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Paid Military Leave for Public Employees in Minnesota

By Gavriel Swerling[1]

Minnesota law provides as follows concerning paid military leave for employees of the state and its political subdivisions:

" Subject to the conditions hereinafter prescribed, any officer or employee of the state or of any political subdivision, municipal corporation, or other public agency of the state who shall be a member of the National Guard, or any other component of the militia of the state now or hereafter organized or constituted under state or federal law, or who shall be a member of the officers' reserve corps, the enlisted reserve corps, the Naval Reserve, the Marine Corps reserve, or any other reserve component of the military or naval forces of the United States now or hereafter organized or constituted under federal law, shall be entitled to leave of absence from the public office or employment without loss of pay, seniority status, efficiency rating, vacation, sick leave, or other benefits for all the time when engaged with such organization or component in training or active service ordered or authorized by proper authority pursuant to law, whether for state or federal purposes, but not exceeding a total of 15 days in any calendar year. The state or political subdivision, municipal corporation, or other public agency shall allow the officer or employee to choose when during the calendar year to take the 15 days of paid military leave. The officer or employee may choose to use all of the 15 days of paid military leave at one time or, in the alternative, the 15 days of paid military leave may be divided and taken throughout the calendar year at the discretion of the officer or employee. Such leave shall be allowed only in case the required military or naval service is satisfactorily performed, which shall be presumed unless the contrary is established. Such leave shall not be allowed unless the officer or employee (1) returns to the public position immediately on being relieved from such military or naval service and not later than the expiration of the time herein limited for such leave, or (2) is prevented from so returning by physical or mental disability or other cause not due to the officer's or employee's own fault, or (3) is required by proper authority to continue in such military or naval service beyond the time herein limited for such leave." Minnesota Statutes, section 192.26.

In 1975, the Minnesota Supreme Court held that service members were only entitled to paid leave for duty assignments (active or inactive) lasting under 15 days. Longer assignments were governed under M.S.A. § 192.261, which allows for unpaid leave for the duration of any such assignment. *Byrne v. Independent School Dist. No. 237*, 232 N.W.2d 432 (1975). So any service

[1] Gavriel Swerling is an ROA Service Members Law Center Associate. He is in his third year at the University Of Maryland School Of Law and is a First Lieutenant in the Marine Corps Reserve. After he graduates from law school and passes the Maryland bar exam, he will go on active duty in the Marine Corps, as a judge advocate, for at least four years. Thank you to RADM James J. Carey and the Washington Scholars for sending him our way. *The views expressed in this article do not represent the Maryland Law School or the Marine Corps.

member requiring a military leave of absence longer than 15 days was precluded from receiving any paid leave. Both laws have, however, been amended several times, in effect, overturning *Byrne*.

Calculating Leave Days

Not all calendar days for which a service member is on duty are to be counted towards the 15 day limit. Op.Atty.Gen., 310-H-1A, April 7, 1971. "The 15 days of paid military leave may be divided and taken throughout the calendar year at the discretion of the officer or employee". Minnesota Statutes, section 192.26. Furthermore, military leave must be calculated in days, and cannot be reduced or converted to hours. *Howe v. City of St. Cloud*, 515 N.W.2d 77 (1994). This means that a firefighter working a 16 hr shift, from 6 a.m. to 10 p.m., would receive paid leave as if he had worked the entire shift, but only be charged one of his 15 days of paid military leave. The fact that he worked two standard eight hour work days is not relevant; he only missed one calendar day of work.

Differential Pay

In addition to paid leave, state and local employees are entitled to "an amount equal to the difference between the member's base active duty military salary and the salary the member would be paid" as a public employee.

The relevant statutes read as follows:

"Except as provided in paragraph (b), a statutory or home rule charter city, county, town, or other political subdivision may pay to each eligible member of the National Guard or other reserve component of the armed forces of the United States an amount equal to the difference between the member's base active duty military salary and the salary the member would be paid as an active political subdivision employee, including any adjustments the member would have received if not on leave of absence. This payment may be made only to a person whose base active duty military salary is less than the salary the person would be paid as an active political subdivision employee. Back pay authorized by this section may be paid in a lump sum. Payment under this section must not extend beyond four years from the date the employee reported for active service, plus any additional time the employee may be legally required to serve." M.S.A. § 471.975(a).

"Each agency head shall pay to each eligible member an amount equal to the person's salary differential for each month or portion of month that the person is ordered to serve in active service. This payment may be made only to a person for whom the amount in subdivision 2, paragraph (b), clause (1), is greater than the amount in subdivision 2, paragraph (b), clause (2). Payments must be made at the intervals at which the member received pay as a state employee, except that any back pay due under this section may be paid as a lump sum. Payment under this section must not extend beyond four years from the date the employee reported for active service, plus any additional time the employee may be legally required to serve. An eligible member may apply for the salary differential benefits authorized under this section prior to,

during, or following the person's active service on or after May 29, 2003." M.S.A. § 43A.183 Subdivision 1.

For further reading see:
No. 133 State Laws, USERRA, and a $10,000 Judgment
No. 1273 Minnesota Teacher Called to Active Duty—Was He Required to Finance his own Substitute?