

Military Leave Policy

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§ 1. Statutory Authority

This regulation is promulgated pursuant to North Carolina General Statute 127A-116 and the Uniformed Services Employment and Reemployment Rights Act of 1994.

§ 2. Policy

Leave shall be granted to employees of the State for certain periods of service in the uniformed services. No agent or employee of the State shall discriminate against any employee of the State or applicant for State employment because of their membership,

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application for membership, performance of service, application for service or obligation for service in the Uniformed Services.

§ 3. Policy Scope

§ 3.1. Covered Service

Following are definitions of terms used in this policy:

Service in the Uniformed Service¹: The performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes:

- active duty (extended active duty; mobilization or call up of reserve components),
- active duty for training of reserve components (annual training - usually 2 weeks or special schools),
- initial active duty for training (initial enlistment in reserve or National Guard),
- inactive duty training (drills - usually on weekends),
- full-time National Guard (usually a 3-year contract),
- State active duty for a period of 14 days or more,
- State active duty in response to a national emergency declared by the President under the National Emergencies Act,
- State active duty in response to a major disaster declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act,
- a period for which a person is absent to determine fitness of the person to perform such duty,
- a period for which a System member of the National Urban Search and Rescue Response System (NUSRRS) is absent from a position of employment due to an appointment into Federal service under section 327 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act,
- a period for which a person is absent from a position of employment due to an appointment into service in the Federal Emergency Management Agency (FEMA) as intermittent personnel under section 306(b)(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5149(b)(1)),
- service in or training for the National Disaster Medical System (NDMS), and

¹ 38 U.S.C. § 4303(13)

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- a period for which a person is absent from employment for the purpose of performing funeral honors duty as authorized by section 12503 of title 10 or section 115 of title 32.

Uniformed Services²:

- Armed Forces and the Reserve Components (Army, Navy, Air Force, Marine Corps, Coast Guard, Army and Air National Guard),
- Commissioned Corps of the Public Health Services,
- System members of the National Urban Search and Rescue Response System (NUSRRS) during a period of appointment into Federal service under section 327 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act,
- Intermittent personnel who are appointed into Federal Emergency Management Agency (FEMA) service under section 306(b)(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5149(b)(1)) or to train for such service,
- National Disaster Medical System (NDMS) intermittent disaster response appointees, and
- any other category of persons designated by the President in time of war or national emergency.

National Guard: A reserve of the U.S. Armed Forces. The N.C. Army and Air National Guard respond to the Governor as Commander in Chief and serve as the military arm of State government and respond to the President of the U.S. in time of war.

Also included are the Civil Air Patrol and State Defense Militia in accordance with the Special Provisions outlined at the end of this policy

Covered Employees: Full-time or part-time (half-time or more) permanent, probationary, and time-limited employees are eligible for military leave.

- Temporary and part-time (less than half-time) are not eligible for military leave.
 - Although temporary employees are not eligible for military leave benefits, they are covered under the reinstatement policies.
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² 38 U.S.C. § 4303(17)

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§ 4. Types of Military Leave

The policy and guidelines that follow are presented in six different sections to differentiate between the benefits applicable to the different types of leave. The sixth section covers reinstatement.

Section 1 - Active Duty Training and Inactive Duty Training

Section 2 - Physical Examination

Section 3 - Reserve Active Duty

Section 4 - Extended Active Duty and Other Military Leave without Pay

Section 5 - Civil Air Patrol and State Defense Militia

Section 6 - Reinstatement

§ 4.1. SECTION 1 - ACTIVE DUTY TRAINING AND INACTIVE DUTY TRAINING

§ 4.1(a) Leave Options

Leave with pay, up to a maximum of 120 hours each Federal fiscal year (Oct.-Sept.), prorated for part-time employees, shall be granted to members of the uniformed services for:

- active duty for training (annual training or special schools, including an authorized training program for the NDMS or FEMA)
- inactive duty training (drills - usually on weekends)

If the drill is not scheduled on the employee's off-day, the employee has the option of requesting that the work schedule be rearranged, or the employee may use any unused portion of the 120 hours leave with pay, vacation/bonus leave or leave without pay.

