

## **OTHER TYPES OF LEAVE**

### **Lump Sum Termination Pay**

Upon termination, resignation, retirement or other action by which a person ceases to be an active employee of the State, the amount due the employee from accrued and unused annual leave shall be paid to the employee in a lump sum unless the employee is beginning a period of active duty for military service and requests that such leave not be liquidated by a lump-sum payment but instead be held in escrow by the state and reinstated upon the employee's return to state employment. This lump sum must not exceed thirty (30) days of annual leave inclusive of holidays.

No employee receiving such additional compensation shall return to State employment until the number of days for which he/she received the additional compensation has expired. However, the employee may reimburse the agency which made the lump sum payment for the number of days paid but not yet expired and return to State employment. Such reimbursement will result in the appropriate number of days being reinstated to the employee's accrued annual leave.

Upon death of an active employee of a state agency or institution, the amount of any accrued, unpaid sick leave incentive benefit and any unused annual and holiday leave due the employee shall be paid to the employee's estate or authorized beneficiary. This lump sum must not exceed \$7,500 for any sick leave incentive benefit and must not exceed sixty (60) days of annual and holiday leave.

State employees who retired under the Early Retirement Incentive Program, Act 187 of 1987, are not eligible to accept further employment in which the State is the employer. Such retired employees may not enter into consultant contracts with the State.

Arkansas Code §21-4-101 et seq. (The Uniform Attendance and Leave Policy Act), provides the authority for this Section of the Leave Policy. As such, no state employment is exempted from this Section. All State agencies, boards, commissions, institutions of higher education, constitutional offices and those others listed in Section 105.1.0 of these Policies shall be covered by Lump Sum Termination Pay Policy in Arkansas Code §19-4-1613. (See Section 110.1.0, payment of overtime accrued upon termination).

### **Leave Without Pay**

Arkansas Code Annotated § 21-4-210 as amended by Act 835 of 2003 effective 7/1/2003

Employees may not take leave without pay (LWOP) as authorized by Arkansas Code Annotated § 21-4-210 until all their annual leave has been exhausted, except in the cases of maternity leave, inclement weather as designated by state policy, budget

reduction as determined by an agency director, and agency disciplinary actions. In the case of maternity leave, such employee may elect to take leave without pay, without exhausting accumulated annual and sick leave. In the case of disciplinary actions, the agency may place an employee in disciplinary leave without pay status in accordance with the agency's written and publicized personnel policies. (See Section 105.11.0 for leave without pay for military service and/or specialized training.)

An Agency Director or Institution Head may grant continuous leave without pay. Any such period shall not exceed six (6) continuous months. Each request for leave without pay (LWOP), as authorized by Arkansas Code Annotated 21-4-210, is to be considered on a case-by-case basis. Upon expiration of any six (6) month period of LWOP, additional extensions, up to six (6) months each may be requested by the employee if updated justification with appropriate documentation is provided.

Approval or disapproval of requests for leave without pay as an accommodation should be determined based upon impact on the agency's operation and mission and whether approval would create an undue hardship on the agency. Section 105.8.2.2 "Undue hardship" is defined as "an action requiring significant difficulty or expense" when considered in relationship to a number of factors. These factors may include, but not necessarily be limited to, the nature of the position occupied by the employee and cost of the request in relation to the size, resources, nature and structure of the agency's operation and mission. Thus, whether or not an accommodation request would create an undue hardship focuses on the resources and circumstances of the particular state agency in relationship to the cost or difficulty of providing a specific leave request. Undue hardship refers not only to financial difficulty, but also to requests that are unduly extensive, substantial, or disruptive, or those that would fundamentally alter the nature of operation of the agency. An agency director should assess, on a case-by-case basis, whether a particular request for leave without pay (LWOP) would cause undue hardship. Every request should be evaluated separately to determine if it would impose an undue hardship on the agency, taking into account: (1) the nature and cost of the request; (2) the overall financial resources of the agency; (3) the number of persons employed by the agency; (4) the effect on expenses and resources of the agency; and, (5) the impact of the request on the agency.

