

# SOUTH DAKOTA BOARD OF REGENTS

## Policy Manual

**SUBJECT:** Military Service and Veterans Rights

**NUMBER:** 4:16

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### 1. General Leave Rights

Any eligible employee of South Dakota's Unified System of Higher Education who is called for training or active duty in the uniformed services of the United States is eligible for military leave, provided the employee gives notice of his or her military obligations. In carrying out the terms of this policy and in all its dealings with employees regarding military leave issues, System complies fully with all federal and state laws granting leave and employment rights to employees serving in any branch of the military or other uniformed services of the United States.

Human Resource Directors from the Universities must submit the employee's name and activation date to the Director of Human Resources.

### 2. Compensation Procedures

Activated employees may choose from the following five options or a combination of these options:

1. Up to 15 days of unused military training leave
2. Up to 40 hours of unused personal leave
3. Accrued vacation leave
4. Active military duty status without pay
5. Separation

In the case of military training leave or personal leave, the employee must not have already exhausted his or her annual allotment. All restrictions regarding these types of leave still apply.

- A. 15 Days of Unused Training Leave**— An employee may use up to 15 calendar days of military training leave as prescribed by ARSD 55:01:22:04 unless the employee has previously used the calendar year allotment.
- B. 40 Hours of Unused Personal Leave**— An employee may use up to 40 hours of personal emergency leave as prescribed by ARSD 55:01:22:02.04 unless the employee has previously used the calendar year allotment.
- C. Vacation Leave**— An employee may use accrued vacation leave to continue their

monthly paychecks until the leave is exhausted. Vacation leave may be used either in small amounts to generate a partial paycheck that covers employee-paid deductions, or to make up the entire monthly check.

- D. Active Military Duty Status without Pay**— An employee may choose to remain on the institution's payroll system and not be paid. This will also be the default option if the employee does not choose a form of leave or if the chosen leave expires.
- E. Separation**— While most employees will elect to remain a state employee and use either paid leave or go on active military duty status without pay, an employee may separate employment with the state. If the employee separates, the employee will be paid for any annual and sick leave balance in accordance with the applicable laws and rules.

### 3. Benefits Procedures

- A. Federal Active Duty**— For employees who are called to federal active duty and dependents who are called to federal active duty, health, life insurance and flexible benefits are suspended because the federal government covers them. However, employees can purchase up to 18 months of continued health coverage if they opt to pay the full premium and administrative fee for the coverage. For more information on health care continuation rights, contact the Human Resource Department. Employees and dependents returning from active duty will not be required to complete the pre-existing condition waiting period. If an employee's dependent is called to federal active duty, the employee should notify the institution's Human Resource Office so that the appropriate adjustments can be made to the employee's benefit elections and premium payments. If an employee is called to federal active duty, the federal government provides dependent medical insurance. However, the employee may elect to continue group health, life insurance and/or flexible benefits for dependents through the state. If the employee wants dependent benefits to continue while on active duty, the employee must notify the institution's Human Resource Office and make arrangements for premium payments (including how to bill for dependent coverage if the employee is on active military duty status without pay).
- B. State Active Duty**— For employees called to state active duty, State health, life insurance, and flexible benefits (including benefits for the employee and dependents) will continue as normal since the employee will receive a state active duty payment through the South Dakota National Guard. For dependents called to state active duty, state benefits will continue as normal and be paid by the employee. If an employee wants to change benefit elections while the employee or a dependent is on state active duty, the employee should contact the institution's Human Resource Office to see if the proposed change(s) can be made.
- C. Employee Entitlement to Servicemember FMLA Leave Entitlement -** Servicemember FMLA provides eligible employees unpaid leave for any one, or for a combination, of the following reasons:

- A “qualifying exigency” arising out of a covered family member’s active duty or call to active duty in the Armed Forces in support of a contingency plan; and/or
- To care for a covered family member who has incurred an injury or illness in the line of duty while on active duty in the Armed Forces provided that such injury or illness may render the family member medically unfit to perform duties of the member’s office, grade, rank or rating.

**1. Duration of Servicemember FMLA**

- When Leave Is Due To A “Qualifying Exigency”: An eligible employee may take up to 12 workweeks of leave during any 12-month period.
- When Leave Is to Care for an Injured or Ill Service Member. An eligible employee may take up to 26 workweeks of leave during a single 12-month period to care for the servicemember. Leave to care for an injured or ill servicemember, when combined with other FMLA-qualifying leave, may not exceed 26 weeks in a single 12-month period.
- Servicemember FMLA runs concurrent with other leave entitlements provided under federal, state and local law.

**2. Leave under State Military Leave Laws**

A growing number of states provide leave for family members of servicemembers. The entitlements for such leave differ from state to state. Our policy is to comply with such laws in any circumstances where they apply to employees of the State of South Dakota and the Board of Regents.

**If you have any questions regarding servicemember FMLA leave, please contact your local human resources office.**

**4. Reemployment Rights**

Federal and state law requires that an employee returning after active duty be offered a job with the same pay, rank, and seniority the employee would have expected if work had not been interrupted by military duty. The actual position may or may not be the same, depending upon agency needs at the time.

An employee who returns to duty within 90 days of discharge, or within 90 days after a hospitalization continuing after such release for a period of not more than one year, will retain his most recent hire date and not serve another probationary period. Military service will be considered credited service for the employee, provided the employee returns and continues to participate in the state retirement plan for one year after their return.

If an employee volunteers for emergency duty instead of being ordered to report, the employee will be handled in the same manner as an employee who is ordered to report.

**SOURCE: BOR, August, 1974; BOR, October, 1993, ARSD August 1993; March 2003. BOR, May 2008.**