Additional military leave needed for training shall be charged to vacation/ bonus leave or leave without pay at the discretion of the employee.

When a military obligation is less than 31 days an employee is authorized eight (8) hours recoup time before and after performance of military duties or military training. This time may also be charged to the 120 hours leave with pay, leave without pay or vacation/bonus leave. Example: An employee may be scheduled on a Friday, to take a convoy to a specific site. If significant travel is required, the employee may need to be released early on the day before training in order to accommodate the request for travel and reasonable rest. The employee is to 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 8 hour rest period.

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Agencies using BEACON HR/Payroll System :

If an employee has holiday compensatory time, overtime compensatory time, gap hours compensatory time, on-call compensatory time or travel compensatory time, it shall be taken before vacation/bonus leave.

§ 4.1(b) Notification

The employing agency may require the employee to provide notification of upcoming duty and/or schedule changes as soon as known.

§ 4.2. SECTION 2 – PHYSICAL EXAMINATION

§ 4.2(a) Leave With Pay for Physical Examination

Leave with pay shall be granted for a required fitness examination relating to service in the uniformed services.

§ 4.3. SECTION 3 – RESERVE ACTIVE DUTY

§ 4.3(a) Compensation

The following shall apply for:

- Each period of involuntary service when ordered to State or Federal active duty,
 - Or the following types of service, which are also deemed involuntary service in the uniformed services under this policy:
 - Service as an intermittent disaster-response appointee upon activation of the NDMS,,
 - An appointee to federal service as a member of NUSRRS under section 327 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, or
 - An appointee to FEMA service under section 306(b)(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5149(b)(1)).³
- (1) Members shall receive up to thirty (30) calendar days of pay based on the employee's current annual State salary.

³ See N.C.G.S. § 127A-116.

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This includes special activities of the National Guard, usually not exceeding one day, when so authorized by the Governor or his authorized representative.

(2) After the thirty-day period, members shall receive differential pay for any period of involuntary service. This pay shall be the difference between military basic pay and the employee's annual State salary, if military pay is the lesser.

When attending special activities of the National Guard, members shall receive up to one day of pay, when attendance at the special activity is authorized by the Governor or his authorized representative.

It is generally assumed that an employee had at least satisfactory performance when placed on military leave; therefore, any legislative increases or applicable labor market adjustments should be included in the differential pay. The addition of career growth adjustments or performance bonuses is determined in the same manner as any employee on leave without pay. If an employee was otherwise not entitled to any benefits conferred by law because of unsatisfactory job performance supported by the previous rating on a performance appraisal, the employee does not become eligible to receive those benefits simply by being placed on military leave.

§ 4.3(b) Notification Required for Full Pay or Differential Pay

The employing agency shall require the employee, or an appropriate officer of the uniformed service in which such service is performed, to provide written or verbal notice of any service.

For periods eligible for military leave with differential pay, the agency shall require the employee to provide a copy of their Leave and Earnings Statement or similar document covering the period eligible for differential pay.

§ 4.3(c) Leave Options

Prior to the 30 days of full pay and the differential pay, the employee may choose to have accumulated vacation/bonus leave paid in a lump sum (maximum of 240 hours of vacation leave), exhausted, or retained (part or all) until return. The employee shall retain any unused sick leave.

FLSA Subject employees may exhaust any compensatory time prior to exhausting leave or it may be paid in a lump sum. FLSA Not Subject employees may exhaust compensatory time in accordance with the provisions in the Compensatory Time Policy prior

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to exhausting leave with approval of the supervisor, consistent with the policy; however, it may not be paid out in a lump sum.

§ 4.3(d) **Benefits**

Service Credit: During the period of reserve active duty, whether receiving full State pay, differential pay, or no pay, the employee shall not incur any loss of total State service.

Longevity - If eligible, the employee shall continue to be paid longevity payments during the period of reserve active duty.

Leave: The employee shall continue to accumulate sick and vacation leave. If the employee does not return to State employment, vacation leave earned while on reserve active duty will be paid in accordance with the Vacation Leave Policy.

Retirement: The employee shall receive retirement service credit for periods of service authorized in the Retirement System statute. (See Retirement System Handbook for further details.)

