

Wisconsin Human Resources Handbook

Chapter 720

Military Leave

Sec. 720.010	Introduction	Sec. 720.120	Pay Differential
Sec. 720.020	Statutory and Rule Authority		Administration/Leave Accrual
Sec. 720.030	Labor Agreement	Sec. 720.130	Benefits Administration
Sec. 720.040	Definitions	Sec. 720.140	Eligibility for Prompt Reemployment/Restoration
Sec. 720.050	Obligation to Grant Military Leave	Sec. 720.150	Reemployment/Restoration Position
Sec. 720.060	Military Leave Without Pay	Sec. 720.160	Employees That Don't Return from Military Leave
Sec. 720.070	Military Leave With Pay For Pre-Induction Physicals	Sec. 720.170	Protection from Discharge
Sec. 720.080	30 Days Military Leave Without Loss of Pay	Sec. 720.180	Dual State and Military Employment
Sec. 720.090	Extended Military Leave Without Loss of Pay	Sec. 720.180	Dual State and Military Employment
Sec. 720.100	Active State Service by Order of the Governor	Sec. 720.190	Military Leave and the Family & Medical Leave Act
Sec. 720.110	Coordination of Military Leaves	Sec. 720.200	Referral of Questions
		Sec. 720.210	Administrative Information

Sec. 720.010 Introduction

1. This chapter provides guidance to agencies regarding the administration of unpaid military leave, military leave without loss of pay, and reemployment rights as provided by federal law, Wisconsin statute, collective bargaining agreement, and executive policy. The general intent of these various provisions is to support persons who temporarily leave civilian jobs to serve in the armed forces of the United States, or in the Wisconsin National Guard or state defense force for duty ordered by the governor, by protecting their civilian jobs, and minimizing any adverse consequences to their pay level, benefits and status that would otherwise result from their absence for military service.
2. For federal military service, the federal Uniformed Services Employment and Reemployment Rights Act ([USERRA](#)) establishes employment and reemployment protections and supersedes any state or local law, contract, policy or practice, except that provisions more favorable to the employee may be provided by state law, employer policy, or collective bargaining agreement.
3. For state-level military service under orders of the governor with the Wisconsin National Guard or state defense force, public health emergency service with the state laboratory of hygiene, or National Guard duty under orders of the governor of another state, Wisconsin Statutes s. 321.65 provides job protections similar to the federal USERRA.

Sec. 720.020 Statutory and Rule Authority

1. The minimum standard for employment protections related to federal military service is established by the federal Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994, codified as Title 38, Chapter 43 of the U.S. Code, sections 4301-4334, and administered by the U.S. Department of Labor. USERRA is a comprehensive revision of the Veterans' Reemployment Rights law of 1940. In December of 2005, the Department of Labor issued final rules for implementing USERRA. These rules are

published in the Federal Register at 20 CFR Part 1002. State law, labor agreements, and employer policies may provide greater protection and benefits to employees covered by USERRA, but may not provide lesser protection and benefits.

2. Section 111.355, Wis. Stats., broadly prohibits employment discrimination because an individual is or applies to be a member of a U.S. or state military force, or because the individual performs, has performed, applies to perform, or has an obligation to perform military service.
3. Section 230.32, Wis. Stats., covers several military leave subjects:
 - a. Section 230.32 (3), Wis. Stats., sets forth the obligation of the state to grant military leave of absence to classified employees that enlist or are called to service in the U.S. armed forces, or that are ordered to other federal service, and requires that notice and terms of all such leaves shall be given in writing by the appointing authority to the Division of Personnel Management Administrator for purposes of record.
 - b. Sections 230.32 (1), (2)(b), (2)(c), and (5), Wis. Stats., set forth standards for the restoration of classified employees after such military or other federal service.
 - c. Section 230.32 (2)(a), Wis. Stats., provides that returning employees shall make up for any vacation that was paid but previously unearned, and that non-returning employees shall within 2 years after termination of leave repay the state for unearned paid vacation that was used.
 - d. Section 230.32 (4), Wis. Stats., provides that an employee who replaces an employee on military or federal leave shall be designated as a substitute or replacement employee, and upon the return of the original employee from leave shall be transferred to a similar position in the same agency if one is available, or if not, he or she shall be eligible for reinstatement or have the right of restoration, and provides that the status of any person who is appointed to fill the place of an employee on military or civilian leave shall be governed by the rules of the director of the Bureau of Merit Recruitment & Selection.
 - e. Section 230.32 (7), Wis. Stats., states: “Any employee who is absent from state service because the employee is in active service, as defined in s. 321.65 (1) (a), is entitled to all reemployment rights and benefits provided under s. 321.65.”
4. Section 230.35(1)(g), Wis. Stats., provides that the continuous service of an employee eligible for annual leave shall not be considered interrupted if the employee was on approved military leave.
5. Section 230.35(3)(a), Wis. Stats., provides officials and employees of the state who have **permanent** status and who are members of any reserve component of the military, with 30 work days of leave without loss of pay and benefits “to attend military schools and annual field training or annual active duty for training, and any other state or federal tours of active duty, except extended active duty or service as a member of the active armed forces of the United States.” During such leave, the employee receives base state pay less base military pay, and accrues all benefits as though continuously employed. Such leave is not granted for absences of less than 3 days. This paragraph further provides that: “A state official or employee serving on state active duty as a member of the national guard or state defense force, may elect to receive pay from the state under s. 20.465(1) in an amount equal to base state salary for such period of state active duty.”
6. Section 230.35(3)(am), Wis. Stats., states: “Officials and employees of the state who have **permanent** status in class and who are members of the national guard, state defense force, or a reserve component of the United States armed forces and who are on military leave without pay for authorized inactive duty training or active duty for training, shall, upon reemployment immediately after such military training, receive credit for annual leave, sick leave, and legal holidays as if they had remained continuously employed by the state.”
7. Section 230.35(3)(b), Wis. Stats., states: “Officials and employees of the state who are called to report for a preinduction physical for the military service shall be granted a leave of absence with pay for the time actually and necessarily spent in response to such call.”

8. Section 230.315, Wis. Stats., grants employees activated for federal military duty other than for training purposes, or employees required to serve in the U.S. public health service on detail with any of the U.S. armed forces, with up to 179 days of military leave without loss of pay, and with accrual of sick leave and paid annual leave of absence. By executive order, the governor may extend the period to 2 years, and make up to 3 additional extensions, each of which may not exceed a period of 2 years. Any extension may apply to an individual employee or to a group of employees, as determined by the governor. This Section also permits employees released from such military duty to use up to 160 hours of accumulated paid leave in the 30 days following release from duty, before the employee resumes employment with the state.
9. Section 321.64, Wis. Stats., provides for the restoration of unclassified employees after an absence from a position other than a temporary position to perform military duty in the U.S. armed forces or national defense work as a civilian.
10. Section 321.65, Wis. Stats., provides reemployment rights and benefits after active state service by order of the governor in the national guard, state defense force, or for the state laboratory of hygiene during a public health emergency. This statute provides reemployment protections following such state active service generally equivalent to those provided by USERRA for federal service in the uniformed services.
11. “The continuous employment status of an employee eligible for annual leave shall not be considered interrupted if the employee. . . 4. Was absent on military leave.” s. ER 18.02(2)(b), Wis. Adm. Code
12. “(1) National guard, state guard, reserve corps. For project employees, eligibility for annual military leave under s. 230.35 (3), Stats., shall be earned after completion of the first 12 months of employment in a project position. If prior eligibility has been attained in a permanent, seasonal, sessional or unclassified position and the employee has been appointed to the project position without an interruption of continuous service, such prior eligibility shall be retained.
Note: See s. 230.35 (3), Stats., for provisions regarding attendance at duly ordered military and naval schools, annual field training and naval exercises by employees and elected officials other than members of the legislature, circuit and appeals court judges and justices of the supreme court.
(2) Active service. See s. 230.32, Stats.” s. ER 18.08, Wis. Adm. Code.
13. “When an employee is restored following military service, pursuant to s. 230.32, Stats. . . the employee shall receive a base rate equal to the last rate received plus intervening adjustments identified under s. ER 29.04 (13) or (14). When such adjustments are discretionary, the amount shall be limited to the amount which would have been generated by the employee. The adjustments applied to the employee's last rate received shall be that of the appropriate pay schedule for the class from which restoration rights are derived.” s. ER 29.03 (7)(b), Wis. Adm. Code.
14. “RETURN FROM MILITARY. An employee returning from military service shall be restored under the provisions of s. 230.32, Stats.” s. ER-MRS 16.03 (2), Wis. Adm. Code.

Note: The following statutory references are from Wisconsin Statutes Chapter 40, Public Employee Trust Fund, and are administered by the Department of Employee Trust Funds. They are included here to support the general information on health insurance and Wisconsin Retirement System benefits related to absence for military service, provided in Sec. 720.130 of this chapter.

15. Section. 40.05 (4g), Wis. Stats., allows employees activated for duty in the U.S. armed forces (other than for training purposes) to choose continued participation in a state health insurance plan for the duration of such military service, including payment of employer and employee premium contributions on the same basis as though the employee was continuing state employment instead of serving on active duty in the U.S. armed forces.
16. “Contributions, benefits, and service credit with respect to qualified military service, as defined in 38 USC 43 [Title 38, Chapter 43 of the United States Code], taken on or after December 12, 1994, are governed by section 414 (u) of the Internal Revenue Code and the federal Uniformed Services Employment and Reemployment Rights Act of 1994.” s. 40.02 (15)(d), Wis. Stats.

