issued May 18, 2015.

Employees enrolled in any other health insurance coverage (example: coverage provided through the military) are not eligible to make or receive contributions from a Health Savings Account (HSA). Consequently they may change their health insurance coverage from the Health Investor Health Plan to the Standard Health Plan. Employees with an HSA should contact People First for guidance.

However, employees may continue to use funds from an existing HSA to pay for eligible medical expenses.

**2. If an employee voluntarily enlists in one of the military services, is the employee eligible for employer premium contributions if they do not use or have exhausted leave credits?**

Yes. Although historical SPS policy (as articulated on page one of the DMS memorandum dated September 28, 2001) provided continuation of the employer premium contributions only for Reservists on military LWOP, volunteers on federal active service (who are non-reservists and will be placed on “regular” rather than “military” LWOP) are also eligible to receive employer contributions, pursuant to DSGI Management Advisory 15-003 (REVISED) issued May 18, 2015.

**3. What is the employee’s responsibility regarding payment for their portion of the insurance premiums?**

The employee will continue to be responsible for any amount that the employee had been paying, whether through continued payroll deductions or by personal check or money order. If payments are to be made by personal check/money order, employees must be given instructions to make the personal check or money order payable to the Division of State Group Insurance and remit the payment to the People First Service Center at the following address:

People First Service Center  
PO Box 863477  
Orlando, FL 32886-3477

If the employee participates in a plan outside of the State Group Insurance Program (i.e. agency contracted plans), the agency personnel office should inform the employee of payment options and how to remit payment.

**4. What happens to the optional life and/or supplemental insurance coverage of employees called to active military duty?**

If enrolled in optional life or any supplemental insurance coverage, the employee may continue or cancel any or all of the coverage. Since the premiums for this coverage are the total responsibility of the employee, employees continuing the coverage are responsible for the entire monthly premium.

For those electing to continue an insurance coverage, any premium amounts due from the employee will continue to be deducted from each payroll. If the amount of the employee’s pay is not sufficient, the employee or their representative must make the payments by personal check or money order. In such instances, payments are due no later than the tenth (10) day of the month **prior** to the coverage month, e.g., by October 10 for November coverage. Payment received after that date may cause a lapse in coverage or cancellation.

**Note:** The basic life insurance and optional life insurance both provide additional coverage for accidental death and dismemberment at no cost. However, the additional coverage for accidental death and dismemberment benefits are only paid in the event of an accident and will not be paid if death occurs due to war or any act of war, declared or undeclared. But, since this coverage is provided at no cost, it is not possible to cancel the accidental death and dismemberment portion of the coverage and retain the basic life coverage.

**5. Can employees who cancelled their insurance coverage when called to active duty reenroll upon discharge from military service?**

Yes. Pursuant to USERRA, an employee canceling an insurance coverage due to being called to active duty may reenroll in that same coverage if the employee returns to work no later than ninety (90) calendar days after separation (date of discharge per DD Form 214) from military

service. Information on how to enroll is on the People First website. Enrollment is handled by the People First Service Center and they can be reached at 1-866-663-4735.

**6. Where can the agency and employees find information regarding the administration of State insurance benefits during military leave?**

Agencies and employees can obtain specific information/instructions by calling the People First Service Center at 1-866-663-4735.

The People First system also contains information related to the State benefits available to all employees and addresses how to continue each insurance plan. The People First system can be accessed by going to <https://peoplefirst.myflorida.com>. Employees will log on to the system using their People First User ID and Password.

**7. What happens to medical or dependent care reimbursement accounts during a military leave of absence?**

Enrollment in medical and dependent care reimbursement accounts may be continued at the elected amount, at a reduced amount or cancelled. The same reenrollment provisions apply to these accounts as apply to an insurance coverage, except that an employee that cancels a medical reimbursement account may not reenroll in such an account in the same calendar year. Also, if the employee's pay is less than the amount of the deduction (underpayment), the employee or their representative must make the payments by personal check or money order, payable to the Division of State Group Insurance and remit to the following address:

People First Service Center  
PO Box 863477  
Orlando, FL 32886-3477

Remember to advise your employees of the next open enrollment period (usually September-October of each year). These employees should be encouraged to make their necessary benefit changes prior to departure.

**E. POST TAX INSURANCE (agency sponsored plans)**

**How is continuation of post-tax insurance plans (auto insurance, universal life, etc.) handled during military leave?**

Agencies should provide employees with assistance in contacting the applicable carriers, so that if the employees are not able to continue payments through payroll deductions, other arrangements can be made.