Effective July 1, 2009, differential pay meets the statutory definition of "compensation" for retirement purposes. Thus, retirement contributions should be reported to the Retirement System on differential pay.

Health Insurance: When on State duty, the State continues to pay for health coverage for members of the National Guard. When on Federal active duty, the State will pay for coverage in the State Health Plan for at least 30 days from the date of active service pursuant to the orders. Partial premiums are not accepted; therefore, if a full premium is paid to cover a partial month, coverage will also continue to the end of that month. If the employee chooses to exhaust vacation leave, the State also pays for coverage while exhausting leave. The member may elect to continue their coverage (and coverage for dependents) for up to 24 months after their absence begins, or for the duration of the period of absence, whichever is shorter.⁴ The member cannot be required to pay more than 102% of the full premium for the coverage.⁵

⁴ A Guide to the Uniformed Services Employment and Reemployment Rights Act; 38 U.S.C. § 4317; 20 C.F.R. § 1002.164; 20 C.F.R. § 1002.166

⁵ This is similar to benefits a former state employee would be eligible for under COBRA.

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§ 4.4. SECTION 4 – EXTENDED ACTIVE DUTY AND OTHER MILITARY LEAVE WITHOUT PAY

§ 4.4(a) Periods Eligible

Military leave without pay shall be granted for all uniformed service duty that is not covered by military leave with pay defined in Sections 1-3. Among the reasons are:

- (1) Initial active duty for training (voluntary initial enlistment);
- (2) Extended active duty (voluntary) for a period not to exceed five years plus any additional service imposed by law (see Advisory Note on next page);
- (3) Full time National Guard duty (usually a voluntary 3 year contract);
- (4) While awaiting entry into active duty, such period as may be reasonable to enable the employee to address personal matters prior to such extended active duty;
- (5) The period immediately following eligible period(s), as defined under “Reinstatement” of this policy, while reinstatement with State government is pending, provided the employee applies for such reinstatement within the time limits defined. (It is the employee’s responsibility to apply for reinstatement within the time limit defined.);
- (6) Employees hospitalized for, or convalescing from, an injury or illness incurred in, or aggravated during the performance of extended active duty, except that such period shall not exceed two years beyond their release from extended active duty under honorable conditions. Also, the employee shall be entitled to leave without pay for the period from the time of release by the physician until actually reinstated in State employment, provided the employee applies for such reinstatement within the time limits defined;
- (7) Duties resulting from disciplinary action imposed by military authorities; and
- (8) Inactive duty training (drills) performed for the convenience of the member, such as equivalent training, split unit assemblies, make-up drills, etc.

Agencies are not required to excuse an employee for incidental military activities such as volunteer work at military facilities (not in duty status), unofficial military activities, etc., unless otherwise permitted by this policy.

The following types do not count toward the cumulative 5-year limit of military service a person can perform while retaining reemployment rights⁶:

⁶ See 20 C.F.R. § 1002.99 - .103 for full explanation of the additional categories of service (eight total) that are exempt from the five-year limitation.

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- (1) Unable (through no fault of the individual) to obtain release from service or service in excess of 5 years to fulfill an initial period of obligated service,
- (2) Required drills and annual training and other training duty certified by the military to be necessary for professional development or skill training/retraining, or
- (3) Service performed during time of war or national emergency or for other critical missions/contingencies/military requirements.

§ 4.4(b) Notification

The employing agency shall require the employee, or an appropriate officer of the uniformed service in which such service is performed, to provide written or verbal notice of service.

§ 4.4(c) Leave Options

Prior to going on LWOP, the employee may choose to have accumulated vacation/bonus leave paid in a lump sum (maximum of 240 hours of vacation leave), exhausted, or retained (part or all) until return. The employee shall retain any unused sick leave.

FLSA Subject employees may exhaust any compensatory time prior to exhausting leave or it may be paid in a lump sum. FLSA Not Subject employees may exhaust compensatory time in accordance with the provisions in the Compensatory Time Policy prior to exhausting leave with approval of the supervisor, consistent with the policy; however, it may not be paid out in a lump sum.

§ 4.4(d) Benefits

Service Credit: During periods eligible for military leave without pay, the employee shall continue to earn time toward total State service if reinstated within the time limits outlined in the Reinstatement Section.

