

All Personnel

Military or Federal Leave; Compensation and Health and Welfare Benefits  
for Employees Called to Active Military Duty or Federal Service

It is the intent of the Governing Board that regular, contract employees, and Proctors called to active military duty or "federalized service" beyond normal short term annual or weekend training shall not suffer adverse financial impact because of such activation. It is also the intent of the Governing Board that this Policy shall, pursuant to the limitations described herein, be in addition to any other salary or benefits provided to eligible Employees as required by law.

Notwithstanding any other provision of the Hesperia Unified School District's Board Policies, the District is hereby authorized to pay a District employee who is a member of the National Guard, the Naval Militia, or a reserve component of any branch of the armed forces of the United States, and who is activated as a result of the deployment of military personnel in response to national defense needs, or to any employee who is "federalized" to perform national service, his/her regular salary and continuation of his/her current District-provided health and welfare benefits; provided, however, that all military or federal salary in amounts up to the Employee's District-paid regular salary which is earned after the 31<sup>st</sup> day of activation by any eligible employee, shall be paid to the District by the Employee as an offset and shall be deposited into the District's General Fund. Employees may, however, receive all District and military pay during the first thirty (30) days of activation. This policy shall not apply to any employee who voluntarily enlists in any branch of the Armed Forces of the United States of America or who is conscripted or drafted into any branch of the Armed Forces of the United States of America. Salary and benefits provided to eligible Employees shall be subject to the following conditions:

- a. The salary and benefits provided herein shall be provided to any eligible employee regardless of when he or she was ordered to active duty, provided said activation occurred after September 11, 2001. Subject to this provision, the salary and benefits shall be paid from the first day of the Employee's military or federalized leave and shall continue for the duration of the period of the Employee's active duty necessitated by the deployment of military or federalized personnel in the national defense.
- b. The Employee is not separated from service from the District for any reason, including, but not limited to, the Employee's resignation, or for cause.
- c. The Employee remains in good standing pursuant to United States Military codes, regulations and laws and/or U.S. laws for federalized services. In the event said Employee is incarcerated by the military or U.S. civil authority for any reason, for a cumulative period of seven (7) or more days, all additional benefits and salary to which said Employee would have been entitled pursuant to this Board Policy shall be

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suspended, pending adjudication of the charges/allegations made against him/her. In the event the Employee is subsequently acquitted of said charges/allegations, or if said charges/allegations are dismissed by a court of competent jurisdiction or other valid authority, the District shall retroactively pay to the Employee all salary withheld, including the cost of health and welfare premiums withheld, during this period of time.

In no event shall the District be liable for any health and welfare costs or professional health and welfare services provided to the Employee and/or his eligible dependents, beyond the cost to the District for District-provided health and welfare premiums.

- d. In the event Employee is discharged from the military or federal service under less-than-honorable conditions, the Employee shall reimburse the District for all salary and health and welfare benefit costs which were incurred by the District as a result of this Board Policy, from the actual date of conduct or behavior which precipitated said discharge under less-than-honorable conditions.
- e. Unless otherwise prevented to do so by time constraints caused by a rapid military reactivation or federalization of the Employee, to the extent practical, Employee shall designate his/her spouse, or if no spouse, a responsible adult, to act in his/her behalf in all salary and benefit matters which may arise as a result of this Board Policy.
- f. It shall be the responsibility of the Employee and/or his/her designated representative to timely inform the District if Employee is subject to any of the conditions enumerated in subsections b, c or d above. If the District otherwise learns of conduct described in these subsections, all salary and benefits provided for herein shall immediately cease. The District also reserves the right to seek reimbursement for all costs incurred under this Board Policy from the date upon which said subsections applied to Employee.
- g. It is the express intent of the Governing Board that health and welfare benefits provided to the Employee by the military or federal government shall be the primary source of health and welfare benefits for the Employee who would have otherwise been eligible for District benefits. However, in order to ensure that the Employee and his or her eligible dependents are not adversely affected as a result of the Employee's military activation, or federal service, the Employee and his/her eligible dependents shall remain covered by District-provided benefits, and any military or federal-provided health and welfare coverage may be used by the Employee in addition to District-provided health and welfare coverage for both the Employee and his/her eligible dependents.

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- h. Salary and health and welfare benefits provided pursuant to this Board Policy shall be granted to Employee for up to sixty (60) calendar days beyond his/her date of honorable discharge, or death, while on active or federal duty, unless otherwise provided for by law.
- i. The Governing Board hereby expressly declares that eligible employees have no right or expectation that this Policy will continue in its present form or that the Governing Board will not rescind this policy. The Governing Board expressly retains the right, in its sole discretion and for any reason, to amend or rescind this Policy without prior notice to eligible or affected employees and/or his/her eligible dependents and that eligible employees should not rely upon the continuation of this Policy for any reason.
- j. The Governing Board hereby directs the Superintendent to implement the provisions of this Board Policy immediately upon adoption by the Governing Board, subject to any legally mandated requirements to reach agreement with employee exclusive representatives on any portion of this Policy within the scope of bargaining.
- k. Severability: Should any provision of this Policy is found to be void, illegal, unenforceable or contrary to law by a court or administrative agency of competent jurisdiction, all other provisions of this Policy shall remain valid and in full force and effect.

