

MILITARY LEAVE OF ABSENCE

Employees are entitled to military leave under the Uniformed Services Employment and Reemployment Act of 1994. The Act applies to military service that began on or after December 12, 1994 or military service that began before December 12, 1994 if the employee was a reservist or National Guard member who provided notice to the employer before leaving work.

Reemployment rights extend to persons who have been absent from work because of "service in the uniformed services". The uniformed services consist of the following military branches: Army, Navy, Marine Corps, Air Force, Coast Guard, Army Reserve, Navy Reserve, Marine Corps Reserve, Air Force Reserve, Coast Guard Reserve, Army National Guard, Air National Guard, Commissioned Corps of the Public Health Service, or any other category of persons designated by the President in time of war or emergency.

"Service" in the uniformed services means duty 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 types of duty.

The employee may be absent for up to five (5) years for military duty and retain reemployment rights. There are, however, exceptions that can exceed the five (5) year limit. Reemployment protection does not depend on the timing, frequency, duration, or nature of an individual's service. The GARID Law enhances protection for disabled veterans including a requirement to provide reasonable accommodations and up to two (2) years to return to work if convalescing from injuries received during service or training.

Employment Protection

The returning employee is entitled to be reemployed in the job that the individual would have attained had he or she not been absent for military service, with the same seniority, status, and pay, as well as other rights and benefits determined by seniority. If necessary, the employer must provide training or retraining that enables the employee to refresh or upgrade his or her skills so he or she can qualify for reemployment. While the individual is performing military service, he or she is deemed to be on a furlough or leave of absence and is entitled to the non-seniority rights accorded other individuals on non-military leaves of absence.

Health Benefits

Individuals performing military duty of more than thirty (30) days may elect to continue employer-sponsored health care for up to eighteen (18) months at the full premium cost plus normal increases in premium. For military service of less than thirty-one (31) days, health care coverage is provided as if the individual had never left. After notification by the employee to the school district of military activation of more than thirty (30) days, the school district shall inform the employee of the health benefits available under "COBRA" and furnish the employee with the enrollment forms for "COBRA".

Upon entering active military duty for more than thirty (30) days, the individual and dependents are covered by what military calls "Tri-Care". There are several different

plans that are offered which offer different levels of managed care. The most managed of the plans are at no cost to the service member. Not all medical costs are covered by "Tri-Care". It is not possible to make a recommendation in this document that will be best for every individual.

If an employee leaves and enters active duty for more than thirty (30) days and discontinues health coverage for themselves and the employee's dependents, and the employee returns to the school district in the time frame stated in this document, they are entitled to have:

Retirement Benefits

A participating SDRS member called to active duty will continue to earn credited service in SDRS while serving in the armed forces if he or she meets the following requirements:

- Secures authorization in advance from his or her employer for a leave of absence for military service;
- Returns to the employment of an SDRS participating unit within one (1) year of discharge from his or her initial period of military service;
- Remains in the employment of that same employer for at least one (1) year upon his or her return;
- This credited service does not require a contribution from either the employer or employee.

Survivor and Disability Benefits

The continuation of SDRS survivor and disability benefits, however, depends upon the continued classification of an employee as contributing SDRS member during his or her leave of absence. To meet the requirement, both the employee and employer contributions must be made to the system for each of the employee's pay periods. This may be accomplished in at least four ways:

1. An employer may make both employee and employer contributions to SDRS, which is allowed under SDCL 3-12-85;
2. The employer may compensate the employee for vacation, sick, and other accumulated personal leave at something less than forty (40) hours per week. This method will extend the period of compensation allowing contributions to continue which will have the effect of continuing SDRS survivor and disability benefits until all personal leave is exhausted.
3. An employee may make the full employee and employer contributions to the system during his or her leave of absence.
4. Employers and employees may develop a method that combines options 1, 2, and 3.

Defining the Status of Temporary Replacements

To be a member of SDRS, an employee must be a "permanent full-time employee". SDCL 3-12-45 (54) specifies three (3) criteria that must be met before an employee is considered permanent and full-time. He or she must:

- Be placed in a permanent classification;
- Work twenty (20) or more hours per week;
- Work six (6) months or more per year.

In general, temporary replacements will not meet these criteria and, therefore, are not eligible for membership in SDRS. No one knows, however, how long any call-up will last. Consequently, it is possible that if the call-up is for an extended period of time, temporary replacements may become permanent employees as set forth in SDCL 3-12-47 (54).

For temporaries working twenty (20) or more hours per week, this point may come after six (6) months of employment. As your temporary employees approach this length of service, please contact SDRS to discuss this situation.

Individuals must provide advance written or verbal notice to his or her employers for all military duty. Notice may be provided by the employee or by the branch of the military in which the individual will be serving. Notice is not required if military necessity prevents the giving of notice or the giving of notice is otherwise impossible or unreasonable.

Accrued vacation or annual leave may be used (but is not required) while performing military duty. The individual's timeframe for returning to work is based upon the time spent on military duty.

Return to Work or Application for Reemployment

Less than thirty-one (31) days: Must return at the beginning of the next regularly scheduled work period on the first full day after release from service, taking into account safe travel home plus an eight (8) hour rest period.

More than thirty (30) but less than one hundred eighty-one (181) days: Must submit an application for reemployment within fourteen (14) days of release from service.

More than one hundred eighty (180) days: Must submit an application for reemployment within ninety (90) days of release from service.

The individual's separation from service must be under honorable conditions in order for the person to be entitled to reemployment rights. Documentation showing eligibility for reemployment can be required. The employer has the right to request that an individual who is absent for a period of service of thirty-one (31) days or more provide documentation showing:

- The application for reemployment is timely;
- The five (5) year service limitation has not been exceeded; and
- Separation from service was under honorable conditions.

If documentation is not readily available or it does not exist, the individual must be reemployed. However, if after reemploying the individual, documentation becomes available that shows one (1) or more reemployment requirements were not met, the employer may terminate the individual, effective immediately. The termination does not operate retroactively.

Once the employee has made application for reemployment, the employee is entitled to employment and benefits as if the employee had never left. For example, a teacher makes application for reemployment on June 1 (after school is out). If you normally pay the single premium health for the other employees during the summer, you will need to reinstate the returning employee and pay the single premium. If the employee has family coverage, they are responsible for that payment.

Questions should be directed first to Employer Support of the Guard and Reserve for an informal resolution at (605) 737-6785 and then to Veterans' Employment and Training Service, U.S. Department of Labor at (605) 626-2325.

LEGAL REFS.: SDCL 3-12-47 (54)
Uniformed Services Employment and Reemployment Act of 1994