Longevity: If eligible, employees shall receive a longevity payment computed on a prorata basis prior to leave without pay. The balance will be paid when the employee returns from military leave and completes a full year. Then, a full payment will be made on the employee's longevity date that was established before going on leave without pay. The period of time an employee is on unpaid military leave or on military leave for a reason other

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than reserve active duty is considered as time worked for the purpose of qualifying for a higher longevity pay.

Leave: The employee shall not accumulate vacation or sick leave. Leave is earned only when the employee is on leave with pay or on reserve active duty. However, the period of time an employee is on unpaid military leave or on military leave for a reason other than reserve active duty is considered as time worked for the purpose of qualifying for a higher leave accrual.

Retirement: The employee shall receive retirement service credit for periods of service authorized in the Retirement System statute. (See Retirement System Handbook for further details.)

Health Insurance: The State will pay for coverage in the State Health Plan for at least 30 days from the date of active service pursuant to the orders. If the employee chooses to exhaust vacation leave, the State also pays for coverage while exhausting leave. Partial premiums are not accepted; therefore, if a full premium is paid to cover a partial month, coverage will also continue to the end of that month. The member may elect to continue their coverage (and coverage for dependents) for up to 24 months after their absence begins, or for the duration of the period of absence, whichever is shorter. The member cannot be required to pay more than 102% of the full premium for the coverage.

§ 4.5. SECTION 5 – CIVIL AIR PATROL AND STATE DEFENSE MILITIA

§ 4.5(a) Civil Air Patrol

While the Civil Air Patrol is not a reserve component, it is an auxiliary to the Air Force. Its members are not subject to obligatory service. When performing missions or encampments, authorized and requested by the U.S. Air Force or emergency missions for the State at the request of the Governor or the Secretary, Department of Crime Control and Public Safety, its members are entitled to military leave with pay not to exceed 120 hours (prorated for part-time employees) in any calendar year. Exceptions may be granted by the Governor. Such service may be verified by the Secretary of the Department of CCPS upon request by the employing agency. Regularly scheduled unit training assemblies, usually occurring on weekends are not acceptable for military leave, however, employing agencies are encouraged to arrange work schedules to allow employees to attend this training.

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§ 4.5(b) State Defense Militia

The State Defense Militia is considered a reserve to the National Guard, but it is not a reserve component of the U. S. Armed Forces. Its members are not subject to obligatory service unless they are assigned to a unit that is ordered or called out by the Governor. Only under the following conditions are State employees entitled to military leave with pay:

- infrequent special activities in the interest of the State, usually not exceeding one day, when so ordered by the Governor or his authorized representative
- State duty for missions related to disasters, search and rescue, etc., again, only when ordered by the Governor or his authorized representative.

Under these conditions, an employee may be granted military leave not to exceed 120 hours (prorated for part-time employees) during any calendar year.

State employees who are members of the State Defense Militia are not entitled to military leave with pay when volunteering for support of functions or events sponsored by civic or social organizations even though such support has been “authorized.”

Regularly scheduled unit training assemblies, usually occurring on weekends, are not acceptable for military leave; however, employing agencies are encouraged to arrange work schedules to allow the employee to attend this training.

Duty status may be verified with:

The Office of the Adjutant General,
North Carolina National Guard,
ATTN: Vice Chief of Staff - State Operations (VCSOP).

§ 4.6. SECTION 6 – REINSTATEMENT

§ 4.6(a) Reinstatement

The agency is required to provide the same treatment that would have been afforded had the employee not left to perform uniformed service. (This includes temporary employees.)

Reinstatement shall be made if the employee reports to work or applied for reinstatement within the established time limits, unless the service was terminated by the occurrence of either of the following:

- (1) A separation with a dishonorable or bad conduct discharge.
- (2) A separation under other than honorable conditions, as characterized pursuant to regulations prescribed by the Secretary of the applicable military branch..

Military Leave Policy (cont.)

Employees who resign to enter military service without knowledge of their eligibility for leave without pay and reinstatement benefits, but who are otherwise eligible, shall be reinstated as if they had applied for this benefit.