Legal References:

EDUCATION CODE

[44800](#) Effect of active military service on status of employees

[45059](#) Employee ordered to military/naval duty - computation of salary

GOVERNMENT CODE

[18540](#) Definition of armed forces

[18540.3](#) Recognized military service

MILITARY AND VETERANS CODE

146 Events justifying calling of militia into active service

389 Definition of temporary military leave

395 Temporary military leave; public employees

395.01 Compensation of public employees on temporary military leave

395.02 Salary while absent on military leave other than temporary

395.03 Return to employment after termination of active military service

395.05 Military duty during state of extreme emergency

395.1 Public employees; return to position after active service

395.2 Non-certificated employees; return to position after active service

395.3 Resignation to enter military service, return to employment

395.4 Length of leave in case of war or national emergency

395.9 Unpaid leave for inactive duty

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**BP 4161.5**

**4261.5**

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COURT DECISIONS

Wright v. City of Santa Clara (1989) 213 Cal. App. 3d 1503

Bowers v. San Buenaventura (1977) 75 Cal. App. 3d 65

ATTORNEY GENERAL OPINIONS

77 Ops.Cal.Atty.Gen. 209 (1994)

69 Ops.Cal.Atty.Gen. 185 (1986)

63 Ops.Cal.Atty.Gen. 924 (1978)

19 Ops.Cal.Atty. Gen. 132 (1952)

18 Ops.Cal.Atty.Gen. 178 (1951)

POLICY ADOPTED: DECEMBER 3, 2001

POLICY AMENDED: September 13, 2004

POLICY READOPTED: May 8, 2006

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**Military Leave**

Military leave shall be granted in accordance with applicable state and federal law to employees performing military duties 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, examination to determine fitness for duty, and performance of funeral honors duty. (Education Code 44800; Military and Veterans Code 395, 395.01, 395.02, 395.05, 395.1, 395.2, 395.9; 38 USC 4301, 4303, 4316)

(cf. 4161/4261 - Leaves)

(cf. 4361 - Leaves)

An employee who needs to be absent from the district to fulfill his/her military service shall provide advance written or verbal notice to the Superintendent or designee, unless the giving of such notice is precluded by military necessity or is otherwise impossible or unreasonable. (38 USC 4312; 20 CFR 1002.85, 1002.86)

(a) Salary/Compensation

An employee shall receive his/her salary or compensation for the first 30 days of any one absence for military leave or during one fiscal year, under any of the following conditions:

1. Active Military Training or Exercises: The employee is granted a temporary military leave of absence to engage in ordered military duty for purposes of active military training, encampment, naval cruises, special exercises, or like activity as a member of the reserve corps or force of the United States Armed Forces, National Guard, or Naval Militia, provided that: (Military and Veterans Code 389, 395, 395.01)
  - a. He/she has been employed by the district for at least one year immediately prior to the day the military leave begins.
  - b. The ordered duty does not exceed 180 days, including time involved in going to and returning from such duty.
2. Active Military Duty: The employee is on military leave, other than a temporary military leave, to engage in active military duty as a member of the reserve corps or force of the United States Armed Forces, the National Guard, or the Naval Militia, provided that he/she has been employed by the district for at least one year immediately prior to the day the military leave begins. (Military and Veterans Code 389, 395.02)

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**Salary/Compensation (Continued)**

3. War or Other Emergency: The employee, however long employed by the district, is a member of the National Guard who is engaged in military or naval duty during a state of extreme emergency as declared by the Governor, or during such time as the National Guard may be on active duty in situations described in Military and Veterans Code 146, including travel time to and from such duty. (Military and Veterans Code 395.05)
4. Inactive Duty Training: The employee is a member of the reserve corps or force of the United States Armed Forces, National Guard, or Naval Militia who is engaged in temporary inactive duty training, provided that he/she has been employed by the district for at least one year immediately prior to the day the military leave begins and the ordered duty does not exceed 180 days, including time involved in going to and returning from such duty.

In determining the length of district employment when necessary to determine eligibility for compensation for military leave, all recognized military service performed during and prior to district employment shall be included.

For classified employees, 30 days' compensation shall be one month's salary. For certificated employees, 30 days' compensation shall be one-tenth of the employee's annual salary. (Education Code 45059)

Certificated employees shall not be entitled to compensation during non-teaching, non-paying months of the year.