17. “Effective with deaths occurring on or after January 1, 2007, while a participant is performing qualified military service, as defined in 38 USC 43 [Title 38, Chapter 43 of the United States Code], death benefits shall be calculated as though the participant was a participating employee subject to par. (d) during the period or periods of military service between the date that the participant left participating employment to enter active military service and the date of death.” s. 40.02 (15)(e)1., Wis. Stats.
18. “Effective with disabilities occurring on or after January 1, 2007, if a participant becomes disabled while performing qualified military service, as defined in 38 USC 43 [Title 38, Chapter 43 of the United States Code], to the extent permitted by section 414 (u) (8) of the Internal Revenue Code, and is unable to return to participating employment due to the disability incurred while performing such military service, for benefit calculation purposes the participant shall be treated as though the participant was a participating employee subject to par. (d) during the period or periods of military service between the date that the participant left participating employment to enter active military service and the date of discharge from military service.” s. 40.02 (15)(e)2., Wis. Stats.
19. “Beginning January 1, 2009, an individual receiving differential wage payments while the individual is performing qualified military service, as defined in 38 USC 43 [Title 38, Chapter 43 of the United States Code], from an employer shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under section 415 (c) of the Internal Revenue Code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.” s. 40.02 (15)(e)3., Wis. Stats.
20. ““Differential wage payment” means any payment, including specifically a payment under s. 230.315, that satisfies all of the following:
 - (a) The payment is made by an employer to a participating employee with respect to any period during which the participating employee is performing service in the uniformed services, as defined in 38 USC 4303, while on active duty for a period of more than 30 days.
 - (b) The payment represents all or part of the earnings the participating employee would have received from the employer if the participating employee were performing services for the employer.” s. 40.02 (20m), Wis. Stats.
21. Earnings: “For purposes of the Wisconsin retirement system, but not for OASDHI purposes, means compensation determined as required under 38 USC 4318 (b) (3) and regulations adopted thereunder with respect to a person who has actually returned to employment under section 414 (u) (9) (A) of the Internal Revenue Code, 38 USC 4312, or any predecessor veteran's reemployment rights provision under federal law, provided contributions and premiums on the compensation are paid as required under s. 40.05. If the participant does not pay any portion of the employee contributions that the participant would have paid if the participant had not left employment to enter military service, the value of the benefits payable from the participant's account shall be reduced by the value of the unpaid contributions plus interest as provided by rule.” s. 40.02 (22)(e), Wis. Stats.

Sec. 720.030 Labor Agreement

1. The provisions of this handbook chapter shall apply to represented public safety employees except where the labor agreement contains specific provisions for a different practice.
2. The provisions of the federal USERRA law supersede labor agreement provisions except where the labor agreement provides a right or benefit more favorable to the employee.
3. **Union Dues.** Represented public safety employees on military leave without loss of pay will continue to have union dues deducted, consistent with the terms of the labor agreement, unless the union formally requests otherwise.

Note: At the time of publication of this chapter, the public safety labor agreement has 30 days of military leave without loss of pay in two separate paragraphs, one under the heading of annual training, and the other under the heading of active military service. This leave corresponds to the 30 work days provided under s. 230.35 (3)(a), Wis. Stats., and is interpreted as a single pool of 30 days per year, and not as 30 days for training plus 30 days for active service.

Sec. 720.040 Definitions

1. **Active Duty:** Federal active duty or state active duty. *See below for the separate definitions of federal and state active duty.* s. 321.01 (1), Wis. Stats.
2. **Active Duty for Training:** A tour of active duty which is used for training members of the Reserve Components to provide trained units and qualified persons to fill the needs of the Armed Forces in time of war or national emergency and such other times as the national security requires. The member is under orders that provide for return to non-active status when the period of active duty for training is completed. This includes annual training, special tours of active duty for training, school tours, and the initial duty for training performed by nonprior service enlistees. Also called ADT. *Dictionary of Military and Associated Terms. S.v. "active duty for training."* Retrieved August 25 2015 from <http://www.thefreedictionary.com/active+duty+for+training>
3. **Active State Service** (mutually exclusive with federal active or inactive duty): Any one of the following, per s. 321.65 (1)(a), Wis. Stats.:
 - a. State active duty, which is full-time state duty in the national guard, or state defense force when activated, under an order of the governor or under an order otherwise issued by authority of law, and includes travel to and from that duty. *See definition of "state active duty" below.*
 - b. Active duty in the national guard under 32 USC 502 (f) that is not considered to be service in the uniformed services.
 - c. Active service with the state laboratory of hygiene under s. 36.25 (11)(em), Wis. Stats., for the purpose of assisting the department of health services under s. 250.042 during a state of emergency relating to public health declared by the governor under s. 323.10, Wis. Stats.
 - d. Active duty in the national guard of any state under an order of the governor of that state.
4. **Extended Active Duty:** Active duty performed by a member of a Reserve component when strength accountability passes from the Reserve component to the active military establishment. This phrase can also refer to service in the regular armed forces. As a general rule, extended active duty is longer than 30 days and is for duty other than training.
5. **Federal Active Duty:** “[F]ull-time duty in the active military service of the United States, as defined in 10 USC 101 (d) or 32 USC 502, 503, or 904.” s. 321.01 (4), Wis. Stats. Includes full-time training duty, annual training duty, and attendance, while in the active military service, at a military school. Does not include inactive duty for training or full-time National Guard duty by order of the governor. Mutually exclusive with *active state service*.
6. **Inactive Duty Training (IDT):** Authorized training performed by a reserve component member not on active duty or active duty for training, and consisting of regularly scheduled unit training assemblies, additional training assemblies, or equivalent training periods. A common example of IDT is the weekend training drill that Guard and Reserve members typically attend each month.
7. **Official and employees of the state who have permanent status:** As this phrase is used in s. 230.35(3)(a), Wis. Stats., to determine eligibility for the annual 30 days of military leave without loss of pay and benefits, this means:

- a. All state employees with permanent status in the classified civil service.
 - b. Project employees who have completed the first 12 months in the project position, or who without interruption of continuous service had attained prior eligibility in a permanent, seasonal, sessional or unclassified position, per ER 18.08 (1), Wis. Adm. Code.
 - c. An unclassified employee in a position identified in s. 230.08 (2), Wis. Stats., other than a temporary position. “Unclassified employee” does not include members of the legislature, circuit and appeals court judges and justices of the supreme court, per the note attached to ER 18.08 (1), Wis. Adm. Code.
8. **Permanent Status:** “[M]eans the rights and privileges attained upon successful completion of a probationary period or career executive trial period required upon an appointment to a permanent, seasonal or sessional position.” s. ER 1.02 (28), Wis. Adm. Code
9. **Service in the Uniformed Services:** The following definition is from the Code of Federal Regulations implementing USERRA, at 20 CFR s. 1002.5 (1): Service in the uniformed services is “the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority. Service in the uniformed services includes active duty, active and inactive duty for training, National Guard duty under Federal statute, and a period for which a person is absent from a position of employment for an examination to determine the fitness of the person to perform such duty. The term also includes a period for which a person is absent from employment to perform funeral honors duty as authorized by law (10 U.S.C. 12503 or 32 U.S.C. 115).”
- a. The above definition of “service in the uniformed services” describes the types of military service eligible for the benefits and protections provided by USERRA. National Guard service under authority of state law is not protected by USERRA. [20 CFR 1002.57]
 - b. Service as an intermittent disaster-response appointee upon activation of the National Disaster Medical System (NDMS) or as a participant in an authorized training program is deemed “service in the uniformed services.” [20 CFR s. 1002.5 (1)]
10. **State Active Duty:** “Full-time state duty in the national guard, or state defense force when activated, under an order of the governor or under an order otherwise issued by authority of law, and includes travel to and from that duty.” s. 321.01 (11), Wis. Stats.
11. **State Defense Force:** “The governor, or adjutant general if designated by the governor, may organize the state defense force, which may include an aviation unit, if all or part of the national guard is called into federal active duty.” s. 321.51, Wis. Stats
12. **State Employee [for Extended Military Leave]:** As this phrase is used at s. 230.315, Wis. Stats., to determine eligibility for the extended military leave without loss of pay and benefits, “state employee” has the same definition as “officials and employees of the state who have permanent status” (see above), except that classified employees on original probation in a permanent or project position, but not limited-term employees, are included as eligible state employees under s. 230.315.

Sec. 720.050 Obligation to Grant Military Leave

1. All state employees of any status, whether classified or unclassified, permanent or temporary, must be excused from work for any military service that has been ordered, including but not limited to, active duty, inactive duty, and annual training.
 - a. All written or verbal orders are considered valid when issued by competent military authority.
 - b. A military member in receipt of official orders is obligated by federal statute to execute them.

- c. The recurring requirement to perform inactive duty training (IDT or “drill”) is an example of when written orders may not be formally issued. However, a written calendar or other type of schedule is typically provided by the military authority to document the dates on which such IDT or drill will occur.
- d. For strategic and security reasons, an employee may receive military orders and be required to leave without telling the employer in advance. For this reason, employers are advised to ask employees in advance how to contact the employee’s commanding officer to obtain information if such a situation were to arise.

2. **Classified Employees Entering the Armed Forces**

- a. Any classified employee who leaves state service and enters the armed forces of the United States shall be granted written military leave of absence by the appointing authority. s. 230.32 (3)(a), Wis. Stats.
- b. Notice of such leave from state service and the terms of any such leave shall be given in writing by the appointing authority to the Administrator of the Division of Personnel Management for purposes of record. s. 230.32 (3)(a), Wis. Stats.