§ 4.6(b) Time Limits

The employee shall be responsible for returning, or making application for reinstatement, within the time limits defined below.

The time limit for submitting an application for reemployment or reporting back to work depends upon the length of uniformed service. If reporting back or submitting an application for reemployment within the specified periods is impossible or unreasonable through no fault of the employee, the employee must report back or submit the application as soon as possible thereafter. If the employee is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service, they must report back or submit an application for reemployment at the end of the period necessary for recovering from the illness or injury. This period may not exceed two years from the date of the completion of service, except that it must be extended by the minimum time necessary to accommodate circumstances beyond the employee's control that make reporting within the period impossible or unreasonable.⁷ The service duration and periods for returning or applying for reemployment are as follows:

- less than 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 8 hour rest period;
- more than 30 days but less than 181 days, must submit a written or verbal application for reemployment with the agency not later than 14 days after the completion of the period of service; or,
- more than 180 days, by submitting a written or verbal application for reemployment with the agency not later than 90 days after the completion of the period of service.

§ 4.6(c) Reinstatement Position

Reinstatement shall be to the position they would have likely achieved had they remained continuously employed (escalator position); or, if the period of uniformed service was in excess of 90 days, their escalator position, or one of like seniority, status and pay

⁷ 20 C.F.R. § 1002.116

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with the same agency or with another State agency. In the case of reemployment, such reemployment is to be promptly effective.

If the employee was serving their probationary period at the time they began military leave, they will be required to complete the remaining portion of his or her probation if there is a need for actual training and/or observation instead of merely time served in the position. However, once the employee completes the remaining portion of the probationary period, under the escalator principle, the subject employee's permanent status should be awarded retroactively to the date they would have attained permanent status had it not been for their active military service.⁸

If, during military service, the employee suffers a disability incurred in, or aggravated during, uniformed service, to the extent that the duties of the escalator position cannot be performed, the agency must make reasonable efforts to accommodate that disability and to help the employee become qualified to perform the duties of their escalator position. If the employee is not qualified for reemployment in the escalator position because of a disability after reasonable efforts by the agency to accommodate the disability and to help the employee to become qualified, the employee must be reemployed in:

- (a) A position that is equivalent in seniority, status, and pay to the escalator position; or
- (b) A position that is the nearest approximation to the equivalent position, consistent with the circumstances of the employee's case, in terms of seniority, status, and pay. A position that is the nearest approximation to the equivalent position may be a higher or lower position, depending on the circumstances.⁹

The employer must make reasonable efforts to accommodate the employee's disability and to help them to become qualified to perform the duties of one of these positions.¹⁰

§ 4.6(d) **Reinstatement Salary**

The employee's salary upon reinstatement shall be based on the salary rate applicable to the proper escalator position and must include any salary increases the employee would have received but for the military leave, such as legislative increases or

⁸ 70 Fed. Reg. 75246 at 75272 (Dec. 19, 2005).

⁹ 20 C.F.R. § 1002.225

¹⁰ 20 C.F.R. § 1002.226

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applicable labor market adjustments.¹¹ In no case will the reinstated employee's salary be less than when placed in a military leave status. If the employee was in a trainee classification at the time of military leave, the addition of trainee salary increases may be considered, at the discretion of the agency head, if it can be determined that military experience was directly related to development in the area of work to be performed in the State position. The addition of trainee increases must be made if it can be shown that progression within or through such status is based merely upon the passage of time with satisfactory performance. If the employee is not eligible for the trainee increases immediately upon reinstatement, upon completion of any requirements, the trainee increases must be provided retroactive to the date the employee was reinstated from military leave. If a passing score on a skill and/or knowledge assessment is required to receive a trainee increase the returning service member shall be provided a reasonable amount of time to prepare for and take the assessment after their reinstatement. Further, the employee's permanent status should be awarded retroactively to the date they would have attained permanent status had it not been for their active military service.¹²

It is assumed that an employee had at least satisfactory performance when placed on military leave; therefore, any cost-of-living adjustment should be included in the reinstatement pay.