Agency directors may declare an undue hardship where a leave request accommodation would be unduly disruptive to other employees' ability to work efficiently. For example, if granting leave would prevent other employees from doing their jobs, then the significant disruption to the operations of the agency constitutes an undue hardship. In some situations, an employee may be able to provide only an approximate date of return because treatment and recuperation do not always permit exact timetables. If an agency is able to show that the lack of a fixed return date imposes an undue hardship, then it can deny the leave. An undue hardship could result if the agency can neither plan for the employee's return nor permanently fill the position. In other situations, an agency may be able to be flexible.

An employee who accumulates ten consecutive or nonconsecutive days of leave without pay (LWOP) during any one calendar month loses the leave accrual (annual and sick) for that month only. The annual leave that is lost due to the LWOP is based on the rate of accrual authorized for that employee.

Employees may continue to participate in agency or institution group insurance programs during the period of LWOP. Employees who choose this option must pay the total cost (employee deduction and employer matching) of the coverage. However if an employee is on FMLA or Workers' Compensation related leave, agencies are required to remit the employer's matching portion of coverage.

Employees having kept their group insurance in effect while on LWOP are to be fully reinstated in insurance programs when they return to duty. However, employees on FMLA leave are eligible for reinstatement in the insurance program even if the employee failed to pay their premium while on FMLA leave. Upon return from FMLA LWOP employees are responsible for payment of the total amount of premiums that are in arrears. Employees who receive less than ten hours of pay in a given pay period and who do not have Workers Compensation Leave, Military Leave, or FMLA Leave approved for that pay period will be responsible for the employee premium as well as the employer portion of their medical insurance.

The employee will be reinstated with full rights at the end of the period of leave without pay (LWOP). An employee who is on LWOP and returns within the required six months continues to earn credited service toward the next rate in the leave accrual schedule just as the employee who had never gone on LWOP. A returning employee's leave accrual rate will not be affected by periods of LWOP, nor will the time of entitlement to a change in leave accrual rate be adjusted because of LWOP. If the position the employee left is no longer available due to a budgetary reduction in staff, the employee will have no options and cannot be reinstated.

The employee's Increase Eligibility Date will not change. However, the award of the next merit salary increase will be delayed beyond the anniversary date for the same number of work days as the employee was on leave without pay (LWOP).

Employees may be dismissed if they fail to report to work promptly at the expiration of the period of leave without pay (LWOP). However, the agency or institution may accept satisfactory reasons provided by the employee in advance of the date to return to work and extend the LWOP period accordingly.

### **Military Leave and Re-Employment of Veterans**

(Arkansas Code §§ 21-4-212 & 21-4-301 et seq) as amended by Act 653 of 2003, effective July 16, 2003 and Arkansas Code Annotated §21-4-105 Amended by Act 653 of 2005 to add subchapter 21-4-105, effective August 12, 2005

## **Proportionate Pay for Military Members**

Act 2113 of 2005

A. Notwithstanding the provisions of the Uniform Attendance and Leave Policy Act, § 21-4-201 et seq., during the period that an employee of a state agency or institution of higher education is called to active duty after September 11, 2001, as a member of the National Guard or any of the reserve components of the armed forces by order of the President or the Governor of an emergency nature or contingency for more than thirty (30) consecutive days, the employee shall be eligible for continued proportionate salary payments which, when combined with the employee's active duty pay, incentives, and allowances, except for uniform and clothing allowances, equal the amount that the employee would have otherwise received but for the employee's required active duty under the order of the President or the Governor.

B. Differential payments will be calculated as of September 11, 2001 as stated in the Act and payable to current active State employees only.

C. Terminated employees are not eligible for payments. However, if an employee's service terminated as a result of a disability incurred while on active duty, the employee is entitled to the payment.

D. If an employee became deceased while on active duty, the employee's beneficiary will be entitled to the payment.

E. Payments dating back to September 11, 2001 to the present are to be paid as a onetime lump sum payment. Thereafter, if the employee is still on active duty, payments will be made on a bi-weekly basis.