**F. IMPACT ON OTHER HR PROVISIONS AND MISCELLANEOUS BENEFITS**

**1. How does being called to active military duty affect a Career Service employee who is in probationary status?**

Pursuant to Rule 60L-33.003(2)(d)3., F.A.C., "time spent on military leave shall count toward completion of the employee's probationary period, and an employee on military leave can attain permanent status while on such leave."

**2. How are performance appraisals to be handled for probationary employees on active military service?**

The employee's performance remains unchanged during military leave. Therefore, if the employee is achieving expectations prior to military leave, a performance evaluation is not required. He/she will have met standards by default at the end of the probationary period.

However, if the rater wishes to acknowledge the employee's performance while actively employed in probationary status, he/she may address such performance, and the additional time spent in probationary status will be rated as "having met standards". The rater may indicate in the comments section of the evaluation that the employee was called to active military service on a particular date and has attained permanent status.

**3. What if an employee is on a corrective action plan prior to being called to active military service?**

If an employee's performance was deficient and was placed on a performance improvement plan prior to going on military leave, the military leave shall be used to extend the review period covered by the corrective action plan on a day-for-day basis.

**4. What happens to Deferred Comp Deductions during a military leave of absence?**

An employee's military pay cannot be considered by the State in computing the amount of deferral. Upon activation, an employee who is participating in the deferred compensation program may choose whether he/she wishes to continue deductions while serving on active duty. Unless the appropriate papers have been processed through the Deferred Compensation Office, deferrals will continue at the same amount as was in effect prior to the military leave, unless the military pay supplement is not sufficient to cover the deferral.

If an employee wishes to discontinue their deduction, they must contact their investment provider directly. Employees who are not sure who their investment provider is or whether they qualify for a withdrawal can contact the State Deferred Compensation Office toll-free at 1-877-299-8002.

**5. How are retirement contributions handled during a military leave of absence?**

Reservists: The employing agency shall make the appropriate employer retirement contributions and deduct the employee contributions on any salary (military supplemental salary payments and/or accrued leave) paid to employees during their period of military leave. However, in order to ensure full retirement credit for the period of military leave, reservists who timely return to employment must submit a request for calculation of additional retirement contributions necessary to make up the difference between the contributions paid on any state compensation received during the leave and the contributions that would have been paid on the regular rate of pay at the time military leave was granted, along with a copy of their DD Form 214 or equivalent discharge papers (indicating their honorable discharge), to the Division of Retirement. The employing agency and the employee will be billed by the Division for their respective cost of the required contributions, plus interest, for their period of military leave.

Non-Reservists: The employing agency shall make the appropriate employer retirement contributions and deduct the employee contributions on any salary (accrued leave) paid to employees during their period of military leave. However, non-reservists who timely return to employment must submit a request for calculation of additional retirement contributions necessary to make up the difference between the contributions paid on any state compensation received during the leave and the contributions that would have been paid on the regular rate of

pay at the time military leave was granted, along with a copy of their DD Form 214 or equivalent discharge papers (indicating their honorable discharge) to the Division of Retirement. The employing agency and the employee will be billed by the Division for their respective cost of the required contributions, plus interest, for their period of military leave.

**6. How are court-ordered or other mandatory payroll deducted payments handled during a military leave of absence?**

If the employee has monetary obligations (i.e., Garnishments, Court Ordered Support, IRS Tax Levies, Federal Student Loans) being deducted from his/her check, these deductions will continue to be processed through the State payroll system if the employee remains in pay status. Employees will need to make up any difference in the amount owed for any court ordered support that is not collected through payroll deduction during this time. Agencies should contact the Bureau of State Payrolls to coordinate this collection activity.

**7. How are other non-insurance payroll deductions handled during a military leave of absence?**

Employees who have payroll deductions for credit unions, football tickets, Florida State Employees' Charitable Campaign, etc., must advise their payroll office of their wishes to continue or stop each of these deductions.

**8. What happens to Direct Deposit during a military leave of absence?**

Direct Deposit (EFT) will continue for any payments processed during the leave, unless the employee makes a change.

**V. APPLICABLE STATUTORY AND RULE PROVISIONS**

**A. Federal Provisions**

**20 CFR Part 1002, Rights, Benefits, and Obligations of Persons Absent from Employment Due to Service in the Uniformed Services (Relevant Excerpts)**

§1002.164 What health plan coverage must the employer provide for the employee under USERRA?

