

LEAVE OF ABSENCE DUE TO MILITARY SERVICE

The board of education, in recognizing that some employees may be required to serve in the active armed forces in time of war or emergency, or for prolonged training mandated as part of their service, does provide these employees with leaves of absence without pay.

Giving of Notice

Employees must provide advance notice of military service to the board of education. Notice may be either written or oral. It may be provided by the employee or by an appropriate officer of the branch of the military in which the employee will be serving.

The cumulative length of absence of an employee to serve in the uniformed services, after December 12, 1994, may not exceed five years. Exceptions to the cumulative 5-year limit will be made for:

1. Service required beyond 5-years to complete an initial period of obligated service.
2. Service from which an employee, through no fault of the person, is unable to obtain a release within the 5 year period.
3. Required training for members of the National Guard and Reserves.
4. Service under an involuntary order to active duty, or to be retained on active duty, during a domestic emergency or national security related situations.
5. Service under an order to active duty, or to remain on active duty, during a war or national emergency declared by the President or Congress.
6. Active duty (other than for training) by volunteers supporting "operational missions" for which selective reservists have been ordered to active duty without their consent.
7. Federal service by members of the National Guard called into action by the President to suppress an insurrection, repel an invasion, or to execute the laws of the United States.

Benefits will be continued during a military leave according to applicable state and Federal regulations. Upon reemployment, persons are entitled to all seniority related benefits as if they had remained continuously employed. Service members will be provided all rights and benefits not based on seniority to the extent that those rights and benefits are available to other employees on non-military leaves of absence, whether paid or unpaid. If there is a variation among different types of non-military leave, the most favored treatment will be accorded the service member. If, prior to leaving for military service, an employee knowingly provides clear written notice of an intent not to return to work after military service, the employee waives entitlement to non-seniority leave-of-absence rights and benefits. The employee must be aware of the specific rights and benefits to be lost. If the employee lacks the awareness or is otherwise coerced, the waiver will be ineffective. Notice of intent not to return to work can waive only non-seniority leave-of-absence rights and benefits. Service members cannot surrender other rights and benefits that a person would be entitled to under the law, particularly reemployment rights.

A person whose military service lasted from 1 to 30 days must report to his employer by the beginning of the first regularly scheduled work day that would fall eight hours after the person returns home from military service. Military service includes reasonable time for travel to and from the place of service.

A person whose military service lasts from 31 to 180 days must make application for reemployment no later than 14 days after completion of the period of military service.

A person whose military service lasts more than 180 days must make application for reemployment no later than 90 days after completion of the period of military service.

Health Benefits

Persons who have coverage under a health plan in conjunction with the person's position of employment may elect to continue such coverage. The maximum period of coverage of the person and the person's dependants shall be the lesser of (1) the 18 month period beginning on the date on which the person's absence begins, or (2) the day after the date on which the person fails to apply for or return to a position of employment within the specified time-frames required by the statute.

A person who elects to continue health-plan coverage may be required to pay not more than 102 percent of the full premium under the plan. A person whose health plan was terminated by reason of service in the uniformed services may not be required to complete a waiting period for reinstatement of coverage following reemployment.

Date:**Review Date: March 20, 1989****First Reading: April 19, 1989****Second Reading/ Adoption: April 19, 1989****Review and Update: November 15, 2007****Adoption: December 20, 2007****Review Date: December 29, 2010 – No Changes****Review Date: January 17, 2012 – No Changes****Review Date: December 28, 2016 – No Changes****Legal References:**

Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)
(38 U.S.C. §§ 4301–4333)

N.J.S.A. 18A:6-33

Tenure, pension and other employment rights in
Military and naval service saved.

N.J.S.A. 18A: 29-11

Credit for Military Service

N.J.S.A. 18A-12

Dismissal of persons having tenure on reduction:
Reemployment.

Key Words: Tenure, Reduction in force