

DIFFERENTIAL PAY FOR MILITARY DUTY (Q & A)

October 27, 2003

GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2003 SENATE BILL 714

A BILL TO BE ENTITLED AN ACT TO ENSURE THAT PUBLIC SCHOOL EMPLOYEES DO NOT LOSE PAY WHILE THEY ARE ON MILITARY DUTY.

SECTION 1. G.S. 115C-302.1 is amended by adding a new subsection to read:

"(g1) Payment During Military Duty. - The State Board of Education shall adopt rules relating to leaves of absence, without loss of pay or time, for periods of military training and for State or federal military duty or for special emergency management service. The rules shall apply to all public school employees, including, but not limited to, school teachers, administrators, school counselors, speech language pathologists, nurses, and custodians employed by local boards of education or by charter schools. The rules shall provide that

- i. the State pays any salary differential to all public school employees in State-funded positions,
- ii. the employing local board of education pays any pay differential to all public school employees in locally funded positions,
- iii. the employing charter school pays any pay differential to all public school employees in the charter school, and
- iv. the employing local board of education pays the local supplement."

SECTION 2. This act becomes effective on or after July 1, 2002.

This legislation is implemented by State Board of Education Policy, approved 10/06/2003:

16 NCAC 6C.0406 Military Duty Without Loss of Pay

Public school employees including charter school employees on leave of absence for State or federal military duty under honorable service status, for required training, or for special emergency management service shall be paid the difference in military base pay and public school salary, including non-performance based bonuses, when the military pay is less than the public school salary. Differential pay shall be paid from the same source of funds as the public school salary.

The following questions and answers concerning military leave have been developed to assist employees who are subject to General Statute Chapter 115C and have been called or have volunteered for active duty.

1. What is differential pay and who is eligible?

Differential Pay is for Leave Without Pay for military service or required training where the military pay is less than the public school salary. The Differential Pay provisions apply to all NC public school employees, including Charter School employees, and are retroactive to July 1, 2002.

2. What is public school salary?

For purposes of differential pay, public school salary is defined as salary plus special pay such as the \$1,800 for math, science and exceptional children bonuses for qualified schools, and National Board Certification. Public school salary includes pay in split-positions such as teacher assistant/bus driver. It does not include extra pay for extra duties or performance, such as coaching supplements or mentor pay.

3. How is differential pay determined?

Differential pay is determined by comparing public school salary with active duty military pay. Public school salary includes any special pay and salary bonuses. It does not include extra duty pay or performance pay bonuses. Local school systems are responsible for employees on local payroll and any local supplement. (See Item 2 above)

Military pay includes base military pay and other military pay such as enlistment and reenlistment bonuses, hazardous duty pay, and separation pay (excluding housing, subsistence allowances, etc.).

Upon receipt of the military leave and earnings statement or similar document, the school employee's payroll office will calculate any amount due. If the documentation is not provided until the employee returns to work, the differential pay due will be determined at that time. Any applicable legislated salary increase will be implemented.

Sample Calculation: A 10-month employee, paid in 10 installments, earns a state paid salary of \$2,500 per month. There is a local supplement of \$2,000 per year. This local supplement is equivalent to \$200 per month. The total public school salary for this employee is \$2,700 per month.

The military pay totals \$2,000 per month. Differentiated pay is calculated at \$700 per month. Local supplement is accounted for before calculating the state obligation.

In this example, the state obligation is \$500 and the local obligation is \$200.

4. How is military and public school pay equated? What about daily rates? What about 10-month employees on 12-month installment pay?

School salary and military pay are equated month for month. When possible, differentiated pay should be made monthly. For periods of less than a month a daily rate can be established. Both military pay and public school salary (including teacher salaries) should be equated based on the number of days in the month by taking the pay for the month and dividing by the number of calendar days in the month.

Some 10-month employees can be paid in 12 installments if they request it. The 12 installments reduce the monthly salary. In order to treat these employees like other 10-month employees, the annual salary is divided by 10 to obtain a monthly rate. Differential pay is not owed during the two-month inter-session (summer) break when 10-month employees are not paid.