3. **Unclassified Employees Entering the Armed Forces**

- a. Although unclassified employees are generally not eligible for formal leaves of absence, if a former unclassified employee is eligible for reemployment under Wisconsin Law or USERRA, the period of time between termination of employment for military duty and return to state employment shall be treated as if it were a military leave of absence.
- b. Unclassified employees, except those in temporary positions without a reasonable expectation of continued or recurring employment, have rights to reemployment or restoration upon discharge from military training or service. Upon reemployment, the employee shall have such seniority, status, pay, and pay rate advancement as though state service had not been interrupted. See ss. 321.64 (1)(a) and (6), Wis. Stats.

4. **Classified Employees Ordered into Federal Civilian Service**

- a. Any classified employee who leaves state service for civilian employment in response to a specific request or order of the federal government or any of its agencies in connection with manpower redistribution and utilization, shall upon written application to the appointing authority and presentation of such specific request or order of the federal government be granted civilian leave of absence. s. 230.32 (3)(b), Wis. Stats.
- b. Notice of such leave shall be made in writing by the appointing authority to the Administrator of the Division of Personnel Management for purposes of record. s. 230.32 (3)(b), Wis. Stats.

5. **Requirements for Military Leave before Actual Performance of Military Service.** (20 CFR s. 1002.74)

- a. At a minimum, an employee must have enough time after leaving the employment position to travel safely to the uniformed service site and arrive fit to perform the service. For short-term service such as weekend training drills, the employee must be granted at least 8 hours plus reasonable travel time to the service site.
- b. Depending on the specific circumstances, including the duration of service, the amount of notice received, and the location of the service, additional time to rest, or to arrange affairs and report to duty, may be necessary.

Note: If additional leave time in addition to the actual dates on the military orders is needed for the reasons stated in b., above, the additional time must be granted, but this additional time outside the specified military service dates does not qualify for pay differential consideration under the military leave without loss of pay provisions.

6. Responsibility of the Employee to Provide Notice of Military Obligation

- a. Whenever possible, employees shall provide reasonable advance notice to their supervisor of their military obligation, including dates and projected duration of duty. Verbal notice is sufficient, though written notice is preferred with the employee furnishing a copy of his or her orders or other appropriate verification, as soon as possible after receipt. (20 CFR s. 1002.85, 86 & 87)
- b. Failure by the employee to provide reasonable advance notice does not relieve the employer of the obligation to release an employee. However, the employee may be subject to discipline and may be denied reemployment unless the failure to provide reasonable advance notice was for reasons beyond the control of the employee. (20 CFR s. 1002.117)

Sec. 720.060 Military Leave Without Pay

1. **Coordination of Leave:** In any calendar year, military leave without pay should be administered only when military leave without loss of pay is not available to the employee. For example, if an employee takes military leave for active duty training, causing the employee to be absent from work more than 30 work days in a year, then military leave without loss of pay under s. 230.35 (3)(a), Wis. Stats., should be applied to the first 30 qualifying work days missed in that year, regardless of any preference stated by the employee.
2. **Statutory Rights:** An employee on military leave is entitled to the non-seniority rights and benefits generally provided to other similarly situated employees on comparable non-military leaves of absence. See 20 CFR s. 1002.149 and s. 321.65 (5)(b), Wis. Stats.

Exception: If employment is interrupted by military service, and the employee knowingly provides written notice of intent not to return to the position of employment after military service, the employee is not entitled to those non-seniority rights and benefits. See 20 CFR s. 1002.152 and s. 321.65 (5)(b)/2., Wis. Stats.

3. **Vacation and Sick Leave Accrual:** Officials and employees of the state who have permanent status and who are members of the National Guard, state defense force, or a reserve component of the U.S. armed forces and who are on military leave without pay for authorized inactive duty training or active duty for training, shall, upon reemployment immediately after such military training, receive credit for annual leave, sick leave, and legal holidays as if they had remained continuously employed by the state. See s. 230.35 (3)(am), Wis. Stats.
4. **Health and Other Insurances:** Briefly put, employees on short military leaves of absence (30 days or less) automatically retain their health insurance coverage. For longer tours of duty other than for training, employees activated from military reserve components may elect to continue their state health insurance coverage on the same terms as if they remained continuously employed, for the duration of the military activation. See Section 720.130, Benefits Administration, for more information.

Sec. 720.070 Military Leave with Pay for Pre-Induction Physicals

1. Officials and employees of the state who are called to report for a preinduction physical for the military service shall be granted a leave of absence with pay for the time actually and necessarily spent in response to such call. See s. 230.35 (3)(b), Wis. Stats.
2. A preinduction physical is a physical prior to admission into military service.
3. Leave of absence with pay for a preinduction physical is in addition to all other military or vacation leaves to which an employee may be entitled.

Sec. 720.080 30 Days Military Leave Without Loss of Pay and Benefits

30 Work Days per Year Provision per s. 230.35 (3)(a), Wis. Stats. Each sentence of s. 230.35 (3)(a), Wis. Stats., is quoted separately in numbers 1. through 6., below. Explanatory notes are provided for some sentences of the statute.

1. **General eligibility.** “Officials and employees of the state who have **permanent** status and who are members of the national guard, the state defense force, or any other reserve component of the military forces of the United States or this state now or hereafter organized or constituted under federal or state law, are entitled to leaves of absence without loss of time in the service of the state, to enable them to attend military schools and annual field training or annual active duty for training, and any other state or federal tours of active duty, except extended active duty or service as a member of the active armed forces of the United States which have been duly ordered but not exceeding 30 days, excluding Saturdays, Sundays and [statutory] holidays . . . in the calendar year in which so ordered and held.”
 - a. “Officials and employees of the state who have **permanent** status.” See definition in Sec. 720.040.
 - b. Inactive duty training such as weekend drills for Guard and Reserve members is not qualifying military service. See definition of “Inactive Duty Training” in Sec. 720.040.
 - c. “Extended active duty” - see definition in Sec.720.040.
 - d. “30 days, excluding Saturdays, Sundays and holidays” is interpreted to mean the first 30 regularly scheduled work days absent in a calendar year for qualifying military leave, excluding statutory holidays. For example, if an employee is regularly scheduled to work on Saturdays and Sundays, each absence on these days for military service would count against the 30 days available.
 - e. “Service as a member of the active armed forces of the United States” means a person who is performing full-time military service in the regular armed forces, and not as a member of a reserve component activated for duty in the U.S. armed forces.
2. **Pay Differential and Leave Accrual.** “During this leave of absence, each state official or employee shall receive base state pay less the base military pay received for and identified with such attendance but such reduction shall not be more than the base state pay.”
 - a. “Base state pay” is the amount the employee would receive for a regular day of work, not to exceed 8 hours, at the employee’s base pay rate excluding supplemental add-ons of any type, including but not limited to shift and weekend differentials, responsibility pay, skill certification add-ons, and education add-on.
 - b. “Base military pay” is the amount of pay earned for each calendar day of military service, excluding all military pay allowances other than base pay. The daily amount is calculated as the total base pay recorded on the military leave and earnings statement (LES), divided by the number of days of military service covered by the LES statement. However, if the length of military service is long enough that the LES is a semi-monthly statement, the pay on the LES (excluding allowances) should be divided by 15 to calculate the daily rate, regardless of the number of days in the particular month.
 - c. During the 30 work days of military leave of absence, the employee is considered to remain in pay status for purposes of vacation and sick leave accrual.
3. **3-Day Minimum.** “Other than for a leave of absence for the adjutant general and any deputy adjutants general, such leave shall not be granted for absences of less than 3 days.”
 - a. “Absences of less than 3 days” refers to the duration of the military orders, not to the work days missed. The intent, dating back to 1971, was to exclude the typical weekend drill from eligibility.

4. **State Active Duty.** “A state official or employee serving on state active duty as a member of the national guard or state defense force, may elect to receive pay from the state under s. 20.465 (1) in an amount equal to base state salary for such period of state active duty.”
 - a. State active duty is full-time state duty in the national guard, or state defense force when activated, under an order of the governor or under an order otherwise issued by authority of law, and includes travel to and from that duty.
 - b. Although state active duty counts towards the 30 work days of military leave without loss of pay and benefits, an employee serving on state active duty may continue to receive pay from the state under s. 20.465 (1)(c), Wis. Stats., in an amount equal to base state salary for the duration of such duty, even if the 30 work days has been used up.
5. “Leave granted by this section [s. 230.35 (3)(a), Wis. Stats.] is in addition to all other leaves granted or authorized by any other law.”
6. “For the purpose of determining seniority, pay or pay advancement and performance awards the status of the employee shall be considered uninterrupted by such attendance.” (See Sec. 720.150, *Reemployment / Restoration Position*.)

Note: All wages due to State Active Duty are paid by the Department of Military Affairs.

Sec. 720.090 Extended Military Leave Without Loss of Pay

This section details the provisions for military leave without loss of pay and benefits pursuant to s. 230.315, Wis. Stats.