Federal law requires employers to notify employees of their rights under the Uniformed Services Employment and Reemployment Rights Act. This requirement may be met by displaying a poster at the location where employers customarily place notices for employees. The poster developed by the U.S. Department of Labor may be found at the following web site: <http://www.dol.gov/vets/programs/userra/poster.htm>

§ 5. Sources of Authority

- [N.C.G.S. § 126-4\(5\)](#), [§ 127A-116](#) and the [Uniformed Services Employment and Reemployment Rights Act of 1994](#)

It is compliant with the Administrative Code rules at:

- [25 NCAC 01E .0800](#)

¹¹ 20 C.F.R. § 1002.193(a)

¹² 20 C.F.R. § 1002.193(b); 70 Fed. Reg. 75246 at 75272 (Dec. 19, 2005).

Military Leave Policy (cont.)**History of This Policy**

Date	Version
July 1, 1950	<ul style="list-style-type: none"> Regulations governing military leave approved.
October 1, 1959	<ul style="list-style-type: none"> Military leave with and without pay adopted.
December 15, 1969	<ul style="list-style-type: none"> An employee may be granted necessary time off as administrative leave, when required for examination, to determine physical fitness to enter military service.
January 1, 1973	<ul style="list-style-type: none"> Added the words “or members of the Civil Air Patrol performing emergency assignments for the State” under Emergency or Special Duty Assignments.
January 7, 1976	<ul style="list-style-type: none"> Changes maximum leave with pay time allowed for annual active duty from 15 to 16 calendar days each year; provides leave with pay for unannounced practice alerts, provides differential pay for full-time training duty in support of the N. C. Military Academy when ordered to duty, grants leave with pay for infrequent special activities, places limit of 30 days on leave with pay for active State duty and grants up to one month of military leave without pay for attendance at service schools.
September 1, 1976	<ul style="list-style-type: none"> Differential pay between military pay and State pay for full-time training duty when in addition to annual active duty for training. An employee may elect to use 96 hours or less of military leave with pay for service school attendance which time shall count as military leave with pay in lieu of attendance at annual active duty for training.
May 1, 1977	<ul style="list-style-type: none"> Added permanent part-time employees to policy. Added to Unacceptable Periods “regularly scheduled unit assemblies usually occurring on weekends and referred to as drills.” Adds the word “required” when granting leave without pay for attendance at a service school.

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	<ul style="list-style-type: none"> Allows that annual leave be exhausted or paid in a lump sum for Initial Active Duty Training in the Reserve and for Extended Active Duty. Further it allows that annual leave may be exhausted or may be retained for future use for Attendance at Service Schools and for Extended Annual Active Duty.
March 1, 1978	<ul style="list-style-type: none"> Authorized military leave from any of the governmental units for which service credit is granted, provided the employee is reinstated within the time limits outlined in the state military leave policies. Included options for using annual leave or retaining.
August 1, 1979	<ul style="list-style-type: none"> Members of Armed Forces reserve components entitled to leave with pay up to 15 calendar days. Members of Army or Air National Guard entitle to leave with pay when ordered for emergency or special duty.
December 1, 1980	<ul style="list-style-type: none"> Leave for military training and State Duty as designated by Governor, Military leave with differential pay and without pay. Clarified that military leave without pay is available for one voluntary enlistment at any time (not just in lieu of being drafted) as required by federal law.
June 1, 1981	<ul style="list-style-type: none"> Military leave with pay should be prorated for part-time employees and employees working a seven-day operation shall have their schedules rearranged when necessary to permit the person to be off on the weekends for drill.
November 1, 1990	<ul style="list-style-type: none"> Added State Defense Militia as National Guard component in accordance with law.
October 1, 1992	<ul style="list-style-type: none"> The amount of military leave with pay for active military duty training has been changed from 96-120 hours. Although "drills usually occur on weekends, there are times when employees must leave on Friday to take convoys to training sites, provision has been added that will allow some of the 120 hours to be used for this purpose if it is available.