During the period of military leave, an employee may, upon his/her own request, use any vacation or similar paid leave accrued before the commencement of the military leave. The district shall not require the employee to use such leave. (38 USC 4316; 20 CFR 1002.153)

(b) Benefits

An employee may elect to continue his/her health plan coverage during the military leave. The maximum period of coverage for the employee and his/her dependents shall be either 24 months from the beginning of the leave or until the day after the employee fails to apply for or return to employment, whichever is less. (38 USC 4317; 20 CFR 1002.164)

An employee on military leave may be required to pay the employee cost, if any, of any funded benefit to the extent that other employees on leave are so required. Payment arrangements will be arranged prior to the employee beginning their leave. (38 USC 4316)

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**Benefits (Continued)**

An employee absent for 30 days or fewer shall not be required to pay more than the employee share for such coverage. An employee absent for 31 days or more may be required to pay not more than 102 percent of the full premium under the plan. (38 USC 4317; 20 CFR 1002.166)

Any employee called into active military duty as a member of the California National Guard or a United States Military Reserve organization shall receive, for up to 12 months, the difference between the amount of his/her military pay and the amount the employee would have received from the district and all benefits that the employee would have received if he/she had not been called to active military duty, unless the benefits are prohibited or limited by vendor contracts. Employees on military leave will be required to provide the District with proof of earnings from their military agency. This information will be used to compute compensation. It is recommended, as required by law, that this section be reviewed each year before the District's budget is approved.

(c) Vacation and Sick Leave Accrual

An employee on temporary military leave under the conditions described in item #1 Active Military Training or Exercises, in the section entitled "Salary/Compensation" above, shall continue to accrue the same vacation, sick leave, and holiday privileges to which he/she would otherwise be entitled if not absent. (Military and Veterans Code 395)

(cf. 4161.1/4361.1 - Personal Illness/Injury Leave)

(cf. 4261.1 - Personal Illness/Injury Leave)

An employee on military leave who is serving in active duty in time of war, national emergency, or United Nations military or police operation shall not accrue sick leave or vacation leave during the period of such leave. (Military and Veterans Code 395.1)

However, an employee who is a National Guard member on active duty as described in item #3 War or Other Emergency, in the section entitled "Salary/Compensation" above, shall not suffer any loss or diminution of vacation or holiday privileges because of his/her leave of absence. (Military and Veterans Code 395.05)

(d) Pension Plan Service Credit

Pension plan service credit and vesting shall continue during an employee's military leave as though no break in service had occurred. Payment of employer and employee contributions shall be made in accordance with law for members of the State Teachers' Retirement System or Public Employees' Retirement System. (Education Code 22850-22856; Government Code 20990-21013)

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(e) Employment Status

Absence for military leave shall not affect the classification of any certificated employee. In the case of a certificated probationary employee, the period of such absence shall not count as part of the service required to obtain permanent status, but shall not be construed as a break in the continuity of service for any purpose. (Education Code 44800)

(cf. 4116 - Probationary/Permanent Status)

(f) Reinstatement Rights

At the conclusion of the military duty, an employee shall be promptly reinstated in the position that he or she would have attained with reasonable certainty if not for the absence due to military service. If for some reason the employee is not qualified for such an escalated position, the employee shall be down-graded based upon their qualifications and other factors currently being used to determine the appropriate position for employees. Such employee shall hold no position lower than the position held at the beginning of the leave and no salary shall be lower than the salary to which he or she would have otherwise been entitled. (Education Code 44800; Military and Veterans Code 395, 395.2; 38 USC 4304, 4313; 20 CFR 1002.180-1002.181)

(cf. 4030 - Nondiscrimination in Employment)

(cf. 4031 - Complaints Concerning Discrimination in Employment)

Any employee who performs active military duty in time of war, national emergency, or United Nations military or police operation has a right to return to his/her position within six months of an honorable discharge or placement on inactive duty. Reinstatement rights shall not be extended to any such employee who fails to return within 12 months after the first date upon which he/she could terminate or could cause to be terminated his/her active service. (Education Code 44800; Military and Veterans Code 395.1)

When an employee has been on military leave for reasons other than war or national emergency, the time frame for reinstatement shall depend on the length of military service as follows: (38 USC 4312; 20 CFR 1002.115, 1002.118)

1. For a leave of 30 days or fewer, the employee shall report for duty no later than the beginning of the first full work day following the completion of military service, provided the employee has a period of eight hours to rest following transportation to his/her residence.
2. For a leave of 31-180 days, the employee shall submit a written or verbal application for reinstatement not later than 14 days after the completion of military service.

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**Reinstatement Rights** (Continued)

3. For a leave of more than 180 days, the employee shall submit a written or verbal application for reinstatement within 90 days after the completion of military service.

