

 <p style="text-align: center;">WEST VIRGINIA DIVISION OF JUVENILE SERVICES</p>	<p><u>POLICY NUMBER:</u></p> <p style="text-align: center; font-size: 2em;">155.00</p>	<p><u>PAGES:</u></p> <p style="text-align: center;">3</p>
<p><u>CHAPTER:</u> Administration and Management</p>	<p><u>REFERENCE AND RELATED STANDARDS:</u> WV Code Chapter §§ 49-5-16a and 49-5E-1 et seq. and §15-1F-1; Division of Personnel Administrative Rule, 143 CSR 1, USERRA, 42 U.S.C. § 201-203</p>	
<p><u>SUBJECT:</u> Military Leave</p>		
<p><u>DATE:</u> October 1, 2009</p>		

POLICY

It is the policy of the Division of Juvenile Services to prohibit discrimination against employees and applicants, based on their current or potential military service, whether voluntary or involuntary, and against any person who attempts to enforce the protections provided to service members. This prohibition applies to initial employment, re-employment, retention in employment, promotion, or any benefit other of employment.

CANCELLATION

This policy has been reviewed and supersedes Policy 155.00 dated October 1, 2007.

APPLICABILITY

This Policy applies to ALL Division of Juvenile Services' employees.

PROCEDURES

1. All employees of the Division of Juvenile Services must comply with the provisions of the Division of Personnel's *Administrative Rule*, 143 CSR 1, Section 14.9, Military Leave.
2. All employees of the Division who are members the National Guard or any military reserve unit of the United States Armed Services shall be entitled to leave(s) of absence from their respective employment without loss of pay, status or efficiency rating on the days during which they are engaged in are engaged in drills or parades , or for examination to determine fitness for duty, inactive duty training, funeral honors duty for the State or federal government, active duty for training or active service for the State all to include reasonable travel time to and from the duty location, for a maximum period of

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thirty working days in any one calendar year when ordered or authorized by proper authority.

3. An employee's leave of absence is considered as time worked for the agency in computing seniority, eligibility for salary increase and experience with this agency.
4. An employee shall provide to the appointing authority advance written or verbal notification of an obligation or intention to perform military duty and such written orders or other documentation, if available, in support of the request for military leave. Employees are to use Division of Personnel Application for Leave with Pay Form (DOP-L1) for short time leave or two week annual deployment. Any employee requesting extended military leave shall fill out the Leave of Absence for Military Duty. (Attachment #1)
5. Under no circumstances will an employee's regular/usual working schedule and previously scheduled "days off" be interrupted/rescheduled solely to conform to the anticipated military leave.
6. None of the unused days of military leave for which an employee is eligible under Subpart (a) of W. Va. Code § 15-1F-1, may be carried over and used in the next calendar year. An employee on extended federal active duty or full-time National Guard duty is eligible for leave provided in this subpart only in the year he or she is called to active duty, and in subsequent years only after he or she has been discharged from military duty and returned to State employment.
7. In accordance with the provisions of W. Va. Code §15-1F-1(b), all employees of the State who are ordered or called to active duty by properly designated federal authority are eligible for an **additional** leave of absence from employment without loss of pay, status, or efficiency rating for a **maximum period of thirty working days** for each single call to active duty, active duty for training, initial active duty for training, or full-time National Guard duty, all to include reasonable travel time to and from the duty location.
8. All employees of the Division who are called to federal active duty or full-time National Guard duty who have not used all or some portion of the thirty working days of military leave granted by Subpart (a) are eligible to use those unused days in the same calendar year prior to using the thirty days for which they are eligible under this subdivision, up to a maximum of sixty days for a single call to active duty. None of the unused days for which an employee is eligible under Subdivision (a) may be carried over and used in the next calendar year.
9. Upon completion of and discharge from the armed services, any employee hired by the Division for permanent State employment has the right to his or her service with the

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agency without any prejudice to his or her status, merit rating or standing by reason of the absence. An employee shall be credited with all annual leave and sick leave not used at the commencement of his or her military leave, in accordance with the provisions of the Division of Personnel's *Administrative Rule*, 143 CSR 1, Section 12.6, Reinstatement.

10. Each facility will have in place an operational policy and procedural plan to ensure the standards and practices of this policy are followed.

RIGHTS RESERVED

The Director reserves the right to modify, suspend or cancel any provision herein in part or entirety, without advance notice, unless prohibited by law.

APPROVED:

Dale Humphreys
Director

Oct 1, 2009
Date

GUIDE TO VERIFICATION OF MILITARY ORDERS

The Administrative Rule, 143 CSR 1, in Subsection 14.9. Military Leave specifies that an employee is entitled to paid military leave “when ordered or authorized by proper authority” or when “ordered or called to active duty by properly designated federal authority.” However, the federal Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. 4301 et seq., and the USERRA Final Rule, 20 C.F.R. Part 1002, effective December 19, 2005, sets forth the various standards regarding reemployment rights of veterans, including employer notice of the call to duty.