If the employee requested to be paid in 12 monthly installments, some additional calculations will be necessary. Using the same salary information as in #3 above, the employee's monthly salary would be \$2,083.33 per month (monthly salary divided by 12 instead of 10) with the local supplement adjusted to reflect \$166.66 per month. The school system in this case will have to pay all salary owed the employee at the time he or she enters military leave (a leave without pay). The school system would follow the same procedures for salary payoffs as for any employee who separates from service. This will make the employee's pay current at the time of separation.

From the time the employee goes on military leave (leave without pay), the school system will need to treat the employee as a 10-month employee. Payment will continue as outlined above in #3 with state

salary being \$2,500 per month plus a \$200 per month local supplement. The total salary would be \$2,700 per month and would be applied to the military pay of \$2,000 per month. The employee would still be paid \$200 per month as a local supplement and \$500 per month from state salary. Total salary would be current and maintained as other employees paid on the 10-month calendar.

5. Who pays?

Differential Pay is paid from the same sources as the public school salary, including the local supplement, if any supplement is paid.

6. How is Differential Pay coded?

Differential pay is coded as follows:

- a. Salary Purpose Code is the same as the regular salary purpose code
- b. Program Report Code is 021, and
- c. Object Code is 187 (for both certified and non-certified employees).

For example,

Differential pay for someone in a regular instructional position will be 5110-021-187.

Differential pay for someone in a custodian position will be 6540-021-187.

(View Account Codes: Chart of Accounts)

7. What is the responsibility of the employee?

The employee is responsible for:

- a. Requesting differential pay for periods of leave without pay for military service or required training AND
- b. Providing military leave and earnings statements, pay vouchers, or similar documents covering the period for which differential pay is being requested.

8. What is the responsibility of the employer (Local Education Agency or Charter School)?

The employer is responsible for:

- a. Notifying employees going on Leave Without Pay for military duty or required training, after July 1, 2002, that they may be eligible for differential pay, AND
- b. To determine whether military pay is less than the employee's public school salary, including any local supplement (See Item 4), AND
- c. Paying any difference from the same sources as the salary is paid.

9. What about other payments?

- a. Salary Bonus authorized for October 1, 2003
Employees on military leave without pay, on October 1, 2003 are eligible to receive the salary

bonus (\$550) based on their LEA employment (permanent full or part-time) prior to the start of the military leave.

b. Longevity

If eligible for longevity, the employee is paid pro-rata to the start of military leave without pay. Upon return, any longevity remainder is paid on the employee's anniversary date.

c. Local Supplement

The legislation provides that the employing local board of education pays the local supplement.

d. ABC Bonus

Employees on military duty do not qualify for ABC bonus pay unless they worked in the school for at least 6 months and meet the school's qualifying criteria. The school's improvement plan should identify all factors related to the distribution of incentive awards. If the individual school does not address factors in distribution of funds, the local board can identify uniform regulations for the system.

e. Bonus Leave

If the employee received bonus leave (effective July 1, 2003), this leave may be used under the same provisions as available annual vacation leave. If the employee was on military leave without pay on July 1, 2003 he/she will receive bonus leave upon his or her return to work.

10. Can FLSA "non-exempt" employees exhaust earned compensatory leave prior to going on LWOP for military purposes?

If the LEA or charter school allows FLSA "non-exempt" employees to earn compensatory leave, the employer can choose to give the employee the option of being paid in a lump sum for the compensatory leave or exhausting this leave prior to military leave without pay. The issue of compensatory time should be resolved prior to going on a Leave Without Pay for active military service.

11. The legislation says without loss of time. How is this implemented?

a. Experience

Upon honorable separation, experience credit for DPI issued licenses is obtained by submitting Form R or Form M (Verification of Active Military Duty) with separation documentation through the school system and indicating active duty military call-up. (There should not be a Licensure fee charged. Indicate on the Form that the request is being made for active military duty.)

b. State Service

State service credit is assigned by the school system upon return to employment honorably separated.

c. Retirement

Upon return to employment honorably separated, the Retirement System is to be notified.

12. What about eligibility for tenure, renewal of licenses, or those in the Initial Licensure Program?

Except when using paid leave (15 days for training, vacation leave if applicable, etc.) active military duty time will count neither for nor against the individual. That is the employee on active duty will be "held harmless" and will pick up where they were at the start of military duty. Should the employee's

license expire while in active military status, the Licensure Section at the Department of Public Instruction should be notified to obtain an extension.