If the employee has coverage under a health plan in connection with his or her employment, the plan must permit the employee to elect to continue the coverage for a certain period of time as described below:

(a) When the employee is performing service in the uniformed services, he or she is entitled to continuing coverage for himself or herself (and dependents if the plan offers dependent coverage) under a health plan provided in connection with the employment. The plan must allow the employee to elect to continue coverage for a period of time that is the lesser of:

(1) The 24-month period beginning on the date on which the employee's absence for the purpose of performing service begins; or,

(2) The period beginning on the date on which the employee's absence for the purpose of performing service begins, and ending on the date on which he or she fails to return from service or apply for a position of employment as provided under sections 1002.115-123 of these regulations.



(b) USERRA does not require the employer to establish a health plan if there is no health plan coverage in connection with the employment, or, where there is a plan, to provide any particular type of coverage.

(c) USERRA does not require the employer to permit the employee to initiate new health plan coverage at the beginning of a period of service if he or she did not previously have such coverage.

§1002.166 How much must the employee pay in order to continue health plan coverage?

(a) If the employee performs service in the uniformed service for fewer than 31 days, he or she cannot be required to pay more than the regular employee share, if any, for health plan coverage.

(b) If the employee performs service in the uniformed service for 31 or more days, he or she may be required to pay no more than 102% of the full premium under the plan, which represents the employer's share plus the employee's share, plus 2% for administrative costs.

## **B. Statutory Provisions**

### **Section 110.219, F.S. Attendance and leave; general policies.--**

(3) The granting of any leave of absence, with or without pay, shall be in writing and shall be approved by the agency head. An employee who is granted leave of absence with or without pay shall be an employee of the state while on such leave and shall be returned to the same position or a different position in the same class and same work location upon termination of the approved leave of absence. The agency head and the employee may agree in writing to other conditions and terms under which the leave is to be granted.

### **Section 115.08, F.S., Definitions.--**

(1) The term "active military service" as used in this chapter shall signify active duty in the Florida defense force or federal service in training or on active duty with any branch of the Armed Forces or Reservists of the Armed Forces, the Florida National Guard, the Coast Guard of the United States, and service of all officers of the United States Public Health Service detailed by proper authority for duty with the Armed Forces, and shall include the period during which a person in military service is absent from duty on account of sickness, wounds, leave, or other lawful cause.

(2) The term "period of active military service" as used in this chapter shall begin with the date of entering upon active military service, and shall terminate with death or a date 30 days immediately next succeeding the date of release or discharge from active military service, or upon return from active military service, whichever shall occur first.

### **Section 115.09, F.S., Leave to public officials for military service.—**

All officials of the State, the several counties of the State, and the municipalities or political subdivisions of the State, including district school and community college officers, which officials are also service-members in the National Guard or a reserve component of the Armed Forces of the United States, shall be granted leave of absence from their respective offices and duties to perform active military service, the first 30 days of any such leave of absence to be with full pay.

### **Section 115.14, F.S., Leave of absence for military service: Employees.—**

All officials of the state, the several counties of the state, and the municipalities or political subdivisions of the state, including district school and community college officers, which officials are

also servicemembers in the National Guard or a reserve component of the Armed Forces of the United States, shall be granted leave of absence from their respective offices and duties to perform active military service, the first 30 days of any such leave of absence to be with full pay. Notwithstanding the provisions of s. 115.09, F.S., the employing authority may supplement the military pay of its officials and employees who are reservists called to active military service after the first 30 days in an amount necessary to bring their total salary, inclusive of their base military pay, to the level earned at the time they were called to active military duty. The employing authority shall continue to provide all health insurance and other existing benefits to such officials and employees as required by the Uniformed Services Employment and Reemployment Rights Act, Chapter 43 of Title 38 United States Code (U.S.C.).

**Section 250.01, F.S., Definitions.--**

(21) "State active duty" means full-time duty in active military service of the State of Florida when ordered by the Governor or Adjutant General in accordance with s. 250.06, s. 250.10, or s. 250.28 to preserve the public peace, execute the laws of the state, suppress insurrection, repel invasion, enhance security and respond to terrorist threats or attacks, respond to an emergency as defined in s. 252.34 or to imminent danger of an emergency, enforce the law, carry out counter-drug operations, provide training, provide for the security of the rights or lives of the public, protect property, or conduct ceremonies. The term includes the duties of officers or enlisted personnel who are employed under the order of the Governor in recruiting; making tours of instruction; inspecting troops, armories, storehouses, campsites, rifle ranges, or military property; sitting on general or special courts-martial, boards of examination, courts of inquiry, or boards of officers; or making or assisting in physical examinations. The term shall also include the period during which a person in active military service is absent from duty as a result of illness, being wounded, being on leave, or other lawful cause.