§ 4303 (8) The term ‘notice’ means any written or verbal notification of an obligation or intention to perform service in the uniformed services provided to an employer by the employee who will perform such service or by the uniformed service in which such service is to be performed.

In Section 1002.85 of the USERRA Rule, Requirement of Notice, stipulates that, “The employee’s notice to the employer may be either verbal or written. The notice may be informal and does not need to follow any particular format.”

One of the requirements to determine eligibility for reemployment under USERRA, found in § 4312 (a) (1), is that

...the person (or an appropriate officer of the uniformed service in which such service is performed) has given advance written or verbal notice of such service to such person’s employer;

Provided that (§ 4312 (b)),

No notice is required if the giving of such notice is precluded by military necessity or, under all of the relevant circumstances, the giving of such notice is otherwise impossible or unreasonable. A determination of military necessity for the purposes of this subsection shall be made pursuant to regulations prescribed by the Secretary of Defense and shall not be subject to judicial review.

And further provided that (§ 4312 (f) (4))

An employer may not delay or attempt to defeat a reemployment obligation by demanding documentation that does not then exist or is not readily available.

The USERRA Rule specifies an appropriate officer is a commissioned, warrant, or noncommissioned officer authorized to give such notice by the military service concerned.

Since the Administrative Rule requires that paid military leave may only be afforded the soldier when the call to duty is by proper authority, verification of military orders may at times be necessary. For this purpose, the Division of Personnel is providing the attached memorandum to be used when an agency deems it necessary to confirm military duty dates in order to authorize paid military leave. This informational request should be sent certified to confirm receipt.

West Virginia Division of Personnel
April 2006

**LEAVE OF ABSENCE for MILITARY DUTY
Employment Status Documentation**

NOTE: Use of this form is advised for all extended military service (other than two-week annual training). Instructions: Form should be completed interactively by Employer and Employee.

Employee Name: _____

SSN (Last 4 Digits Only): ____ _

Official Title: _____

Agency: _____

MILITARY ORDERS

NOTE: Eligibility for Subpart (a) and Subpart (b) paid military leave requires documentation and/or verification of military call to duty and authority citation.

Date Ordered to report to duty (Per Orders):

Period of Service (Per Orders): From _____ To _____

Date departing State employment (Last Day of Work):

Duty authority citation (Per Orders): ____ _ U. S. C. ____ _

Name of Military Unit:

Address of Military Unit:

Commanding Officer:

Are you requesting to use paid military leave: ____ Yes ____ No

Note: If Yes, attach completed leave slip(s).

Are you requesting to use other accumulated leave: ____ Yes ____ No

Note: If Yes, attach completed annual, holiday or compensatory time leave slips.

Will you exhaust paid leave entitlements? ____ Yes ____ No

Note: If Yes, attach a request for a Personal Leave of Absence without Pay.

If you will be on a Personal Leave of Absence without Pay:

Do you wish to continue State medical and life insurance for yourself? _____ Yes _____
No

Do you wish to continue State medical and life insurance for dependants?
_____ Yes _____ No

To determine premiums due for continued coverage, contact:

If medical insurance is suspended, the last day of coverage is:

You may be entitled to make-up missed payments to your retirement account upon your return. For information regarding retirement service and contributions contact:

You were originally appointed/hired as a (official classification)
_____ on (date) _____.

You _____ **are** _____ **are not** currently serving a probationary period. If you are serving a probationary period the time remaining must be completed upon return to State employment.

You _____ **are** _____ **are not** presently eligible for the Annual Incremental Salary Increase payment to qualifying permanent State employees each July.

The person who will maintain contact with you during your military duty:

Name: _____
Address: _____
Phone: _____

The person who has legal authority to act on your behalf regarding employment issues during your absence:

Name _____
Address _____
Phone _____

Do you wish to receive vacancy announcements during your absence?
_____ Yes _____ No

(Facility Letterhead)
(Date)

MEMORANDUM TO: (Armed Forces)

SUBJECT: Verification of Military Service Dates

It is the policy of the State of West Virginia to facilitate the military activities of our employees and to comply with the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended.

_____, an employee of the WV Division of Juvenile Services,
(name)

has notified his or her supervisor of the need to be absent from work due to necessary military duty on the following dates:

_____ to _____
(beginning date) (ending date)

If this information is correct, please check here, sign and date below.

If this information is incorrect, please check here and provide the correct military duty dates below.

_____ to _____
(beginning date) (ending date)

(signature and rank)

(date)

Please return this form to:

(contact name)

(facility name)

(street address)

(city, state, zip code)

(NOTE: This informational request should be sent facility letterhead and certified to confirm receipt.)