1. **Eligible Employees.** Employees must meet the definition of “state employee” provided in Sec. 720.040 of this chapter. State employees are eligible if a., b., and c., all apply, or if d. alone applies:
 - a. “On or after January 1, 2003, the employee is activated to serve, or is serving, on military duty in the U.S. armed forces, other than for training purposes.” s. 230.315 (1)(a), Wis. Stats.
 - b. “On the date on which he or she is activated, the employee is either a member of the Wisconsin national guard or a member of a reserve component of the U.S. armed forces or is recalled to active military duty from inactive reserve status.” s. 230.315 (1)(b), Wis. Stats.
 - c. “The employee has received a military leave of absence under s. 230.32 (3)(a) or 230.35 (3), under a collective bargaining agreement . . . or under rules promulgated by the division or is eligible for reemployment with the state under s. 321.64 after completion of his or her service in the U.S. armed forces.” s. 230.315 (1)(c), Wis. Stats.
 - d. The employee is required to serve in the U.S. public health service and is on detail with any of the U.S. armed forces. s. 230.315 (2), Wis. Stats.

Note: Classified employees do not need to have achieved permanent status to be eligible for the extended military pay differential. and leave benefits. *This contrasts with the 30-work day provision, where eligibility is contingent on permanent status (or twelve months in a project position) to receive the pay differential and leave benefits.*

Note: If an employee submits written intent not to return to his or her state position following military service, [Chapter ER 21, Wis. Adm. Code](#) the employee is not eligible for military leave without loss of pay and benefits. However, under USERRA, the employee would still retain reemployment rights after military service.

2. **Eligible Military Service and Duration of Coverage by Executive Order**

- a. Eligible service includes military duty in the U.S. armed forces, other than for training purposes, for a period of not more than 179 days, unless a longer period is authorized by executive order of the governor. ss. 230.315 (1) and (3), Wis. Stats.

Note: Eligible military service covers a wide range of federal active duty authorized under Title 10 (Armed Forces) and/or Title 32 (National Guard), U.S. Code. Eligible service is not limited to combat or combat support operations. Generally, all federal active duty military service is eligible except duty for training purposes. State active service by order of the governor of Wisconsin or another state is excluded. Military funeral honors service is eligible provided that it is performed as federally authorized active duty or full-time National Guard duty, and not as inactive duty. Another example of eligible service is federally authorized National Guard active duty in support of the U.S. Border Patrol. In unusual situations, ascertaining the eligibility of a particular period of military duty may require a careful review of the military orders and consultation with the employee, the DPM military leave contact, and/or other knowledgeable persons.

- b. Eligible service includes service in the U.S. public health service, for a period of not more than 179 days, unless a longer period is authorized by executive order of the governor. ss. 230.315 (2) and (3), Wis. Stats.
- c. At the time of publication, former Governor Doyle by two Executive Orders had authorized coverage for all employees for military service up to 4 years in duration, and those orders remain in effect. By statute, the governor may make 3 additional extensions, each of which may not exceed a period of 2 years. Any extension may apply to an individual employee or to a group of employees, as determined by the governor. s. 230.315 (3)(b), Wis. Stats.
- d. If an employee is released from military duty, and is subsequently reactivated for eligible military service, the “clock” is reset, and the employee is eligible for a new period of coverage of up to 4 years, or longer if extended by the governor, as noted in c., above. It is not required that the employee be reemployed in the interim between release from military duty and a subsequent reactivation to be eligible for this new period of coverage, provided that the employee would have been eligible for reemployment at the time of subsequent reactivation.

Sec. 720.100 Active State Service by Order of the Governor

1. **Active state service** (*see definition in Sec. 720.040*) consists of any of the following types of service described under a. through d. below. Each description is followed by information regarding eligibility for military leave benefits.
- a. State active duty, which is full-time state duty in the national guard, or state defense force when activated, under an order of the governor or under an order otherwise issued by authority of law, and includes travel to and from that duty.
- 1) An excerpt of s. 230.35 (3)(a), Wis. Stats., states: “A state official or employee serving on state active duty as a member of the national guard or state defense force, may elect to receive pay from the state under s. 20.465 (1) in an amount equal to base state salary for such period of state active duty.” Base state salary means a daily amount equal to the amount the employee would receive for a regular day of work, not to exceed 8 hours, at the employee’s base pay rate excluding supplemental add-ons of any type, including but not limited to shift and weekend differentials, responsibility pay, skill/certification/license add-on, and education add-on.
- 2) A state official or employee that does not elect to receive their base state salary will instead be paid their military rate of pay according to military pay provisions for state active duty.

- 3) If the state official or employee elects to receive their base state salary during the period of state active duty, may be limited to 30 work days per calendar years under s. 230.35 (3)(a), Wis. Stats., and the employing agency may bill the Department of Military Affairs for such compensation costs from the funds appropriated for public emergencies under s. 20.465 (1)(c), Wis. Stats.
- 4) Whether the employee selects base state salary or military pay during the period of state active duty, in either case the employee shall maintain benefits and accrue vacation and sick leave as though employment was not interrupted for state active duty.

- b. Active duty in the national guard under 32 USC 502 (f) that is not considered to be service in the uniformed services.

Any active state service in this category will need to be evaluated on a case-by-case basis to determine eligibility for military leave benefits.

- c. Active service with the state laboratory of hygiene under s. 36.25 (11)(em), Wis. Stats., for the purpose of assisting the department of health services under s. 250.042 during a state of emergency relating to public health declared by the governor under s. 323.10, Wis. Stats.

According to statute, active service with the state laboratory of hygiene will be as a limited term employee of the department of health services. Such active service does not qualify for the 30 work day or extended military leave provisions.

- d. Active duty in the national guard of any state under an order of the governor of that state.

National guard active duty for another state qualifies for the 30 work day military leave pay and benefits provided under s. 230.35 (3)(a), Wis. Stats., and described in Section 720.080.

2. Employees that take leave for any of the four types of active state service described above enjoy the reemployment rights after national guard, state defense force, or public health emergency service provided under s. 321.65, Wis. Stats. These are similar to the reemployment rights provided under USERRA for federal military service or U.S. public health service detail.

Note: Operations of the Civil Air Patrol do not qualify under the various military leave provisions. However, job-protected unpaid leave for Civil Air Patrol personnel may be required for emergency service operations. See s. 321.66, Wis. Stats., for information about leave for Civil Air Patrol service.

Sec. 720.110 Coordination of Military Leaves

1. In any calendar year military leave without loss of pay should be administered whenever available to the employee. Leave without pay should be administered only if military leave without loss of pay is exhausted or unavailable to the employee. For example, if an employee takes military leave for training, causing the employee to be absent from work more than 30 work days in a year, then military leave without loss of pay under s. 230.35 (3)(a), Wis. Stats., should be applied to the first 30 qualifying work days missed in that year.
2. Paragraph s. 230.315 (3)(a), Wis. Stats., in pertinent part states: "If a state employee is eligible to receive pay and benefits for military service under s. 230.35 (3)(a) or a collective bargaining agreement . . . the state employee shall become eligible to receive the pay and benefits [of the extended pay differential under s. 230.315] only after receiving the pay and benefits for military service under s. 230.35 (3)(a) or a collective bargaining agreement." Therefore, in each calendar year, the 30-day provision should be exhausted for qualifying military service before applying the extended leave pay differential.
3. When an employee qualifies for military leave under more than one military leave provision, the time absent for military service should be counted against all applicable military leave provisions. Except as specified in

1. and 2., above, the employee must receive the benefits provided by the military leave provision most favorable to the employee.
4. The duration of an extended military leave without loss of pay under s. 230.315, Wis. Stats., is determined from the date of military activation for a continuous, unbroken period of military service, which may consist of one or more sets of back-to-back military orders. Thus, any portion of the continuous period of extended military service assigned to the 30 work days per year provision simultaneously counts as time under the extended military leave without loss of pay provisions.

Sec. 720.120 Pay Differential Administration/ Leave Accrual

1. **General principles.** For employees eligible to receive a pay differential during leave for military service as described in Sections 720.080 and 720.090, the pay differential is the amount the employee's daily state pay exceeds his or her daily military pay for each regularly scheduled day of work missed during military service. However, the calculations of the employee's daily state pay and military pay differ under the two pay differential provisions. Further considerations and calculations are required for employees who work schedules other than a standard 5-day, 40 hour week, to accomplish the goal of providing military leave without loss of pay in an equitable manner to these employees.
 - a. Full-time employees are considered to be Monday through Friday 8 hour days, 40 hours a week during the period of military leave. Part-time employees are also considered to be on a Monday through Friday 5-day workweek, with a prorated number of hours each day. The employee's regularly scheduled work days should apply for the any calendar weeks covered only partially by a period of military leave. Rare exceptions to this rule may exist based on equity for employees with extremely divergent work schedules, such as Fire/Crash Rescue Specialists that work 24-hour shifts and more than 80 hours in a two-week pay period.
 - b. For the 30-work day provision, the intent is to provide up to 30 days of 8 hours each (240 hours) of pay differential annually for full-time employees. For part-time employees, the 240 hours is prorated by the budgeted FTE, e.g., 30 days of 4 hours each (120 hours) for an employee with a budgeted FTE of 0.50.
 - c. For the extended pay differential, which may cover months or years of military service, the intent is to ensure that employees do not earn less in five days of military service than the employee would have earned during a normal five-day workweek with the state, excluding overtime, shift differentials, or other contingent pay premiums not paid to an employee taking annual leave. This is normally accomplished for a full-time employee by comparing eight hours of state pay to one day of military pay. The eight hours of state pay would be prorated by the budgeted FTE for a part-time employee.
2. **Calculating the Daily State Pay Rate.**
 - a. *30 Work Day Provision.* The daily rate is the amount the employee would earn in a regularly scheduled two-week pay period, but not to exceed 80 hours, at the employee's base pay rate excluding supplemental add-ons and differentials of all types, divided by 10.
 - b. *Extended Military Leave Without Loss of Pay.* The daily rate is the amount the employee would earn during a regularly scheduled two-week pay period (which may exceed 80 hours), excluding shift and weekend differentials and any other pay supplements not considered part of the employee's regular hourly pay rate, divided by 10. Unlike the daily rate for the 30-work day provision, this daily rate includes pay add-ons that an employee is eligible to receive for all hours in pay status, such as add-ons for professional licensure or college credits for teachers.