**Section 250.341, F.S., Cancellation of health insurance.-- (Relevant Excerpts)**

- (1) Any health insurance policy, certificate, or evidence of health coverage which provides coverage to a member of the Florida National Guard, or a member of any branch of the United States military reserves who is a resident of this state, called to active duty or state active duty, must:
- a) Continue all coverages that were in effect for the person, or the person's dependents covered by the same policy, at the premium in effect for all insured under the same contract, unless the employee or insured requests coverage changes that might alter the premium he or she was paying prior to such activation during the time he or she serves on active duty.
  - (b) Reinstate the coverage for any such person who elects not to continue it while on active duty or state active duty, at the person's request upon return from active duty or state active duty, without a waiting period or disqualification for any condition that existed at the time he or she was called to work with the same employer or within 60 days if the policy is an individual policy.

**Section 250.48, F.S., Leaves of absence.—**

Any officer or employee of the State, of any county or school district of the State, or of any municipality or political subdivision of the State who is a member of the Florida National Guard is entitled to leave of absence from his or her respective duties, without loss of pay, time, or efficiency rating, on all days during which the officer or employee is engaged in active State duty for a named event, declared disaster, or operation pursuant to ss. 250.28 or 252.36., F.S. However, a leave of absence without loss of pay granted under this section may not exceed 30 days for each emergency or disaster, as established by executive order.

**Section 250.482, F.S., Troops ordered into state active service; not to be penalized by employers and postsecondary institutions.-- (Relevant Excerpts)**

(1) If a member of the National Guard is ordered into state active duty pursuant to this chapter, a private or public employer, or an employing or appointing authority of this state, its counties, school districts, municipalities, political subdivisions, career centers, community colleges, or universities, may not discharge, reprimand, or in any other way penalize such member because of his or her absence by reason of state active duty.

(2)(a) Upon the completion of state active duty, a member of the National Guard shall promptly notify the employer of his or her intent to return to work.

(b) An employer is not required to allow a member of the National Guard to return to work under this section if:

1. The employer's circumstances have so changed as to make employment impossible or unreasonable;
2. Employment would impose an undue hardship on the employer;
3. The employment from which the member of the National Guard leaves to serve in state active duty is for a brief, nonrecurrent period and there is no reasonable expectation that such employment will continue indefinitely or for a significant period; or
4. The employer had legally sufficient cause to terminate the member of the National Guard at the time he or she left for state active duty.

The employer has the burden of proving the impossibility or unreasonableness, undue hardship, the brief or nonrecurrent nature of the employment without a reasonable expectation of continuing indefinitely or for a significant period, or the legally sufficient cause to terminate the person at the time he or she left for state active duty.

(c) A member of the National Guard who returns to work after serving on state active duty is entitled to:

1. The seniority that the member had at his or her place of employment on the date of the commencement of his or her state active duty and any other rights and benefits that inure to the member as a result of such seniority; and
2. Any additional seniority that the member would have attained at his or her place of employment if he or she had remained continuously employed and the rights and benefits that inure to the member as a result of such seniority.

(d) A member of the National Guard who returns to work after serving on state active duty may not be discharged from such employment for a period of 1 year after the date the member returns to work, except for cause.

**C. Rule Provisions**

**Rule 60L-33.002, F.A.C., General Principles.**

(3) Employees on military leave shall be treated as if they had been continuously employed for purposes of status, pay, and other benefits pursuant to the terms of the type of authorized leave they have been granted and in accordance with Title 38, United States Code, Chapter 4, the Uniformed Services Employment and Reemployment Rights Act (USERRA).

**Rule 60L-33.003, F.A.C., Status Upon Appointment.**

(2)(d)3. Time spent on military leave shall count toward completion of the employee's probationary period, and an employee on military leave can attain permanent status while on such leave.

**Rule 60L-34.0041, F.A.C., Annual Leave.**

(4)(a) At the close of business on December 31 of each calendar year, a career service employee's annual leave balance in excess of 240 hours shall be transferred to sick leave on an hour-for-hour basis. In accordance with an agency-wide plan, the employee may carry-over up to 360 hours of annual leave credits past December 31. For senior management service and selected exempt service employees, at the close of business on the day before the member's anniversary date, all annual leave credits in excess of 480 hours shall be converted to sick leave on an hour-for-hour basis.

**Rule 60L-34.0052, F.A.C., Leaves of Absence Without Pay**

(1) An employee may, upon request, be granted leave without pay to cover any absence from work, for a period not to exceed twelve months, provided the agency deems such leave to be justified and not detrimental to the operations of the agency. An agency may approve the use of intermittent leave credits to maintain state benefits.