F. Employees must provide a Leave and Earning Statement showing the employees military pay or Form DD214 which indicates the date the employee was called to active duty and the date released from active duty.

G. Leave and Earning Statements for those currently on active duty, after the initial submission to payroll, need only be submitted thereafter when a pay change occurs. The payments will be subject to state and federal taxes.

H. Payments authorized by Act 2113 of 2005 will not be retirement eligible earnings at the time of payment and will not be reported to APERS, thus there will be no matching paid to APERS. When the employee returns to State service as an active state employee, the retirement service will be purchased for them by the agency and the retirement matching will be paid at that time. If the employee is a member of the APERS contributory plan, he/she will pay their contributions to APERS by personal payment. These contributions will not be tax deferred.

Regular, full-time state employees who are members of the National Guard or any of the reserve branches of the US Armed Forces will be granted leave at the rate of fifteen (15) working days per calendar year, plus necessary travel time for annual training purposes. Up to fifteen (15) unused military leave days may be carried over to the succeeding year for a maximum of thirty (30) military leave days for military training purposes for that calendar year.

Military leave for annual training or other official training duties will be granted without loss of pay and shall be in addition to annual leave.

The employee must provide written or oral notification prior to going on duty, unless precluded by military necessity. Employees are encouraged to notify their employer of any "window" of anticipated military activity including scheduled drills and annual training.

**Active Duty for Military Service:** A regular, full-time employee who is drafted or called to active duty in the Armed Forces of the United States or who volunteers for military service, shall be placed on extended military leave without pay; all unused sick leave at the time of military leave will be reinstated at the time the employee returns. All accrued, unused annual leave at the time of military leave will be reinstated at the time the employee returns to state employment unless the employee requested and received a lump-sum payment for the accrued, unused annual leave when placed on the extended military leave.

**Active Duty for the Purpose of Specialized Training:** In cases where an employee volunteers or is ordered to active duty for the purpose of special training, the employee will be placed on leave without pay for the period of training unless the employee elects to use his accrued annual leave. This leave without pay is given in addition to the paid leave for annual military training in Section 105.11.2. The employee retains eligibility rights including accumulated annual leave (unless the above option has been exercised) and any sick leave not used at the time the employee begins the training. The employee does not accumulate annual or sick leave during the leave without pay period, and the annual leave accrual rate will be calculated as though there had been no period of absence.

The employee retains eligibility rights including accumulated annual leave (unless the above option has been exercised) and any sick leave not used at the time the employee begins the training. The employee does not accumulate annual or sick leave during the leave without pay period, and the annual leave accrual rate will be calculated as though there had been no period of absence.

When the employee is released from active duty, he/she shall be reinstated to the position vacated or an equivalent position for which he/she is qualified in the same agency or its successor in interest.

Employees performing active military service for fewer than thirty-one (31) days must report for reemployment on the first regularly scheduled workday within eight (8) hours after discharge from military service. Those serving more than thirty (30) but less than one hundred and eighty-one (181) days must report within fourteen (14) days after discharge. Those serving more than one hundred and eighty (180) days must report for reemployment within ninety (90) days after discharge from military service.

The reinstated employee will not lose any seniority rights with respect to leave accrual rates, salary increases, Reduction in Force policies, or other benefits and privileges of employment. The period of military service shall, for purposes of computations to determine whether such persons may be entitled to retirement benefits, will be deemed continuous service and the employee shall not be required to make any contributions to any state supported retirement fund. To receive service credit for retirement purposes, a copy of the employee's DD214 must be submitted to the appropriate retirement system. The retirement system will notify the appropriate agency to remit the employer's contributions to update the employee's account.

Former employees returning to State service after military service, but who extended their enlistment or re-enlisted for additional military service beyond the initial period for more than a period of four (4) years (or five (5), when re-enlistment was at the request of the military) will lose all re-instatement rights and will be considered a rehire. Military service time may be extended beyond the five (5) year period for reasons stated in 38 US Code Section 4312(c).