NOTE: For extended military leave without loss of pay, the daily state rate will be worth more than 8 hours of pay for employees that are regularly scheduled for more than 80 hours each biweekly pay period, such as Fire/Crash Rescue Specialists. This differs from the daily state rate for the 30 work day provision, which limits the daily amount to 8 hours of base pay. The reason for the difference is to ensure an employee "his or

her state salary, less any military pay and housing allowances” during the period of military service, per s. 230.315, Wis. Stats.

3. **Calculating the Daily Military Rate.**

- a. *30 Work Day Provision*. The daily military rate is calculated as the total base pay recorded on the military leave and earnings statement (LES), divided by the number of days of military service covered by the LES statement. Military pay allowances are not part of the military base pay. If the LES is a semi-monthly statement, the total base pay should be divided by 15 to determine the daily rate.
- b. *Extended Military Leave Without Loss of Pay*. The daily military rate is calculated as the total base military pay plus housing allowances recorded on the military leave and earnings statement (LES), divided by the number of days of military service covered by the LES. Do not include allowances other than housing allowances. If the LES is a semi-monthly statement, the daily military pay should be calculated as the total base pay and housing allowances on the LES divided by 15, regardless of the actual number of days in the particular month. (For employees on leave in the U.S. Public Health Service, an equivalent calculation is made based on federal pay and allowances.)

4. **Counting State Work Days Applicable for the Pay Differential.**

- a. *30 Work Day Provision*. For full-time employees, each regularly scheduled 8 hour period of work missed during a period covered by military orders counts as 1 work day, and therefore 240 hours equals 30 work days. For part-time employees, also considered be working a five-day workweek but at a prorated number of hours, the 30-day/240 hours annual full-time employee benefit is prorated by the FTE of the employee. Therefore, the annual benefit for a 0.5 FTE employee is 30 days at 4 hours per day (120 hours).
- b. *Extended Military Leave Without Loss of Pay*. During the time of extended military leave, each employee (full-time and part-time) is administratively considered to be on a Monday thru Friday schedule. Each Monday through Friday weekday counts as one eligible day for the military leave pay differential. Days may be counted based on the employee’s regular schedule for any partial calendar weeks affected by military leave.

5. **Procedure for Applying a Pay Differential.**

a. **Standard 5 Days a Week Work Schedules.**

- (1) If the daily state pay rate exceeds the daily military pay rate, pay the difference between state pay and military pay for each regularly scheduled calendar day that the employee would have worked. This will always be a one-to-one comparison of daily rates based on regularly scheduled work days for the employee. Pay the differential only for days in the leave period covered by military orders, and not for days prior to actual military service, nor for days after completion of military service and prior to reemployment.

Example: Military Leave of 14 calendar days on military orders (two weeks)

State Pay = 80 hours at \$20.00/hour
State Gross Pay = \$1,600.00
State Daily Rate = \$160.00 (based on 10 regular work days in two weeks)
Military Base Pay = \$1,270.34
Military Daily Rate = \$1,270.34 ÷ 14 days = \$90.74/day
Daily Differential is \$160.00 - \$90.74 = \$69.26
Differential for 10 missed work days in two weeks = \$692.60

- (2) All employees on extended military leave without loss of pay will receive the pay differential on the standard basis described in (1), above, because all such employees are administratively

considered to be on a standard 5-day a week, Monday through Friday schedule, regardless of actual regular work schedule.

6. **Pay Differential and Leave Accrual.** During the period of activation for military duty, the employee shall be paid his or her state salary, less any military pay and housing allowances that he or she receives, unless the military pay and housing allowances equal or exceed his or her state salary, and shall accumulate sick leave and paid annual leave of absence as though no interruption in service has occurred. This also applies to employees required to serve in the U.S. public health service on detail with any of the U.S. armed forces, substituting federal pay for military pay in determining the pay differential.
 - a. “State salary” is the amount the employee would receive for a regular day of work, not to exceed 8 hours, at the pay rate the employee would receive if on paid leave. (The “state salary” may be different than the “base state pay” used for determining a pay differential under the 30 work day provision, which excludes all supplemental add-ons.)
 - b. “Military pay [or federal pay] and housing allowances” is the amount of military pay plus housing allowance earned for each calendar day of military service. For purposes of determining the daily military pay, do not include allowances other than housing allowances. The daily amount is calculated as the base military pay plus housing allowances recorded on the military leave and earnings statement (LES), divided by the number of days of military service covered by the LES statement. For consistency, when an employee’s military service is long enough that the LES is a semi-monthly statement, the daily military pay should be calculated as the total pay and housing allowances on the semi-monthly LES divided by 15, regardless of the actual number of days in the particular month.
 - c. Regardless whether the state salary exceeds military (or federal) pay plus housing allowances, the employee shall accrue sick leave and paid annual leave of absence as though no interruption in service has occurred.

7. **Estimation and Final Reconciliation of Pay Differentials.** Agencies may choose to provide the pay differential “in real time” pay period by pay period, or to delay differential processing until the employee’s return from military service. When provided pay period by pay period, the pay differential will be an estimate, subject to final reconciliation after receipt of military leave and earnings statements (LES).
 - a. If it appears that an employee will be eligible for a substantial pay differential and an agency chooses to continue the employee on payroll during military leave of more than two weeks, it is recommended that the agency estimate the employee’s military base pay (plus housing allowance if applicable) for 10 days per bi-weekly pay period, and deduct these amounts pre-tax from the employee’s pay check each pay period during the time of military service. This will minimize money that the employee owes back to the state upon reemployment and reconciliation of pay differential earnings.
 - b. It is highly recommended that agency payroll and benefits personnel meet with employees in advance of departures for military service to acquire information about each employee’s military rank and years of service, type of duty orders, and expectation of a housing allowance (in addition to explaining military leave pay and benefits and arranging for benefits continuation as selected).
 - c. Military basic pay rates for active duty by rank and years of service and Basic Allowance for Housing amounts may be accessed through the Defense Finance and Accounting Service at: <http://www.dfas.mil/militarymembers/payentitlements/military-pay-charts.html>. Please note that these are monthly rates. The daily rate can be estimated by dividing the monthly pay rate by 30.

8. **Payroll Deductions.** Payroll deductions may be continued during military service if continuing full state pay or the pay differential is large enough, though in many cases continuation of a state benefit may require the employee to provide timely payments to continue the benefit. The amount of military pay deducted from state paychecks may be reduced if necessary to allow for the deduction of state health insurance, life insurance, and income continuation insurance premiums, employee reimbursement account deductions, or other

necessary payroll deductions. However, doing so will likely result in the employee owing money back to the state upon reemployment.

9. **Payroll taxes.** Any pay differentials and lump sum wage payments paid to employees on military leave are subject to both state and federal taxes.

Sec. 720.130 Benefits Administration

1. Employees that are eligible to receive a pay differential while on military leave (including those that don't actually receive a pay differential solely because their military pay is greater than their state pay), continue to accrue annual leave and sick leave and remain eligible for state health insurance and other fringe benefits as though continuously employed, though continuation of health insurance and certain other benefits may be elective on the part of the employee.
2. **Enlistment in the regular armed forces.** Employees who leave state service for induction into the regular armed forces of the United States are considered to be on military leave without pay and do not continue to receive personal and legal holidays, nor accrue annual leave and sick leave, and are not eligible for continuation of health insurance and other benefits except as provided by COBRA. Upon timely reemployment after military service, employees will have the opportunity to be made "whole" for Wisconsin Retirement System participation that was missed during military service.
3. **Leave Accrual, Use, and Carryover**
 - a. *Leave Accrual during 30 Work Day Military Leave Without Loss of Pay.* Employees who **have permanent status** continue to receive personal and legal holidays, and accrue annual leave and sick leave as if they had remained employed, during the period of actual military service stated on the military orders. Employees without permanent status do not continue to accrue annual leave, legal holidays or sick leave.
 - b. *Leave Accrual during Extended Military Leave Without Loss of Pay.* Employees continue to accrue sick leave and paid annual leave of absence in the manner of continuing in pay status with the state, during the period of actual military service stated on the military orders.
 - c. *Use of Leave during Military Service.* Per USERRA, an employee must be permitted upon request to use any accrued paid vacation leave including personal holidays, annual leave, sabbatical or floating legal holidays, during the period of service, in order to continue his or her state pay. However, the employer may not require the use of such leave during the period of service. Employees may not use sick leave during military leave. (20 CFR s. 1002.153)
 - d. *Option to Use 160 Hours of Accrued Leave before Reporting Back to Work.* Per s. 230.315 (4), Wis. Stats., an appointing authority shall permit a state employee who is eligible to receive the pay and benefits under s. 230.315, Wis. Stats. (extended military leave without loss of pay – see Sec. 720.090) and who has completed his or her duty with the U.S. armed forces or the U.S. public health service, to use up to 160 hours of accumulated paid leave before reporting back to his or her state job. Any such leave must be used no later than 30 calendar days after the completion of military service.
 - (1) Accrued paid leave that may be used includes annual leave, sabbatical leave, personal holidays, and accrued floating holidays, but does not include sick leave.
 - (2) The use of up to 160 hours of accumulated paid leave under this provision shall not be deemed as application for reemployment/restoration after military service under state or federal law. Therefore, regardless of use of such accumulated leave, classified employees retain the right to make application for restoration within 180 days after release from active military service, or hospitalization resulting from such service, as provided at s. 230.32 (1)(d), Wis. Stats., and unclassified employees retain the right to make application for reemployment within 90 days

after release from a period of military service of more than 180 days. See Sec. 720.140 (5), *Timely Application for Reemployment*.

