

# Arkansas Municipal League

## **Military Leave and Training for Arkansas Municipalities**



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# Table of Contents

<b>Introduction .....</b>	<b>4</b>
<b>Military Training Programs .....</b>	<b>4</b>
National Guard and Reserves .....	4
<b>Military Leave, Rights and Benefits.....</b>	<b>4</b>
Continuing Military Benefits.....	4
Leave for Emergency Situations .....	5
Leave for Municipal Officials .....	6
Uniformed Services Employment and Reemployment Rights Act.....	7
Definitions .....	7
Notice .....	7

# Introduction<sup>1</sup>

In this publication, we will discuss military leave for employees of municipalities, including both state and federal protections for military employees.

## Military Training Programs

### National Guard and Reserves

Municipal employees “who desire to take a leave of absence to participate in military training programs made available by the National Guard or any of the reserve and auxiliary branches of the armed forces. . . shall be entitled to a leave of absence for fifteen (15) days plus necessary travel time for annual training requirements or other duties performed in an official duty status in any one calendar year.” Ark Code Ann. § 21-4-102(a)(1).

This unused training leave time accumulates so the employee can use it in the succeeding year until it totals fifteen (15) days at the beginning of the calendar year. Ark Code Ann. § 21-4-102(a)(2).

When a municipal employee is granted fifteen (15) days of training leave under this statute for a single calendar or fiscal year, then the military training leave will continue to accumulate for use in succeeding calendar years or fiscal years until it totals fifteen (15) days at the beginning of the calendar year or fiscal year, for a maximum number of military leave days available in any one (1) calendar year or fiscal year to be thirty (30) days. Ark. Code Ann. § 21-4-102(e). For example, a military employee could “roll over” fifteen (15) days of leave from one year to the next year, and use that leave in January. The same employee will then begin accumulating new leave throughout the year so that by December the employee might have accumulated thirty (30) days of total leave for the year.

Employees are entitled to their regular salary during the time they are away from their duties during a military leave of absence. Ark. Code Ann. § 21-4-102(b)(1). This leave of absence shall be in addition to the regular vacation time allowed to the employee. Ark. Code Ann. § 21-4-102(b)(2).

## Military Leave, Rights and Benefits

### Continuing Military Benefits

During a leave of absence, military employees retain all seniority rights, efficiency or performance ratings, promotional status, retirement privileges, life and disability insurance benefits, and any other rights, privileges, and benefits to which they have become entitled. Ark. Code Ann. § 21-4-102(d)(1).

The period of military service shall, for purposes of computations to determine whether such person may be entitled to retirement benefits, be deemed continuous service and the employee shall not be required to make contributions to any retirement fund. Ark. Code Ann. § 21-4-102(d)(2). The municipality 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. Ark. Code Ann. § 21-4-102(d)(3).

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<sup>1</sup> This informational document is provided to members of the Arkansas Municipal League and is in no way to be considered legal advice. This is an educational document only.

## Leave for Emergency Situations

Employees called to duty in emergency situations by the governor or by the president of the United States shall be granted leave with pay not to exceed thirty (30) working days, after which leave without pay will be granted. This leave shall be granted in addition to all other leave the employee shall be entitled to. Ark. Code Ann. § 21-4-102(c)(1). “[A]n employee of the state or a political subdivision who is called to duty in an “emergency situation,” as defined at A.C.A § 21-4-212, is entitled to one thirty-day period of paid leave, regardless of whether or not his service spans more than one calendar year.” A.C.A § 21-4-102(c)(1). “Emergency situations” means “any case of invasion, disaster, insurrection, riot, breach of peace, or imminent danger thereof, threats to public health or safety, or threats to the maintenance of law and order.” Ark. Code Ann. § 21-4-212(c)(2).

There are special privileges and rights for certain auxiliary components of the military. An employee of the state, a city of the first class, a city of the second class, an incorporated town, or a county who is a member of:

1. The United States Civil Air Patrol or the United States Coast Guard Auxiliary and desires to take a leave of absence to participate in a training program and rescue services shall be entitled to a leave of absence with pay for a period of fifteen (15) days for that purpose during any one (1) calendar year, if the leave of absence is at the request of the employee’s wing commander, the wing commander’s designated representative, or District 15 Captain; or
2. The National Disaster Medical System, a Disaster Mortuary Operational Response Team, or a Disaster Medical Assistance Team, of the Office of Emergency Management of the Office of the Assistant Secretary for Preparedness and Response of the Department of Health and Human Services and desires to take a leave of absence for the purpose of participating in a training program in emergency and rescue services shall be entitled to a leave of absence with pay for a period of fifteen (15) days for that purpose during any one (1) calendar year, if the leave of absence is in response to a United States Department of Health and Human Services National Disaster Team Alert Order. Ark. Code Ann. § 21-4-104(a).