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	<ul style="list-style-type: none"> The provisions for duty with Civil Air Patrol and for members of the State Defense Militia have been moved to the end of the policy so that it will not be confused with the provisions for reserve components of the U.S. Armed Forces. The provisions for the Civil Air Patrol have not changed, except to increase the maximum amount to 120 hours.
October 1, 1992	<ul style="list-style-type: none"> Military leave with pay, up to 120 hours, for the State Defense Militia will cont'd be allowed only when ordered by the Governor or his authorized representative for special activities or for missions related to disasters, search and rescue, etc. This can be verified with the Office of the Adjutant General.
August 1, 1995	<ul style="list-style-type: none"> Changes the terminology to "permanent, probationary, trainee appointment" rather than "permanent, probationary, trainee employment." In addition, "time-limited" appt has been spelled out in the appropriate policies, whereas, in the past, this type of appt was considered to be a type of "permanent" appt.
October 1, 1998	<ul style="list-style-type: none"> Revisions mainly to implement the provisions of The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). <p>Changes required by law:</p> <ul style="list-style-type: none"> Includes terminology used in the USERRA and defines what is included in the Uniformed Services and what is considered as service in the Uniformed Services. Notification of service is required at the earliest opportunity and may be a written or verbal notice by the employee or an appropriate officer of the uniformed service. Employee has option of requesting a change in work schedule if drill is not scheduled on the employee's off-day; the agency cannot require employee to change schedule. Time limit for reporting back to work depends upon the length of uniform service.

Military Leave Policy (cont.)

	<ul style="list-style-type: none"> • May elect to continue employer-sponsored health care for a period of up to 18 months. • Expands to 5 years the cumulative length of time that an individual may be absent and retain reemployment rights. • Service members convalescing from injuries received during service or training may have up to two years to return to their job. <p>Changes not required by law:</p> <ul style="list-style-type: none"> • Leave with pay is not allowed on initial active duty for training. Employee may use all or part of the 120 hours of leave with pay when ordered to Federal active duty (mobilization).
September 1, 2001	<ul style="list-style-type: none"> • Revised to conform to House Bill 231, Sections 23.(a) and 23.(b) that rewrote G.S. 127A-116 to provide for leaves of absence without loss of pay, time or efficiency rating for federal military duty. Provided for 30 days full pay and differential pay if military pay is less than state pay. • Also rescinded the provision for using the 120 hours for active duty. It can only be used for training.
September 1, 2002	<ul style="list-style-type: none"> • Revised to clarify that 120 hours leave with pay is granted each Federal fiscal year (Oct-Sept).
September 30, 2002	<ul style="list-style-type: none"> • Revised to clarify that 120 hours leave with pay is granted each Federal fiscal year (Oct-Sept).
March 1, 2003	<ul style="list-style-type: none"> • Policy format rearranged for clarification. • Health insurance coverage clarified. • Correction under Reinstatement Position from “180 days” to “90 days.”
June 1, 2003	<ul style="list-style-type: none"> • Note added to clarify that although temporary and intermittent employees are not eligible for pay and leave benefits, they are entitled to reinstatement rights.
August 1, 2004	<ul style="list-style-type: none"> • Deleted Advisory Note under Compensation since the temporary rule has become permanent.

Military Leave Policy (cont.)

October 1, 2004	<ul style="list-style-type: none"> Added provisions for the National Disaster Medical System rule providing for differential pay has become a permanent rule.
March 1, 2005	<ul style="list-style-type: none"> Add Advisory Note regarding the requirement for employers to provide notification to employees about their rights under the USERRA.
January 1, 2008	<ul style="list-style-type: none"> Advisory Note added for agencies using BEACON HR/Payroll System: If an employee has holiday compensatory time, overtime compensatory time or on-call compensatory time, it shall be taken before sick leave. Hours worked in excess of the employee's established work schedule will be used to offset leave reported in the same overtime period. Leave will be restored to the employee's uses balance for later.
July 1, 2009	<ul style="list-style-type: none"> Revised Advisory Note to add gap hours compensatory time and travel compensatory time to leave hierarchy used in the BEACON HR/Payroll System.
July 1, 2009	<ul style="list-style-type: none"> Changes made to conform to the retirement legislation which authorizes differential pay to be considered as compensation for retirement purposes.
January 1, 2011	<ul style="list-style-type: none"> Advisory Note about Leave Offsetting deleted and placed in General Leave Policies.
January 1, 2012	<p>Note from January 2012:</p> <ul style="list-style-type: none"> To ensure compliance with G.S. 135-45.12(a)(5) [now G.S. 135-48.44(a)(5)] and G.S. 135.44- 12(d)(2) the health insurance provisions of the policy was changed to remove the statement that an employee may choose to continue health insurance coverage in the State Health Plan by paying the full premium. Also, portions of the policy previously identified as "notes" or "advisory notes" are no longer referenced as "notes" but are now written as policy. <p>Note on the 2012 change added in July 2024:</p>

Military Leave Policy (cont.)