(2) In exceptional cases, leave without pay may be extended if approved by the Department.

(3) In determining excessive absenteeism, an agency may consider leave without pay when taken due to the exhaustion of other types of paid leave or when unscheduled.

(4) An employee on leave without pay shall not earn leave credits, unless authorized by law.

**Rule 60L-34.0062, F.A.C., Military Leave.**

(1) An employee, except an employee who is a commissioned reserve officer or reserve enlisted personnel in the United States military or naval service or member of the National Guard, or who is employed in a temporary position or employed on a temporary basis, who is drafted or who volunteers for active military service shall be granted leave beginning with the date of induction and ending up to one year after the date of separation from the military service or from hospitalization continuing after discharge. Active military service includes active duty with any branch of the United States Army, Navy, Air Force, Marines, or Coast Guard, of the National Guard of the State, or of any other service as provided in ss. 115.08 and 115.09, F.S. The leave of absence shall be verified by official orders or appropriate military certification, which shall be filed in the employee's personnel file.

(3) An employee, who is a member of the Florida National Guard, shall be granted leave in accordance with s. 250.48, F.S.

(4) An employee, except an employee employed in a temporary position or employed on a temporary basis, who is a commissioned reserve officer or reserve enlisted personnel in the United States military or naval service or member of the National Guard, who is ordered to active military duty under Title 10, U.S.C., s. 673b, shall be granted leave beginning with the day ordered to duty and ending up to thirty-one days after the date of release from the military service or from hospitalization continuing after discharge. Active military service includes active duty with any branch of the United States Army, Navy, Air Force, Marines, or Coast Guard, of the National Guard of the State, or of any other service as provided in ss. 115.08 and 115.09, F.S. The leave of absence shall be verified by official orders or appropriate military certification, which shall be filed in the employee's personnel file.

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### **Rule 60P-2.012, F.A.C., Employees Not on Payroll/Return to Payroll. (Relevant Excerpts)<sup>1</sup>**

(2) Leave Without Pay.

(a) An insured employee granted leave without pay shall be eligible to continue coverage while on such leave provided the employee pays the full premium and notified the Department in accordance with subsection 60P-2.002(2), F.A.C.

(8) Military Leave. An insured employee granted military leave as defined under Personnel Chapter 60K-5, F.A.C.,<sup>2</sup> shall be eligible to continue enrollment in the Health Program while on such leave, provided the employee pays the full premium...

### **Rule 60P-3.015 F.A.C., Employees Not on Payroll. (Relevant Excerpts for the Life Plan)<sup>3</sup>**

(2) Leave without pay. An employee on approved leave without pay shall be eligible to continue coverage while on such leave provided the employee pays the full premium...

(8) Military leave. An insured employee granted military leave as defined under Personnel Chapter 60K-5, F.A.C.,<sup>4</sup> shall be eligible to continue coverage while on such leave, provided the employee pays the full premium...

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<sup>1</sup> Obsolete procedural requirements that pre-date the current process under People First are not cited.

<sup>2</sup> Obsolete reference. Correct citation is Rule 60L-34.0062, F.A.C.

<sup>3</sup> Obsolete procedural requirements that pre-date the current process under People First are not cited.

<sup>4</sup> Obsolete reference. Correct citation is Rule 60L-34.0062, F.A.C.



# PROGRAM GUIDELINES

<b>SUBJECT:</b> <b>Military Leave for Recurring Reserve or National Guard Training</b>	
<b>STATUTORY/RULE REFERENCE:</b> Section 115.07, Florida Statutes (F.S.), Officers and employees' leaves of absence for reserve or guard training Rule 60L-33.002(3), Florida Administrative Code (F.A.C.), Appointments and Status, General Principles Rule 60L.33.003(2), F.A.C., Status Upon Appointment Rule 60L-34.0062(2), F.A.C., Military Leave	<b>EFFECTIVE DATE:</b> March 22, 2012 June 8, 2015
<b>FORMS:</b>	<b>ADDITIONAL REFERENCE MATERIAL:</b> Management Advisory 15-003(REVISED), issued May 18, 2015, by the Division of State Group Insurance (DSGI) <i>this is absent</i>

*insurance when on LWOP*

## I. SCOPE AND PURPOSE

As part of their duties as a reservist or member of the National Guard, employees may be called up annually for specialized training during different times of the year. The statutes and rules covering military leave for training activities provide that such employees will be granted military leave which, at a minimum, will be without loss of time or efficiency rating for a specified period. These guidelines address the leave provisions that apply when agencies have employees in the Career Service, Selected Exempt Service (SES), and Senior Management Service (SMS) who are called to such active or inactive duty military training, pursuant to section 115.07, F. S.