If an employee is granted 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 during the leave of absence. Ark. Code Ann. § 21-4-104(b)(1). The leave of absence will be in addition to the regular vacation time allowed. Ark. Code Ann. § 21-4-104(b)(2).

During a leave of absence, the employee shall be entitled to preserve “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.” Ark. Code Ann. § 21-4-104(c). For purposes of computations to determine whether the person may be entitled to retirement benefits, the period of the leave of absence shall be deemed continuous service. Ark. Code Ann. § 21-4-104(d). The municipality 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. Ark. Code Ann. § 21-4-104(e).

## Leave for Municipal Officials

Officers who are municipal officials, township officials, or all other officers who hold an elected office in Arkansas shall be granted a leave of absence from their offices and duties to perform active military service. Ark. Code Ann. § 21-4-302(a). When an officer volunteers or is called into active duty in the United States Armed Forces during war, the governor, or person or persons whose duty it is to fill the vacancy should there be one, shall, upon application being made by the officer, grant the officer a leave of absence during the time the officer is retained in the military service. Ark. Code Ann. § 21-4-302(b).

An officer who volunteers or is called into active duty in the United States Armed Forces shall not be deemed to have forfeited his or her office during his or her leave of absence for military duty. Ark. Code Ann. § 21-4-302(c)(1). Upon completion of active military duty, the officer shall be permitted to resume his or her office for the remainder of the term for which he or she was elected. Ark. Code Ann. § 31-4-302(c)(2).

In the discretion of their employer, all municipal employees may be granted leave of absence under the terms of this subchapter and upon leave of absence's being granted to officials under this subchapter. Ark. Code Ann. § 21-4-308(a). However, an employee shall not have the right to select or in any way control the selection of his or her successor. Ark. Code Ann. § 21-4-308(b). During a leave of absence, an official shall be entitled to preserve all seniority rights, efficiency rating, promotional status, and retirement privileges. Ark. Code Ann. § 21-4-310(a). The period of active military service shall, for purposes of computations to determine whether such persons may be entitled to retirement under the laws of the State of Arkansas, be deemed continuous service in the office of the official or employee. Ark. Code Ann. § 21-4-310(b). While absent on leave, the official or employee shall not be required to make contribution to any retirement fund. Ark. Code Ann. § 21-4-310(c).

Any public employee who may be granted a leave of absence under the provisions of this subchapter and who serves for not more than four (4) years, plus any period of additional service imposed pursuant to law shall be entitled, upon release from service under honorable conditions, to reemployment rights as provided by federal law. The refusal of any state, county, or municipal official to comply therewith shall subject the official to removal from office. Ark. Code Ann. § 21-4-309(a)-(b).

During a leave of absence, an employee granted leave under this section, as opposed to Ark. Code Ann. § 21-4-102, are entitled to all seniority rights, efficiency rating, promotional status, and retirement privileges. The period of active military service counts toward retirement and counts as continuous service in the office of the official or employee. During this leave, the official or employee is not required to make contribution to any retirement fund. Ark. Code Ann. § 21-4-309(a)-(c).

# Uniformed Services Employment and Reemployment Rights Act

In 1994, Congress adopted the preemptive Uniformed Services Employment and Reemployment Rights Act (USERRA). 38 U.S.C. § 4301. USERRA prevents uniformed service members' employers, including the state and its municipalities, from denying initial employment, reemployment, continued employment, a promotion, or any benefit of employment based on "membership, application for membership, performance of service, application for service or obligation." 38 U.S.C § 4311(a). Furthermore, an employer cannot fire or punish an employee for asserting their rights under USERRA. 38 U.S.C. §4311(b).

## Definitions

USERRA extends reemployment rights to individuals who have been absent from a position of employment on account of military duty in the "uniformed services" which are defined as:

- Army, Navy, Marine Corps, Air Force, or Coast Guard.
- Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve, or Coast Guard Reserve.
- Army National Guard or Air National Guard.
- Commissioned Corps of the Public Health Service.
- Any other category of persons designated by the President in time of war or emergency.
- Service means the performance of such military duty on a commission or noncommission status, and on a voluntary or involuntary basis, in a uniformed service, including:
  - Active duty
  - Active duty for training
  - Initial active duty for training
  - Inactive duty training
  - Full-time National Guard duty
  - Absence from work for an examination to determine a person's fitness for any of the above forms of duty
  - Funeral honors duty by National Guard or reserve members.

## Notice

Under USERRA, an employee must provide advance written or verbal notice to the employer of all military duty, unless giving notice is impossible, unreasonable, or precluded by military necessity. Notice may be provided by the employee or by an appropriate officer of the branch of the military service in which the employee will be serving. The law only requires "advance" notice, but does not specify how far in advance notice must be given.

For more information on USERRA compliance contact the Department of Labor, or visit their website on USERRA guidance at [dol.gov/vets](http://dol.gov/vets).



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