	<ul style="list-style-type: none"> • The 2012 change missed the requirement for health coverage under federal law in Section 4317(a)(1)(A) of USERRA, 38 U.S.C. § 4317(a)(1)(a), along with the Health Plan statute at G.S. 135-48.4, which states, “If any provision of this Article is in conflict with applicable federal law, federal law shall control to the extent of the conflict.” Therefore, the January 2012 change on health insurance was reversed in July 2024.
September 7, 2017	<ul style="list-style-type: none"> • Policy revised to delete all reference to trainee appointments, per appointment types and career status.
July 11, 2024	<ul style="list-style-type: none"> • Added footnotes with citations to federal guidance throughout the policy. • The definitions of “Service in the Uniformed Service” and “Uniformed Services” were updated to include all types of service and uniformed services listed in the US Code. • In Section 3, entitled “Reserve Active Duty”: <ul style="list-style-type: none"> ○ The provision entitled “Compensation” was reformatted and updated. <ul style="list-style-type: none"> ▪ Pursuant to the federal USERRA law, added appointment to federal service as a member of the National Urban Search and Rescue Response System (NUSRSS) and appointee to Federal Emergency Management Agency (FEMA) service to the types of service eligible for the compensation detailed in this section. ○ Changed the reference to “cost of living adjustment” to “legislative increase” and added a reference to labor market adjustment as types of pay adjustments that should be included in the compensation detailed in this section. ○ In the provision entitled “Leave Options,” added a reference to FLSA Not Subject employees utilizing compensatory time in accordance with the Compensatory Time policy. ○ In the provision entitled “Benefits,” for compliance with USERRA, added language that states “a member may elect to continue their coverage (and coverage for dependents) for up to 24 months after their absence begins, or for the duration of the period of absence, whichever is shorter. The member

Military Leave Policy (cont.)

	<p>cannot be required to pay more than 102% of the full premium for the coverage.”</p> <ul style="list-style-type: none"> • In Section 4, entitled “Extended Active Duty and Other Military Leave Without Pay”: <ul style="list-style-type: none"> ○ In the provision entitled “Leave Options,” added the same language as in Section 3 about FLSA Not Subject employees utilizing compensatory time in accordance with the Compensatory Time policy. ○ In the provision entitled “Benefits,” added explanatory language to the Longevity and Leave provisions that clarifies period of time an employee is on unpaid military leave or on military leave for a reason other than reserve active duty is considered as time worked for the purpose of qualifying for a higher longevity pay and higher leave accrual. ○ In the provision entitled “Health Insurance,” added the same language as in Section 3 clarifying “a member may elect to continue their coverage (and coverage for dependents) for up to 24 months after their absence begins, or for the duration of the period of absence, whichever is shorter. The member cannot be required to pay more than 102% of the full premium for the coverage.” • In Section 6, entitled “Reinstatement”: <ul style="list-style-type: none"> ○ Removed obsolete reference to the intermittent employee type. ○ In the provision entitled “Time Limits,” added information related to hospitalization or recovery of an employee and the time they have to return to employment following a service related illness or injury. ○ In the provision entitled “Reinstatement Position,” added: <ul style="list-style-type: none"> ▪ A paragraph on how to handle reinstatement of an employee who was in their probationary period when they went out on leave, and ▪ Language to clarify the employer obligation when reinstating a service member who was disabled during military service. ○ In the provision entitled “Reinstatement Salary”:
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Military Leave Policy (cont.)

	<ul style="list-style-type: none">▪ Added language to clarify the reinstatement salary should include any salary increases the employee would have received but for the military leave, such as Legislative Increases or Labor Market Adjustments.• Expanded the explanation of how an employee who was in a trainee classification at the time they began military leave should be treated upon reinstatement.
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