

Military Leave from State Service – What Are My Benefits If I Am On Active Duty in 2009?

Q. If I am activated for military service during 2009 what paid leave will I receive during my activation?

A. Under provisions of the NYS Military Law, the 2007-2011 State/PEF Agreement, and a the 2009 Memorandum of Understanding between PEF and the State of New York regarding military leave, you are eligible for the following types of fully and partially paid leave:

Military Leave with Pay

NYS Military Law Section 242 provides for paid military leave for 30 calendar days or 22 work days (whichever provides the greater benefit to the employee) in any calendar year or any continuous period of absence which spans more than one calendar year. This leave is available for any type of military activation.

If you have not charged military leave with pay during 2009, you will be eligible to receive the full benefit provided by the Military Law when you are called up to active duty.

If you have charged a portion of your Military Leave with Pay in 2009 for intermittent leave (e.g. training time), you will receive the balance of the 30 calendar days or 22 working days entitlement when called up to active duty.

Supplemental Military Leave

After exhausting leave benefits available under NYS Military Law Section 242, you may also be eligible for an additional 30 calendar days or 22 work days (again whichever provides the greater benefit to the employee) of “supplemental military leave.” Supplemental Military Leave is also leave at full pay.

This benefit is available for activations which are related to the “war on terror” (which includes the period from September 11, 2001 through December 31, 2009). You are eligible for this leave if you are called up to active duty in connection with the war on terror, including activations associated with military action in Iraq.

Employees are eligible to receive Supplemental Military Leave *only once* for activation related to the “war on terror.” If you have charged 30 calendar days or 22 work days of Supplemental Military Leave since September 11, 2001 you will not receive it again.

Military Leave at Reduced Pay

After exhausting Military Leave with Pay and Supplemental Military Leave, you may then charge off any accruals (other than sick leave) which you *elect* to

use to remain in full pay status. After exhausting any accruals you elect to charge, you may then be eligible for Military Leave at Reduced Pay. Under the current Military Leave MOU, Military Leave at Reduced Pay will continue until the end of your activation or December 31, 2006 which ever comes first.

While on Military Leave at Reduced Pay, you will receive your State salary (base pay plus any location pay and geographic differential) reduced by your military pay (base pay plus housing and food allowances).

Your State Reduced Pay salary will be calculated based on your state salary as of your last day in full pay status. However, if your activation began in 2008 and continues into 2009 your Military Leave at Reduced Pay will be recalculated based on the State salary you would be receiving on January 1, 2009 if your were not on military leave. If your military pay exceeds your State salary you will receive no compensation from the State during this period.

Like Supplemental Military Leave, you are eligible for this leave if you are called up to active duty in connection with the "war on terror" including activations associated with military action in Iraq.

Q. After I return from active service, am I entitled to any additional leave for other military service (e.g. continuing training obligations)?

A. The current Military Leave MOU also provides for Training Leave at Reduced Pay. You are eligible for Training Leave at Reduced Pay if you are returning from active military duty in connection with the war on terror and have exhausted your entitlement to Military Leave with Pay under Section 242 of the NYS Military Law.

During calendar year 2009 eligible employees may use up to 30 calendar days or 22 work days (whichever provides the greater benefit) of Training Leave at Reduced Pay for any required military duty (including mandatory weekend and summer training or other activation) that is not related to the war on terror.

While on Training Leave at Reduced Pay you will receive your State salary (base pay plus any location pay and geographic differential) reduced by your military pay (defined as base pay plus housing and food allowances). As with Military Leave at Reduced Pay, your State salary will be calculated based on your last day in full pay status for your first use of Reduced Pay in 2009 or January 1, 2009 (if you were in reduced pay status at that time) whichever is later. If your military pay exceeds your State salary you will receive no compensation from the State during this period.

Q. Do I have to return to work immediately upon my return from active duty?

A. Under the Uniformed Services Employment and Reemployment Rights Act (USERRA) and Section 243 of the NYS Military Law eligible employees who have been in active duty for 180 consecutive days or more are allowed up to 90 calendar days from the date of discharge from active duty to return to work (hereinafter "post-discharge period"). You may use the entire 90 day post-discharge period or you may elect to return to work sooner at your option.

Q. What benefits will I receive during my post-discharge period?

If you notify your agency that you are choosing to charge leave accruals (other than sick leave) during your post-discharge period your agency must honor this request.

If you are temporarily ordered back to military duty during your post-discharge period, you will be restored to the appropriate paid leave status (whether full pay or reduced pay) to the extent that these orders conflict with your regular work schedule.

Following the completion of any order military duty during your post-discharge period you will be returned to your post-discharge leave status until the expiration of your post-discharge period unless you elect to return to work sooner.

Q. Will I continue to earn leave accruals while I am on fully paid leave?

A. While you are on Military Leave with Pay and Supplemental Military Leave with Pay you remain in full pay status. During this period if you are otherwise eligible to earn leave accruals (vacation, sick and personal leave) you will continue to do so in the same manner as you do while working.

Q. Will I continue to earn leave accruals while I am on military leave at reduced pay?

A. While you are on Military Leave at Reduced Pay you will not earn bi-weekly vacation and sick leave credits. However, if your vacation anniversary date or your personal leave anniversary date fall during your period of Military Leave at Reduced Pay you will be credited with any bonus vacation, additional vacation days or personal leave days for which you are eligible and your anniversary date will not be adjusted. Any accruals balances which you have at the time that you begin Military Leave at Reduced Pay or Training Leave at Reduced Pay will be restored to you when you return from leave with the exception of any leave credits which otherwise expire during that period (e.g. unused personal leave).

Q. Do I have a hold on my position while I am on Military Leave?

A. Yes, NYS Military Law § 242 generally provides that any employee who is absent from work due to ordered military duty shall be granted a leave of absence from his/her State position for such duty. This leave of absence does not interrupt continuous employment for seniority purposes.

Q. Do I get retirement service credit while I am on military leave?

A. Yes, you are entitled to retirement service credit for all periods during which you are called to active duty. While you remain in full pay status you will continue to accrue retirement service credit in the same manner as you normally do. If you are in Tier 3 or 4 and still making a 3% employee contribution to the Retirement System, the deduction from your paycheck to cover that contribution will continue so long as any salary you are receiving is sufficient to cover the cost of your 3% employee contribution. Once you begin receiving Military Leave at Reduced Pay (or go on unpaid military leave), if any reduced pay is insufficient to cover the 3% contribution, you must make up those contributions based on the salary you would have received from the State if you had not been activated. Such contributions may be made to the Retirement System within five years of the termination date of ordered military duty.

Employees who are interested in receiving retirement service credit for any period of activation during which they are on Military Leave at Reduced Pay or unpaid military leave should contact the New York State Retirement System, whether or not they are still making contributions, to request full retirement service credit for the entire period of their activation and arrange for payment of any unpaid employee contributions for the period of activation.