Note: Military leave for training provisions for eligible employees paid from Other Personal Services (OPS) funds are addressed separately in the program guideline entitled *Military Leave Without Pay Provisions for Eligible Other Personal Services Employees*.

## II. DEFINITIONS

For the purposes of this document, the terms below are defined as follows:

**Annual Period** – A recurring 12-month period that runs from October 1 to September 30, in accordance with the federal fiscal year.

**National Guard Member** – A state official or employee who is a member of either the Air National Guard or Army National Guard, as defined in section 250.01, Florida Statutes, and who, when called to military duty training under federal provisions, is entitled to leave for up to 240 hours per annual period, without loss of pay, accrued leave credits, or efficiency rating, pursuant to section 115.07, F. S.

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**Reservist** – A state official or employee who is a member of a reserve component of one of the armed forces of the United States and who, when called to federal military duty training, is entitled to leave for up to 240 hours per annual period, without loss of pay, accrued leave credits, or efficiency rating, pursuant to section 115.07, F. S.

Note: For brevity, the term ‘Reservist’ is used in this document to refer to both members of the National Guard and members of the federal armed forces reserves who have been called to active or inactive duty military training

### **III. POLICY**

In accordance with state and federal provisions, the granting of military leave for recurring training purposes and any associated benefits apply to Career Service, SES, and SMS employees, including part-time and probationary employees. The provisions of this guideline do not apply to Other Personal Services employees, due to their ineligibility for any form of paid leave, pursuant to section 110.131(3), F.S.

Pursuant to section 115.07, F.S., Career Service, SES, and SMS employees are eligible for 240 hours of administrative leave in each annual period for reserve or guard training.

### **IV. HUMAN RESOURCE RELATED ISSUES**

#### **1. How is an employee placed on a military leave of absence for training?**

Upon inspecting the employee's official military orders, the only action required is proper completion of the employee's timesheet. It is not necessary to complete a Personnel Action Request (PAR) for short term military training purposes.

**Timesheet:** Enter leave type 0057 (ADMIN-Reserve/NG Training) for the missed work hours.

This applies to the employee's first 240 hours of active or inactive duty training in an annual period.

**Personnel File:** The agency will dictate the method for receiving and placing copies of the order in the personnel files.

**Impact:** The employee remains in full pay status with full leave accruals and is paid for any applicable state holiday, during the first 240 hours of military training leave, pursuant to sections 115.07(1) and (2), F.S.

#### **2. How is an employee placed on leave if they exceed the 240 hours for active or inactive duty training?**

**Timesheet:** Enter leave type 0058 (Leave Without Pay (LWOP) – Authorized) or, if the employee elects to use accrued leave, the appropriate paid leave type, for the missed work hours.

This applies to any hours of work that are missed beyond the first 240 hours of active or inactive duty military training in an annual period.

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Timesheets should be submitted and approved each pay period, even if the employee has elected not to use accrued leave.

**Note:** If an employee whose training period will exceed the 240 hours does not have sufficient leave credits to cover the extended period, you may wish to place such employee on a leave without pay personnel action request (PAR) to avoid an overpayment situation if a time sheet is not timely submitted.

**Impact:** Unless the employee elects to use personal accrued leave, he/she will not accrue leave credits, be eligible for paid holidays, or receive the employer premium contribution for state basic life insurance and the SMS/SES disability income plan (if applicable) during active or inactive duty military training leave in excess of 240 hours, in accordance with section 115.07(2), F.S. This is because, in cases of leave that exceed 240 hours, the standard provisions that govern leave without pay apply with respect to pay and benefits.

However, employees who must be placed on leave without pay during an annual period in which they have exceeded their 240 hours of administrative leave will continue to be eligible for the employer premium contribution for health insurance notwithstanding their LWOP status, pursuant to DSGI Management Advisory 15-003 (REVISED) issued May 18, 2015.

Wont lose insurance

3. **Are employees entitled to paid leave under section 115.07, F.S., if they are members of another state's National Guard and called to active or inactive duty military training under federal orders?**

Yes. To the extent that section 115.07(1), F.S. and Rule 60L-34.0062(2), F.A.C., do not specify the Florida National Guard, the State Personnel System shall apply the provisions of section 115.07(2), F.S., to state officials and employees who, as members of the Air or Army National Guard, are engaged in active or inactive duty military training ordered under the provisions of the United States military or naval training regulations for such personnel. (That is, the orders are issued under the authority of the federal government.)