Regular, full-time state employees who are called to active duty in emergency situations (and in situations covered by 10 United States Code §12304) as declared by the Governor or President shall be granted leave with pay. (Arkansas Code Annotated §§ 21-4-102(d) and 21-4-212(d)). The period of leave with pay for emergency active duty will not exceed thirty (30) working days per calendar year. Periods beyond the thirty (30) day limit may be charged to annual leave at the employee's option and if necessary, to leave without pay. If an employee's active duty in emergency situations begins in one calendar year and ends in the next calendar year and the employee is subsequently redeployed due to an emergency situation, the employee is eligible for thirty (30) days paid leave in the new calendar year. To be eligible for emergency active military duty paid leave, the employee must be actively employed by the state and submit a copy of military orders for each emergency deployment.

Military leave for emergency active duty situations is granted in addition to annual military leave in Section 105.11.2 for training purposes and annual leave.

### **Military Leave for Service Connected Disabilities**

Arkansas Code Annotated §21-4-105 Amended by Act 653 of 2005 to add subchapter 21-4-105, effective August 12, 2005 All employees of the State of Arkansas, as defined in § 21-4-203, who have been rated by the United States Department of Veterans Affairs or its predecessor to have incurred a military service-connected disability and

have been scheduled by the United States Department of Veterans Affairs to be reexamined or treated for the disability shall be entitled to a leave of absence with pay for a period not to exceed six (6) days for that purpose during any one (1) calendar year.

If an employee receives a leave of absence under this section, the employee shall be entitled to his or her regular salary during the time the employee is away from his or her duties during the leave of absence. The leave of absence shall be in addition to the regular annual leave and sick leave allowed to the employee. During a leave of absence, the employee shall be entitled to preserve all seniority rights, efficiency or performance ratings, promotional status, retirement privileges, and life and disability insurance benefits and any other rights, privileges, and benefits to which he or she has become entitled.

For purposes of computations to determine whether the employee may be entitled to retirement benefits, the period of the leave of absence shall be deemed continuous service.

The state shall continue to contribute its portion of any life or disability insurance premiums during the leave of absence on behalf of the employee, if requested, so that continuous coverage may be maintained.

### **Transfer of Leave Between State Agencies and/or Institutions of Higher Education**

When an employee transfers between State agencies and/or institutions of higher education which are covered by these policies, the unused portion of his/her annual and sick leave will also be transferred.

The amount of leave to be transferred shall not exceed the accrual limits established in this Policy.

The receiving agency will be responsible for verifying the employee's accrued leave with the relinquishing agency.

When an officer or employee of a state office or agency excluded from the provisions of the Uniform Attendance and Leave Policy Act by the definition of "state agencies" in Arkansas Code §21-4-203(1) leaves employment of the excluded office or agency and becomes employed by an agency or institution which is subject to the Uniform Attendance and Leave Policy Act, the period of employment with the excluded office or agency shall be included as state employee service for the purpose of determining the rate at which the employee earns paid annual leave.

## **US Air Force Auxiliary Civil Air Patrol & US Coast Guard Auxiliary Leave**

(Act 471 of 2003) Effective Date: 03/18/2003

All state employees who are members of the United States Air Force Auxiliary Civil Air Patrol or the United States Coast Guard Auxiliary shall be permitted to take leave of absence, with pay, from their regularly scheduled work for up to fifteen (15) days each calendar year for the purpose of participating in training programs or emergency and rescue services. For purposes of this section, a day shall mean eight (8) hours, i.e., the same as the definition in Arkansas Code Annotated §21-4-203(13)(B). The leave of absence must be at the formal request of the employee's wing commander, or designated representative, or Division 15 Captain.

During such leaves of absence, the employee shall be entitled to preserve all employee privileges and benefits. The period of leave of absence shall, for the purposes of retirement benefits, be deemed continuous service. A state agency shall continue to contribute its budgeted portion of any group life or health insurance premium during such leaves of absence, if requested by the employee, so that continuous group insurance coverage may be maintained.