- e. *Two-Year Carryover of Accrued Leave Credits.* An appointing authority shall permit a state employee who is eligible to receive the pay and benefits under s. 230.315, Wis. Stats. (extended military leave without loss of pay – see Sec. 720.090), or similar labor agreement provisions, and who has been reemployed following his or her duty with the U.S. armed forces or the U.S. public health service, to carry over unused accrued leave for a period of not more than two consecutive calendar years after the year of reemployment. Accrued leave that may be carried over includes annual leave, personal holidays, and floating Saturday/legal holidays.
- (1) This carryover of leave for two calendar years supersedes the limitations set forth in s. ER 18.02 (6)(b), Wis. Adm. Code., or in the applicable labor agreement, if the labor agreement provisions are more restrictive than the two-year provisions given here.
 - (2) This two-year carryover is limited to the amount of unused accrued leave available to the employee prior to military activation plus the amount of accrued leave earned during the employee's military leave of absence. Leave time earned after an employee returns to work from military activation is subject to the carryover provisions outlined in the applicable contract and/or administrative rule.

EXAMPLE: An employee is activated on July 1, 2015 and returns to work on July 1, 2016. At the time of activation, this employee had 40 hours of unused accrued leave time available for use. Upon return to work on July 1, 2017, the employee is granted an additional 208 hours of unused accrued leave time (52 hours for the second half of 2015, 104 hours for 2016, and 52 hours for the first half of 2017 - upon return to work,). The appointing authority shall permit this employee to carry over 248 (40 plus 208) hours of accrued leave time until December 31, 2019. Any accrued leave time in excess of these 248 hours is time earned after the employee returned to work from military activation and is, therefore, subject to the carryover provisions outlined in the statutes or applicable collective bargaining agreement.

- f. *Payback of Used but Unearned Leave.* Per s. 230.32 (2)(a), Wis. Stats., an employee with permanent status in class who leaves state service for military service and who has used the yearly vacation in anticipation of a full year's employment is presumed not to have interrupted employment as far as vacation pay is concerned, and any portion of the vacation for which the employee was paid which is unearned at the time of being called to duty may be made up upon return to state service.
- (1) If the employee does not return to the state service, the employee shall within 2 years after termination of leave repay the state the amount not earned. In the case of an employee that does not return to state service, termination of military leave shall be the last day of continuous military service for which the employee left state employment, or the attainment of the 5-year limit on cumulative military service for retaining reemployment rights, whichever comes first.
 - (2) Used but unearned leave may be made up by carrying the deficit forward and offsetting the deficit with leave accrued during military service or after reemployment. Employees eligible for military leave without loss of pay and benefits will accrue leave during military service to partially or completely make up for used but unearned leave.

4. Wisconsin Retirement System (WRS)

- a. **Federal military service.** As a general matter of federal law, under USERRA, upon reemployment after federal military service an employee is treated as not having a break in service with the employer maintaining a pension plan, for purposes of participation, vesting and accrual of benefits, by reason of the period of absence from employment due to or necessitated by service in the uniformed services. (20 CFR s. 1002.259)

- b. **Active state service.** Employees on active state service by order of the governor are not covered under the federal USERRA. Any questions regarding WRS contributions and creditable service during active state service should be referred to DETF.
- c. The Department of Employee Trust Funds (DETF) administers the WRS and must be consulted for all administrative issues related to military service and the WRS. DETF resources available at the time of publication of this handbook chapter include:
 - (1) [Wisconsin Retirement System Administration Manual](#)
Chapter 20, Section 2001 - *Military Service Credit*
Chapter 22 –*Uniformed Services Subject to Retirement Credit*
 - (2) [DETF Bulletin ET-4122 - Military Service Credit](#)

5. **Health Insurance.**

- a. The Department of Employee Trust Funds (DETF) administers the state employee health insurance benefits and must be consulted for all administrative issues related to military service and state health insurance. DETF resources available at the time of publication of this handbook chapter include:
 - (1) [Employer Bulletin, Vol. 18, State D, October 9, 2001 - Health Insurance Benefits for National Guard and Military Reserve Personnel on Unpaid Military Leave](#)
- b. As a general matter of state law, a state employee activated from a reserve component of the U.S. armed forces for duty in the U.S. armed forces, other than for training purposes, may elect to continue or reinstate his or her state health insurance during such military duty and pay the employee share of the health insurance premiums on the same basis as if the employee had not left his or her state position for military service. s. 40.05 (4g), Wis. Stats.
- c. If health plan coverage for the employee or a dependent was terminated by reason of service in the uniformed services, that coverage must be reinstated upon reemployment. (20 CFR s. 1002.168)

6. **Other Insurances, Employee Reimbursement Accounts (ERAs), Deferred Compensation**

The Department of Employee Trust Funds (DETF) administers insurance benefits such as life, income continuation, vision, and dental, ERAs, and deferred compensation, and must be consulted for all related administrative issues. Some DETF resources available at the time of publication of this handbook chapter include:

- a. [DETF Employer Bulletin Vol. 22, No. 14, of July 29, 2005](#), titled *Wisconsin Act 162, Military Leave and Group Life Insurance*
- b. [DETF Employer Bulletin Vol. 18, No. 24, of December 28, 2001](#), titled *Bulletin Addresses Life Insurance Coverage During Military Leave*
- c. [DETF Employer Bulletin Vol. 18, State D, of October 9, 2001](#), titled *Health Insurance Benefits for National Guard and Military Reserve Personnel on Unpaid Military Leave*

Sec. 720.140 Eligibility for Prompt Reemployment / Restoration after Military Service

Note. Reemployment and Restoration rights after active state service, provided under s. 321.65, Wis. Stats., are very similar to the reemployment and restoration rights after federal military service, provided under USERRA. Therefore, due to these close similarities, the statutory citations after the provisions in this Section will usually consist of two references: the USERRA regulation covering return from federal service, followed by the WI statute, covering return from active state service.

In addition to USERRA, two Wisconsin statutes also govern reemployment after federal military service: s. 321.64, Wis. Stats., for unclassified employees, and s. 230.32, Wis. Stats., for classified employees. These statutes are cited only where they provide a greater benefit to the employee than USERRA.

1. **Prompt Reemployment Obligation.** Except where an employee is not entitled to reemployment for any of the reasons given under 2., through 7., below, the employer must promptly reemploy an employee when he or she returns from a period of military service and provides timely and appropriate application for reemployment. See 20 CFR s. 1002.180 and ss. 321.65 (3) and 321.65 (4)(a), Wis. Stats.
 - a. “Prompt reemployment” means as soon as practicable under the circumstances of each case.
 - b. Absent unusual circumstances, reemployment must occur within two weeks of the employee’s application for reemployment. For example, prompt reinstatement after a weekend National Guard duty generally means the next regularly scheduled working day. On the other hand, prompt reinstatement following several years of active duty may require more time, because the employer may have to reassign or give notice to another employee who occupied the returning employee’s position. See 20 CFR s. 1002.181 and s. 321.65 (4), Wis. Stats.
 - c. The person presents to the employer evidence of satisfactory completion of the period of federal active duty or federal government service, or of discharge from the U.S. armed forces under conditions other than dishonorable. (s. 321.64(1)(a)2., Wis. Stats.). The person is still qualified to perform the duties of the position. (s. 321.64(1)(a)3., Wis. Stats.). The person makes application for reemployment and resumes work within 90 days after completion of the federal active duty or federal government service, military or civilian, or was so discharged from the U.S. armed forces, or within 6 months after release from hospitalization for duty-connected or service-connected injury or disease. (s. 321.64(1)(a)4., Wis. Stats.). The employer's circumstances have not changed as to make it impossible or unreasonable to restore the person. (s. 321.64(1)(a)5., Wis. Stats.). The federal active duty or federal government service was not for more than 5 years unless extended by law.
 - d. Any classified employee who had attained restoration rights as a seasonal employee when he or she left state service shall be restored to such seasonal position or eligibility as though the service or eligibility had not been so interrupted. s. 230.32 (2)(c), Wis. Stats.