In cases where reporting within the periods specified in items #1 and #2 above is impossible or unreasonable through no fault of the employee, he/she shall report as soon as possible after the expiration of the period. (38 USC 4312; 20 CFR 1002.115, 1002.117)

An employee who is hospitalized for, or convalescing from, an illness or injury incurred in or aggravated during the performance of military service shall report for duty or submit an application for reinstatement at the end of the period that is necessary to recover from such illness or injury, but no more than two years after the completion of military service unless circumstances beyond the employee's control make reporting within the two-year period impossible or unreasonable. (38 USC 4312; 20 CFR 1002.116)

(cf. 4032 - Reasonable Accommodation)

Upon receiving an application for reinstatement, the Superintendent or designee shall reinstate the employee as soon as practicable under the circumstances of his/her case, but within a time period not to exceed two weeks, absent unusual circumstances. (20 CFR 1002.181)

If the employee's previous position has been abolished, he/she shall be reinstated in a position of like seniority, status, and pay, if such position exists, or to a comparable vacant position for which he/she is qualified. (Military and Veterans Code 395, 395.1; 38 USC 4313; 20 CFR 1002.192)

An employee failing to apply for reinstatement within the appropriate period does not automatically forfeit his/her rights, but shall be subject to the Board's rules governing unexcused absences. (38 USC 4312)

The Superintendent or designee may elect not to reinstate an employee following military leave if any of the following conditions exists:

1. The district's circumstances have so changed as to make such re-employment impossible or unreasonable, such as a reduction in force that would have included the employee. (38 USC 4312; 20 CFR 1002.139)
2. The accommodation, training, or effort described in 38 USC 4313(a)(3), (a)(4), or (b)(2)(B) would impose an undue hardship on the district as defined in 20 CFR 1002.5 or 1002.198. (38 USC 4312; 20 CFR 1002.139)

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**Reinstatement Rights (Continued)**

3. The employee's position was for a brief, non-recurrent period and there was no reasonable expectation that such employment will continue indefinitely or for a significant period. (38 USC 4312; 20 CFR 1002.139)
4. The employee's cumulative length of absence and length of all previous military leave while employed with the district exceeds five years, excluding those training and service obligations specified in 38 USC 4312(c). (38 USC 4312; 20 CFR 1002.99-1002.103)
5. The employee was separated from military service with a disqualifying discharge or under other than honorable conditions. (Military and Veterans Code 395.1; 20 USC 4304, 4312; 20 CFR 1002.134-1002.138)

(g) Notices

The Superintendent or designee shall provide employees a notice of the rights, benefits, and obligations of employees granted military leave and of the district under the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 USC 4301-4334. (38 USC 4334)

This requirement may be met by posting the notice where the district customarily places notices for employees. (38 USC 4334)

(cf. 4112.9/4212.9/4312.9 - Employee Notifications)

Legal Reference:

EDUCATION CODE

22850-22856 Pension benefits, STRS members on military leave

44018 Compensation for employees on active military duty

44800 Effect of active military service on status of employees

45059 Employee ordered to military/naval duty - computation of salary

GOVERNMENT CODE

18540 Definition of armed forces

18540.3 Recognized military service

20990-21013 Pension benefits, PERS members on military leave

MILITARY AND VETERANS CODE

146 Events justifying calling of militia into active service

389 Definitions; temporary military leave

394 Nondiscrimination based on military service

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**Legal Reference (Continued)**

395-395.9 Military leave

UNITED STATES CODE, TITLE 38

4301-4334 Uniformed Services Employment and Reemployment Rights Act of 1994

CODE OF FEDERAL REGULATIONS, TITLE 20

1002.1-1002.314 Uniformed Services Employment and Reemployment Rights Act of 1994

COURT DECISIONS

Wright v. City of Santa Clara (1989) 213 Cal. App.3d 1503

Bowers v. San Buenaventura (1977) 75 Cal. App.3d 65

ATTORNEY GENERAL OPINIONS

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63 Ops.Cal.Atty.Gen. 924 (1978)

19 Ops.Cal.Atty.Gen. 132 (1952)

18 Ops.Cal.Atty.Gen. 178 (1951)

Management Resources:

U.S. DEPARTMENT OF LABOR PUBLICATIONS

A Non-Technical Resource Guide to the Uniformed Services Employment and Reemployment Rights Act (USERRA), rev. April 2005

NATIONAL SCHOOL BOARDS ASSOCIATION PUBLICATIONS

The Uniformed Services Employment and Reemployment Rights Act (USERRA), NSBA Federal File: Guidance on Federal School Law, 2003

WEB SITES

National Committee for Employer Support of the Guard and Reserve: <http://www.esgr.org>

National School Boards Association: <http://www.nsba.org>

U.S. Department of Labor, USERRA: <http://www.dol.gov/vets/programs/userra>

09/08

REGULATION ADOPTED: October 20, 2008

REGULATION REVISED: July 26, 2010