4. **Are employees entitled to paid leave under section 115.07, F.S., if they are members of another state's National Guard and called to active or inactive duty military training under that state's orders?**

No. Pursuant to section 115.09, F.S., state employees who are members of the National Guard of a state other than Florida and who are called to active duty under that state's authority are not eligible for paid military leave. This is because such leave is to be granted "to perform active military service" which is defined in section 115.08(1), F.S., in relevant part, as including the "Florida National Guard" but not the National Guard of other states. For this reason (and based on legal analysis by the Office of the General Counsel of the Department of Management Services) employees serving in the National Guard of another state who are called to active or inactive duty military training under the authority of that state are not eligible for paid leave under section 115.07, F.S.

### **\*\* Notes:**

To ensure that employees are eligible for paid military training leave under section 115.07, F.S., agencies should obtain a copy of the actual orders and verify that they cite the United States Code rather than a state statute or code.



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However, orders received by the employee under Title 10 USC Chapter 1209 ss. 12301-12322 for active duty training do not fall under section 115.07, F.S. Rather, such training orders are to be treated as active military service under sections 115.09 and 115.14, F.S. Additionally, orders received by the employee under Title 32 USC s. 501 or 502 will require review on a case-by-case basis to evaluate whether they fall under sections 115.07, 115.09, or 115.14, F.S.

In most instances, the orders for annual training that do fall under section 115.07, F.S., will be presented in the form of a notification letter stating the weekend drill and two-week training drill dates for the upcoming year. There may be additions/changes to this in the form of orders if the dates need to be amended. However, because orders tend to vary in format, it is recommended that the agency verify the authority under which the training orders have been issued, as needed, to determine eligibility for paid military leave under the appropriate statute.

### **V. APPLICABLE STATUTORY AND RULE PROVISIONS**

#### **A. Statutory Provisions**

##### **Section 115.07, F.S., Officers and employees' leaves of absence for reserve or guard training.**

- (1) All officers or employees of the state, of the several counties of the state, and of the municipalities or political subdivisions of the state who are commissioned reserve officers or reserve enlisted personnel in the United States military or naval service or members of the National Guard are entitled to leaves of absence from their respective duties, without loss of vacation leave, pay, time, or efficiency rating, on all days during which they are engaged in training ordered under the provisions of the United States military or naval training regulations for such personnel when assigned to active or inactive duty.
- (2) Leaves of absence granted as a matter of legal right under the provisions of this section may not exceed 240 working hours in any one annual period. Administrative leaves of absence for additional or longer periods of time for assignment to duty functions of a military character shall be without pay and shall be granted by the employing or appointing authority of any state, county, municipal, or political subdivision employee and when so granted shall be without loss of time or efficiency rating.
- (3) When an employee's assigned employment duty conflicts with ordered active or inactive duty training, it is the responsibility of the employing agency of the state, county, municipal, or political subdivision to provide a substitute employee, if necessary, for the assumption of such employment duty while the employee is on assignment for the training.
- (4) It is the intent of the Legislature that the state, its several counties, and its municipalities and political subdivisions shall grant leaves of absence for active or inactive training to all employees who are members of the United States Reserve Forces or the National Guard, to ensure the state and national security at all times through a strong armed force of qualified and mobilization-ready personnel.

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**B. Rule Provisions**

**Rule 60L-33.002, F.A.C., Appointments and Status, General Principles.**

- (3) Employees on military leave shall be treated as if they had been continuously employed for purposes of status, pay, and other benefits.

**Rule 60L-33.003(2), F.A.C., Status Upon Appointment**

- (d)3. Time spent on military leave shall count toward completion of the employee's probationary period, and an employee on military leave can attain permanent status while on such leave.

**Rule 60L-34.0062, F.A.C., Military Leave.**

- (2) An employee, who is a commissioned reserve officer or reserve enlisted personnel in the United States military or naval service or a member of the National Guard, shall be granted leave in accordance with section 115.07, F.S.

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**STATE PERSONNEL SYSTEM (SPS) MILITARY LEAVE PROVISIONS FOR FULL-TIME OTHER PERSONAL SERVICES (OPS) EMPLOYEES  
(AT-A-GLANCE PROVISIONS)**

- "Full-time" OPS employees regularly work the requisite number of hours stipulated in the federal Affordable Care Act (ACA), and are defined in section 110.123(2)(c), F.S., with respect to insurance eligibility. "Seasonal" employees are not considered full-time for purposes of state group insurance coverage nor, consequently, for purposes of military leave eligibility.
- The federal Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), covers full-time OPS employees on active military service. Pursuant to ACA, the state must count USERRA-covered military leave in determining the employee's ongoing insurance eligibility. For this reason, ALL full-time OPS employees on active military service shall be placed on a military leave of absence without pay, which must be activated via a Personnel Action Request (PAR) in the People First System.
- Effective January 1, 2015, payment of state group insurance contributions continues during any form of OPS (unpaid) leave, as per state implementation of the federal Affordable Care Act (ACA).