Note: An employee does not lose reemployment rights even if the employee seeks or obtains employment with an employer other than the state during the allowable timeframe to apply for reemployment with the state. (20 CFR s. 1002.120)

2. **Failure to Provide Advance Notice of Military Service to Employer.** To retain reemployment rights after military service, an employee (or appropriate military officer) must provide advance notice, verbally or in writing, to the employer. The employee is excused from giving advance notice when prevented by military necessity or if otherwise impossible or unreasonable under all the circumstances. See 20 CFR s. 1002.32 (a)(1) and s. 1002.85 and s. 321.65 (3)(a)1., Wis. Stats.
3. **Reemployment Impossible or Unreasonable.** Reemployment is not required if circumstances have so changed as to make reemployment impossible or unreasonable. An example is where there has been an intervening reduction in force that would have included that employee. However, reemployment may not be refused on the basis that another employee was hired to fill the reemployment position during the employee’s absence, even if reemployment might require the termination of that replacement employee. See 20 CFR s. 1002.139 (a) and s. 321.65 (3)(d)1., Wis. Stats.
4. **Employee Not Qualified for Reemployment.** Reemployment is not required if the employer establishes that assisting the employee in becoming qualified for reemployment would impose an undue hardship. See 20 CFR s. 1002.139 (b) and s. 321.65 (3)(d)3., Wis. Stats.
5. **Employee Left Temporary Position.** Reemployment is not required if the employer establishes that the employment position vacated by the employee in order to perform service in the uniformed services was for a

brief, nonrecurrent period and there was no reasonable expectation that the employment would continue indefinitely or for a significant period. See 20 CFR s. 1002.41 and s. 1002.139 (c) and s. 321.65 (3)(d)2., Wis. Stats.

Note: The employer defenses listed in 3., 4., and 5., above, are affirmative ones, and the employer carries the burden to prove by a preponderance of the evidence that any one or more of these defenses is applicable. 20 CFR s. 1002.139 (d)

6. **Length of Service Restriction on Eligibility for Reemployment / Restoration.** In general, an employee may perform service in the uniformed services for a cumulative period of up to five (5) years and retain reemployment rights (20 CFR s. 1002.99 or s. 321.65 (3)(a)2., Wis. Stats.). However, the following periods of time and periods of military service do not count towards the cumulative five-year service limit:
- a. A period of absence from employment before or after performing service in the uniformed services. For example, the period between completing the uniformed service and reporting back to work or seeking reemployment within the application for reemployment timeframe described in 5., below, does not count against the five-year limit. (20 CFR s. 1002.100)
 - b. Any periods of service while employed with an employer other than the state. An employee is entitled to a leave of absence for uniformed service for up to five years with each employer. (20 CFR s. 1002.101)

Note: The State of Wisconsin is considered a single employer for counting the five year service limit. For example, if an employee serves two years in the military while employed by the University of Wisconsin and then three years while an employee of the Department of Corrections, that employee will have exhausted the five-year limit on military service for retaining reemployment rights.

- c. Service that is required beyond five years to complete an initial period of obligated service. Some military specialties require an individual to serve more than five years because of the amount of time or expense involved in training. If the employee works in one of those specialties, he or she has reemployment rights when the initial period of obligated service is completed. See 20 CFR s. 1002.103 (a)(1) and s. 321.65 (3)(c)1., Wis. Stats.
- d. If the employee was unable to obtain orders releasing him or her from service in the uniformed services before the expiration of the five-year period, and the inability was not the employee's fault. See 20 CFR s. 1002.103 (a)(2) and s. 321.65 (3)(c)2., Wis. Stats.
- e. Service performed to fulfill periodic National Guard and Reserve training requirements as prescribed by 10 U.S.C. 10147 and 32 U.S.C. 502(a) and 503. See 20 CFR s. 1002.103 (a)(3)(i) and s. 321.65 (3)(c)3., Wis. Stats.
- f. Service performed to fulfill additional training requirements determined and certified by a proper military authority as necessary for the employee's professional development, or to complete skill training or retraining. See 20 CFR s. 1002. 103 (a)(3)(ii) and s. 321.65 (3)(c)3., Wis. Stats.
- g. Service performed in a uniformed service when ordered to or retained on active duty under:
 - (1) 10 U.S.C. 688 (involuntary active duty by a military retiree);
 - (2) 10 U.S.C. 12301(a) (involuntary active duty in wartime);
 - (3) 10 U.S.C. 12301(g) (retention on active duty while in captive status);
 - (4) 10 U.S.C. 12302 (involuntary active duty during a national emergency for up to 24 months);
 - (5) 10 U.S.C. 12304 (involuntary active duty for an operational mission for up to 270 days);
 - (6) 10 U.S.C. 12305 (involuntary retention on active duty of a critical person during time of crisis or other specific conditions);
 - (7) 14 U.S.C. 331 (involuntary active duty by retired Coast Guard officer);
 - (8) 14 U.S.C. 332 (voluntary active duty by retired Coast Guard officer);

- (9) 14 U.S.C. 359 (involuntary active duty by retired Coast Guard enlisted member);
 - (10) 14 U.S.C. 360 (voluntary active duty by retired Coast Guard enlisted member);
 - (11) 14 U.S.C. 367 (involuntary retention of Coast Guard enlisted member on active duty); and
 - (12) 14 U.S.C. 712 (involuntary active duty by Coast Guard Reserve member for natural or man-made disasters). See 20 CFR s. 1002.103 (a)(4) and s. 321.65 (3)(c)4., Wis. Stats.
- h. Service performed in a uniformed service if the employee was ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary concerned. See 20 CFR s. 1002.103 (a)(5) and s. 321.65 (3)(c)4., Wis. Stats.
 - i. Service performed in a uniformed service if the employee was ordered to active duty (other than for training) in support of an operational mission for which personnel have been ordered to active duty under 10 U.S.C. 12304, as determined by a proper military authority. See 20 CFR s. 1002.103 (a)(6) and s. 321.65 (3)(c)4., Wis. Stats.
 - j. Service performed in a uniformed service if the employee was ordered to active duty in support of a critical mission or requirement of the uniformed services as determined by the Secretary concerned. See 20 CFR s. 1002.103 (a)(7) and s. 321.65 (3)(c)4., Wis. Stats.
 - k. Service performed as a member of the National Guard if the employee was called to respond to an invasion, danger of invasion, rebellion, danger of rebellion, insurrection, or the inability of the President with regular forces to execute the laws of the United States. See 20 CFR s. 1002.103 (a)(8) and s. 321.65 (3)(c)4., Wis. Stats.
 - l. Service performed to mitigate economic harm where the employee's employer is in violation of its employment or reemployment obligations to him or her. 20 CFR s. 1002.103 (b)
 - m. "Active state service" in the National Guard or state defense force under orders of the governor. See *Definitions* and Sec. 720.100, *Active State Service by Order of the Governor*. s. 321.65 (3)(c)4., Wis. Stats.
7. **Military Discharge Restrictions on Eligibility for Reemployment / Restoration.** Employees are disqualified from reemployment rights (20 CFR s. 1002.135) if the employee has received one of the following types of discharge:
- a. Separation from uniformed service with a dishonorable or bad conduct discharge;
 - b. Separation from uniformed service under other than honorable conditions, as characterized by regulations of the uniformed service;
 - c. A commissioned officer dismissed as permitted under 10 U.S.C. 1161(a) by sentence of a general court-martial; in commutation of a sentence of a general court-martial; or, in time of war, by order of the President;
 - d. A commissioned officer dropped from the rolls under 10 U.S.C. 1161(b) due to absence without authority for at least three months; separation by reason of a sentence to confinement adjudged by a court-martial; or a sentence to confinement in a Federal or state penitentiary or correctional institution.
 - e. In the case of active service in the national guard in this or another state or the state defense force, the active service has been terminated under other than honorable conditions. s. 321.65 (3)(a)4., Wis. Stats.
8. **Timely Application for Reemployment**

- a. Classified employees, except limited term employees, have up to 180 days after release from active service in the armed forces of the United States (or federal service during a national emergency) to apply for restoration. s. 230.32 (1), Wis. Stats.
 - (1) The 180 days to apply for restoration begins after a period of hospitalization continuing after military discharge because of injuries or sickness resulting from such military training or service.
 - (2) Exclusions. The 180 day timeframe under this statute does not apply to unclassified employees, inactive duty training, or state active service by order of the governor during a public emergency.
- b. Unclassified employees have up to 90 days to apply for reemployment after release from federal active duty of 90 days or more, or release from any period of service requested by the federal government for national defense work as a civilian during a period officially proclaimed to be a national emergency or a limited national emergency, except that unclassified employees that left a temporary position are not entitled to restoration. ss. 321.64 (1) and (6), Wis. Stats.

Note: The timeframes provided by WI law for certain classified and unclassified employees to apply for restoration after federal service, described in a., and b., above, are more generous than the reemployment timeframes provided in the federal USERRA law, and elsewhere in WI law for return from active state service.

- c. For all returns from federal civilian or military service or active state service not covered by a. or b., above, employees must notify the employing agency of intent to return to work by either reporting to work or submitting a timely application for reemployment. Whether the employee is required to report to work or submit a timely application for reemployment depends upon the length of service, as follows:
 - (1) *Period of service of less than 31 days or for a period of any length for the purpose of a fitness examination.* The employee must report back to the employer not later than the beginning of the first full regularly-scheduled work period on the first full calendar day following the completion of the period of service, and the expiration of eight hours after a period allowing for safe transportation from the place of that service to the employee's residence. For example, if the employee completes a period of service and travel home, arriving at ten o'clock in the evening, he or she cannot be required to report to the employer until the beginning of the next full regularly-scheduled work period that begins at least eight hours after arriving home, i.e., no earlier than six o'clock the next morning. If it is impossible or unreasonable for the employee to report within such time period through no fault of his or her own, he or she must report to the employer as soon as possible after the expiration of the eight-hour period. See 20 CFR s. 1002.115 (a) and s. 321.65 (3)(e)1., Wis. Stats.
 - (2) *Period of service more than 30 days but less than 181 days.* The employee must submit an application for reemployment (written or verbal) not later than 14 days after completing service. If it is impossible or unreasonable for the employee to apply within 14 days through no fault of his or her own, he or she must submit the application not later than the next full calendar day after it becomes possible to do so. See 20 CFR s. 1002.115 (b) and s. 321.65 (3)(e)2., Wis. Stats.
 - (3) *Period of service more than 180 days.* The employee must submit an application for reemployment (written or verbal) not later than 90 days after completing service. See 20 CFR s. 1002.115 (c) and s. 321.65 (3)(e)3., Wis. Stats.
 - (4) *Service-related illness or injury.* If the employee is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service, he or she must report to or submit an application for reemployment to the employing agency 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. This period for recuperation and recovery extends the time period for reporting to or submitting an application for reemployment to the employer, and is not applicable following reemployment. See 20 CFR s. 1002.116 and s. 321.65 (3)(e)4., Wis. Stats.