13. Does the employee on military duty accrue benefits while on leave for active duty?

Vacation and sick leave will be earned while using paid leave, including the 15 days of paid leave for military duty. However, leave is not earned while the employee is on military leave without pay.

Upon the employee's return to employment after honorable separation/discharge and within the time frames specified by USERRA (Item 15):

- Unused vacation and sick leave balances are reinstated, and,
- State service is credited for the period of military service, and,
- Retirement service credit is given upon the employee's reinstatement and applying to Retirement System. Contact the Retirement Systems Division of the State Treasurer's Office for instructions.

Health insurance coverage in the State Health Plan will be paid for at least 30 days from the date of active service, after which the employee may choose to continue coverage under the COBRA provisions or by paying the full premium.

14. When will the 30 day required health insurance coverage change take effect? How do school systems handle employees currently on military leave who may have already been taken off the health insurance coverage?

According to the State Health Plan, the change should take place immediately. Employees who went on military leave from February 1, 2003 forward should be reinstated if necessary in order to accommodate the change. Any further questions concerning changes to health insurance coverage should be directed to the State Health Plan Office. (See <https://shp.nctreasurer.com/>).

15. Is leave with pay applicable when a reservist or National Guard member is called to active duty?

Yes, under some circumstances. The 15 days of Military Leave with pay can be used if the active duty is for training. Employees in pay status are eligible for up to 15 days of leave with pay per federal fiscal year (October 1-September 30). Other available paid leave may be used prior to going on military leave without pay.

16. Do employees returning from military duty have to report to their public school jobs immediately after release from military duty?

The time limit for applying for reinstatement and reporting back to work depends upon the duration of uniformed service as follows:

- Less than 30 days service, 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.
- More than 180 days, by submitting an application with the agency not later than 90 days after the completion of the period of service.

(From the Uniformed Services Employment and Reemployment Rights Act (USERRA).)

17. Will an employee be reinstated in the same position held prior to military leave?

The employee will be reinstated to the same or a like position with seniority, status, and pay likely achieved had the employee remained continuously employed. Increases in salary based on experience and state service will be included.

18. What happens if an employee on military duty is wounded or disabled while on active duty and unable to perform the job after returning?

The employee will be reinstated to an available position as nearly comparable to the original position as his/her capabilities will permit. The deadline for reinstatement may be extended for up to two years for employees who are convalescing due to a disability incurred during military service.

19. If the employer makes staff reductions while an employee is on military leave, can an employee's job be terminated while he or she is on military duty?

An employer can terminate the job of an employee on military leave but would have to prove that the position would have been terminated regardless of the absence. Otherwise, the employer would have to rehire the returning employee in a comparable job with comparable pay.

20. How is paid leave and lump sum payout of leave handled?

Employees going on military duty may use available paid leave and comp time or they can be paid in a lump sum for comp time and/or (up to 30 days) vacation leave. Differential pay is not received for the days that the employee receives full salary because she/he is using paid leave or comp time. Also, for lump sum payouts, differential pay is not received for the number of fully paid days that are included in the payout. For example, if an employee going on military duty elects to be paid in a lump sum for 30 days of vacation leave, the employee would not be eligible for differential pay during the 30 days.

21. Should employees be paid for any vacation leave balance if they don't return to their job at the completion of their active duty assignment or if they don't apply for reinstatement within the designated timeframe?

An employee who does not return to his/her job, should be paid for all vacation leave earned but not used, up to a maximum of 30 days.

22. If an employee resigns from a public school position for personal reasons, then later decides to enlist in one of the branches of armed forces, does the employee have any reinstatement rights with the last civilian employer under the provisions of USERRA?

No. USERRA requires advance notice be given to the employer prior to any eligible military duty, including initial enlistment. The notice could not be given since the public school is no longer the employer.

23. Can a LEA employee on military leave without pay donate leave to an immediate family member in a public school or state agency?

Employees on military leave without pay for active duty may donate available leave (from their leave balance) to an immediate family member for their personal medical need or to care for another family member.

Legal Reference(s):

Public Law 103-353 Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) and its regulations found in Title 38, United States Code, Chapter 43 - Employment and Reemployment Rights of Members of the Uniformed Services.

G.S. 115C-12(8)

G.S. 125C-302.1 (g1) and (g2)

G.S. 127A-116

16 NCAC 6C.0404

25 NCAC 1E.0800

NCGA 2003, SB 714