

A MANAGER'S GUIDE TO THE
Paid Military Leave Requirement
IN THE MONTANA MILITARY SERVICE EMPLOYMENT
RIGHTS ACT (MMSERA)

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State Human Resources Division
Department of Administration

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Introduction

This guide addresses paid military leave administration for Montana state employees. The Montana Military Service Employment Rights Act (MMSERA), passed by the 2005 Montana Legislature and amended in 2009, established paid military leave.



This guide does not address the Uniformed Services Employment and Reemployment Rights Act (USERRA). However, please note that USERRA may apply to more employees than those who are members of the Armed Forces or the National Guard. For example, members of the commissioned corps of the Public Health Services are considered members of the uniformed services under USERRA and are often called up to help provide medical response during disasters. For more information about USERRA, please see the links to USERRA guidance in the Resources Section on the last page of this guide.

MMSERA significantly changed the rights of employees in the State of Montana who are members of the militia. Most of the act deals with employees' reemployment rights when they return from military duty. This guide only addresses the portion of the act that provides state employees with paid military leave.

"Militia" means all of the military forces of Montana, whether organized or unorganized. In Montana, the organized militia is the Montana Army and Air National Guard. The unorganized militia includes persons who are either active or inactive duty members of the armed forces reserves.

Eligibility Requirements

Employees of the State of Montana who are members of the organized or unorganized militia of Montana become eligible for paid military leave after six continuous months of employment. MMSERA does not make a distinction between full-time or part-time employees. Temporary employees working more than six continuous months are also covered. Seasonal employees and student interns meet the eligibility requirements for paid military leave after working six months, but time spent in a leave of absence without pay status does not count towards the eligibility requirement.

Short-term workers are not eligible for paid military leave because they are employed for 90 working days or less. Persons contracted as independent contractors or hired under personal services contracts are not considered employees and do not qualify for paid military leave.

Leave of absence without pay greater than 120 working hours does not count towards the six-month qualifying period, unless the leave of absence was for military service.

Military Leave Accrual

Eligible full-time employees earn 120 hours of paid military leave each calendar year. Part-time employees earn paid military leave on a prorated basis. Employees cannot earn more than 120 hours of paid military leave per calendar year.

Employees can carry unused paid military leave into the next calendar year, but cannot accrue more than 240 hours. Once employees reach the maximum, they do not accrue additional paid military leave until their balance drops below 240 hours. This amount is prorated for part-time employees.

State of Montana employees do not accrue paid military leave during leaves of absence without pay unless the leave is for military duty.

Requests to Use Paid Military Leave

Military Service Definition

MMSERA uses the term “military service” to define the situations under which employees can use paid military leave. Military service includes both federally funded military duty and state active duty. “Federally funded military duty” means duty, including required training, performed pursuant to orders issued under either Title 10 or 32 of the United States Code. Here are the links to those definitions.

Link to full text of Title 10 –

http://www4.law.cornell.edu/uscode/html/uscode10/usc_sup_01_10.html

Link to full text of Title 32 –

http://www4.law.cornell.edu/uscode/html/uscode32/usc_sup_01_32.html

State active duty means duty, including required training, performed during a declared disaster or emergency pursuant to Article VI, section 13, of the Montana constitution. The definitions can be found at <http://leg.mt.gov/bills/mca/CONSTITUTION/VI/13.htm>. Military service also includes time spent recovering from an illness or injury incurred while performing federally funded military duty or state active duty.

Use of Leave

Employees may request and employers may grant paid military leave in as few as one-hour increments. Employees may also use paid military leave intermittently with leave without pay while performing military service.

Employees may use paid military leave retroactively.

Paid military leave is meant to compensate qualified employees for loss of income because of time spent performing military service. Agencies should grant paid military leave only for the hours the employee was scheduled to work and receive pay. Agencies may deny paid military leave if it results in overtime.

Employers may not automatically deduct paid military, sick or vacation leave from an employee who is absent from work to perform military service. The employee must designate the leave they wish to take and may choose to perform military service without using paid leave.

Special Situations

Military Leave and Benefit Accrual

State employees receive state holiday benefits and accrue sick and annual leave while using paid military leave.

If an employee uses paid leave intermittently, please consult the annual, holiday and sick leave policies for information on adjusting leave benefits. These policies can be found on the State Human Resources Division's policies website - <http://www.mom.mt.gov/default.mcp>

Unused Military Leave

Unused military leave cannot be cashed out on termination of employment. Agencies may remove the unused military leave balance from an employee's account when the employee's sick leave and annual

leave is cashed out or removed following the employee's termination. If a state employee transfers to another state agency without a break in service, the employee's accrued paid military leave should be transferred along with the employee's accrued sick and annual leave.

Military Leave and Military Pay

Employees may request and use paid military leave simultaneously with state active duty military pay from the Montana Department of Military Affairs. In this case, the employee does not violate the State of Montana's ethic laws because the employee is using accrued leave.

Resources

Below, we have listed additional resources you can use in administering military leave benefits.

Here is a link to the section of the MCA dealing with Montana Military Service Employment Rights.

Link to MCA - http://leg.mt.gov/bills/MCA_toc/10_1_10.htm

The links below will take you to Uniformed Services Employment and Reemployment Rights Act (USERRA) guidance from the US Department of Labor and the Employer Support of the Guard and Reserve (ESGR).

Link to Department of Labor Guidance -
<http://www.dol.gov/elaws/vets/userra/userra.asp>

Link to ESGR Guidance -
<http://www.esgr.org/Site/Resources/EmployerResourceGuide/tabid/106/Default.aspx>

We designed this guide to assist executive branch human resource professionals, supervisors, and managers in administering paid military leave. It is a companion to information contained in statute.

We will provide alternative accessible formats of this Guide on request. If you need an alternative format, please contact the State Human Resources Division, Department of Administration, 125 N. Roberts St., PO BOX 200127, Helena, MT 59620-0127. Telephone 406-444-3871. Those using a TTY may call through the Montana Relay Service at 711.