MILITARY SERVICE TYPE	USERRA COVERED	ELIGIBLE FOR ADMIN LEAVE	HEALTH INSURANCE CONTINUATION THROUGHOUT LOA WITHOUT PAY	STATE HEALTH CONTRIBUTION DURING LOA WITHOUT PAY	LEAVE ACCRUAL & HOLIDAY PAY THROUGHOUT LOA WITHOUT PAY	ELIGIBLE FOR MILITARY PAY SUPPLEMENT	PAR REASON CODE FOR LOA WITHOUT PAY
<b>a</b> Federal Active Duty Reservists and Members of any state National Guard	YES	NO	YES	YES	NO	NO	Military Leave Without Pay Supplement (83)
<b>b</b> State Active Duty Florida National Guard Members Only	NO	NO	YES	YES	NO	NO	Military Leave Without Pay Supplement (83)
<b>c</b> Reserve/Guard Training Title 32 USC Reservists/ All National Guard members under recurring federal training orders	YES	NO	YES	YES	NO	NO	Military Leave Without Pay Supplement (83)
<b>d</b> Federal Active Duty Enlistees/Volunteers (Non-Reservists)	YES	NO	YES	YES	NO	NO	Military Leave Without Pay Supplement (83)
<b>e</b> Active Duty (Members of another state's National Guard)	NO	NO	YES	YES	NO	NO	Military Leave Without Pay Supplement (83)

**STATE PERSONNEL SYSTEM (SPS) MILITARY LEAVE PROVISIONS – FOR SALARIED EMPLOYEES (HOLDING ESTABLISHED POSITIONS AT ALL FTE LEVELS)  
(AT-A-GLANCE PROVISIONS)**

Note: In certain cases of military leave, state statutory and policy provisions provide greater job protections & benefits than the federal Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). Also, effective January 1, 2015, payment of state group insurance contributions continues during any form of leave without pay, as per state implementation of the federal Affordable Care Act (ACA).

MILITARY SERVICE TYPE	USERRA Covered	AUTHORITY For Leave of Absence (LOA) and Reinstatement	ELIGIBLE FOR ADMIN LEAVE?	HEALTH INSURANCE CONTINUES DURING LOA WITHOUT PAY?	STATE CONTRIBUTION FOR GROUP PLANS DURING LOA WITHOUT PAY?	LEAVE ACCRUAL & HOLIDAY PAY DURING LOA WITHOUT PAY?	ELIGIBLE FOR MILITARY PAY SUPPLEMENT?	PAR REASON CODE WITH PAY (ADMIN LEAVE)	PAR REASON CODE FOR LOA WITHOUT PAY
a Federal Active Duty Reservists and Members of any state National Guard	YES	USERRA; s. 115.14, F.S.; and Rule 60L-34.0062(1)	YES First 30 days	YES	YES	YES	YES	Active Military (69)	Military Leave With Pay Supplement (82) or Without Pay Supplement (83)
State Active Duty Florida National Guard Members Only	NO	s. 250.48, F.S.; s. 250.482, F.S.; and Rule 60L-34.0062(3)	YES First 30 days	YES	YES	YES	NO	National Guard (61)	Military Leave Without Pay Supplement (83)
b Reserve/Guard Training Title 32 USC Reservists/All National Guard Members under recurring federal training orders	YES	USERRA; s. 115.07, F.S.; and Rule 60L-34.0062(2)	YES ≤ 240 hours per annual period	YES	YES	NO	NO	PAR N/A (Employee must use hours type 0057 on timesheet for first 240 hours)	if employee does not use accrued leave on timesheet for hours > 240, must use hours type 0058
c Federal Active Duty Enlistees/Volunteers (Non-Reservists)	YES	USERRA; s. 115.14, F.S.; and Rule 60L-34.0062(1)	YES First 30 days	YES	YES	NO	NO	Active Military (69)	Authorized Leave (58) for > 30 days
d State Active Duty (Members of another state's National Guard)	NO	Rule 60L-34.0052	NO	YES	YES	NO	NO	PAR Optional (Employee may use accrued leave on timesheet)	Authorized Leave (58) (if PAR is used) or hours type 0058 on timesheet