- d. If an employee fails to timely report for or apply for reemployment, he or she does not automatically forfeit entitlement to reemployment and other rights and benefits. Rather, the employee becomes subject to the conduct rules, established policy, and general practices of the employing agency pertaining to an absence from scheduled work. See 20 CFR s. 1002.117 (a), 20 CFR s. 1002.116, and s. 321.65 (3)(e)5., Wis. Stats.

9. **Process and Documentation for Application for Reemployment**

- a. An application for reemployment does not need to follow any particular format. The employee, orally or in writing, should indicate that he or she is a former employee returning from military service and seeks reemployment. 20 CFR s. 1002.118
- b. The application for reemployment must be submitted to the pre-service employing agency, or to a representative of that agency who has apparent responsibility for receiving employment applications. Depending upon the circumstances, such a person could be a personnel or human resources officer, or a first-line supervisor. 20 CFR s. 1002.119
- c. If the employee submits an application for reemployment after a period of service of more than 30 days, he or she must, upon the request of the employer, provide documentation to establish that:
 - (1) The reemployment application is timely;
 - (2) The employee has not exceeded the five-year limit on the duration of service (subject to the many service exceptions provided by law – see Sec. 720.130 (3)), and;
 - (3) The employee's separation or dismissal from service was not disqualifying. See 20 CFR s. 1002.121 and s. 321.65 (3)(f)1., Wis. Stats.
- d. The employer is not permitted to delay or deny reemployment by demanding documentation that does not exist or is not readily available. The employee is not liable for administrative delays in the issuance of military documentation.

The following sentence applies to federal service only, not state active service. If the employee is reemployed after an absence from employment for more than 90 days, the employer may require that he or she submit the documentation establishing entitlement to reemployment before treating the employee as not having had a break in service for pension purposes. If the documentation is received after reemployment and it shows that the employee is not entitled to reemployment, the employer may terminate employment and any rights or benefits that the employee may have been granted. See 20 CFR s. 1002.122 and ss. 321.65 (3)(f)2. and 3., Wis. Stats.

- e. Documents that satisfy the requirement (when requested by the employer) that the employee establish eligibility for reemployment after a period of service of more than thirty days include:
 - (1) DD (Department of Defense) 214 Certificate of Release or Discharge from Active Duty;
 - (2) Copy of duty orders prepared by the facility where the orders were fulfilled carrying an endorsement indicating completion of the described service;

- (3) Letter from the commanding officer of a Personnel Support Activity or someone of comparable authority;
- (4) Certificate of completion from military training school;
- (5) Discharge certificate showing character of service; and
- (6) Copy of extracts from payroll documents showing periods of service;
- (7) Letter from National Disaster Medical System (NDMS) Team Leader or Administrative Officer verifying dates and times of NDMS training or Federal activation. 20 CFR s. 1002.123

Sec. 720.150 Reemployment / Restoration Position

1. **Escalator Principle.** As a general rule, the employee is entitled to reemployment in the job position that he or she would have attained with reasonable certainty if not for the absence due to military service, if the person is qualified or can become qualified after reasonable efforts by the employer for that position. This position is known as the escalator position, and takes into account personnel transactions that would have occurred if the employee had not left for military service, and could result in a negative transaction such as lay-off. The escalator principle requires that the employee be reemployed in a position that reflects with reasonable certainty the pay, benefits, seniority, and other job prerequisites, that he or she would have attained if not for the period of service. See 20 CFR s. 1002.191
2. **Reemployment Position.** In all cases, the starting point for determining the proper reemployment position is the escalator position. Once this position is determined, other factors may allow, or require, the employer to reemploy the employee in a position other than the escalator position. These factors are: (a) The length of the employee's most recent period of military service; (b) The employee's qualifications; and (c) Whether the employee has a disability incurred or aggravated during military service. See 20 CFR s. 1002.192 and s. 1002.195.
 - a. *Length of Service – Less than 91 days.* The employee must be reemployed in the escalator position. He or she must be qualified to perform the duties of this position. The employer must make reasonable efforts to help the employee become qualified to perform the duties of this position. See 20 CFR s. 1002.196 and s. 321.65 (4)(a)1., Wis. Stats.
 - (1) If the employee is not qualified to perform the duties of the escalator position after reasonable efforts by the employer, the employee must be reemployed in the position in which he or she was employed on the date that the period of service began.
 - (2) If the employee is not qualified to perform the duties of the escalator position or the pre-service position, after reasonable efforts by the employer, he or she must be reemployed in any other position that is the nearest approximation first to the escalator position and then to the pre-service position. The employee must be qualified to perform the duties of this position. The employer must make reasonable efforts to help the employee become qualified to perform the duties of this position.
 - b. *Length of Service – More than 90 days.* The employee must be reemployed in the escalator position or a position of like seniority, status, and pay. He or she must be qualified to perform the duties of this position. The employer must make reasonable efforts to help the employee become qualified to perform the duties of this position. See 20 CFR s. 1002.197 and s. 321.65 (4)(a)2., Wis. Stats.
 - (1) If the employee is not qualified to perform the duties of the escalator position or a like position after reasonable efforts by the employer, the employee must be reemployed in the position in which he or she was employed on the date that the period of service began or in a position of like seniority, status and pay.

- (2) If the employee is not qualified to perform the duties of the escalator position, the pre-service position, or a like position, after reasonable efforts by the employer, he or she must be reemployed in any other position that is the nearest approximation first to the escalator position and then to the pre-service position. The employee must be qualified to perform the duties of this position. The employer must make reasonable efforts to help the employee become qualified to perform the duties of this position.
- c. *Employee qualifications for reemployment position.* The employee must be qualified for the reemployment position. The employer must make reasonable efforts to help the employee become qualified to perform the duties of this position. The employer is not required to reemploy the employee on his or her return from service if he or she cannot, after reasonable efforts by the employer, qualify for the appropriate reemployment position. See 20 CFR ss. 1002.198 1002.226
 - (1) “Qualified” means that the employee has the ability to perform the essential tasks of the position. The employee’s inability to perform one or more non-essential tasks of a position does not make him or her unqualified.
 - (2) Only after the employer makes reasonable efforts (actions, including training, that do not place an undue hardship on the employer), may it determine that the employee is not qualified for the reemployment position. These reasonable efforts must be made at no cost to the employee.
- d. *Disabled Employees.* If the employee has a disability incurred in, or aggravated during, the period of military service, the employer must make reasonable efforts to accommodate that disability and to help the employee become qualified to perform the duties of his or her reemployment position. The employee must be reemployed in a position according to the following priority:
 - (1) The escalator position;
 - (2) A position that is equivalent in seniority, status, and pay to the escalator position; or
 - (3) 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. See 20 CFR s. 1002.225 and s. 321.65 (4)(a)3., Wis. Stats.

3. Probationary Periods.

- a. If an employee was serving a probationary period at the time he or she took leave for military service, upon reemployment the employee will continue the probationary period from the point he or she had attained at the time of departure for military service. See s. 230.32 (2)(b), Wis. Stats.
- b. According to the guidance provided in the preamble to the federal regulations implementing USERRA, an employee that was serving a bona fide probationary period of training and/or observation should be allowed to complete the probationary period following reemployment. Once the employee completes the probationary period, the employee’s pay and seniority should reflect both the pre- and post-military service time in the probationary period, plus the time served in the military. (Federal Register, Vol. 70, No. 242, December 19, 2005, under the discussion of *Apprenticeships and Probationary Periods*)
- c. Upon reemployment after military service, the employee will be placed in his or her pre-military service classification to complete the probationary period. The pay rate will reflect any intervening adjustments that would have been received by employees on probation in the pre-military service classification.
- d. Upon completion of the probationary period, the employee’s pay, and classification if appropriate, should be reconstructed based on the escalator principle, and any resulting back pay paid to the employee.

- e. The eligibility of a returning probationary employee for health insurance and other fringe benefits should be based on the length of service the employee would have attained without leaving for military service, regardless of the remaining period of probation that the employee must serve.

Sec. 720.160 Employees That Don't Return From Military Leave

1. *Pension.* Former employees that do not make a timely application for reemployment/restoration following military service are not entitled to have the period of military leave treated by the employer as continuous service with the employer for purposes of determining participation, vesting and accrual of pension benefits. Employees that apply for reemployment with the state following the period designated under state or federal law for timely reemployment will be subject to the ordinary rules regarding employee participation in the Wisconsin Retirement System. See 20 CFR s. 1002.259.

Sec. 720.170 Protection from Discharge

1. If an employee's most recent period of federal service in the uniformed services or active state service was more than 30 days, he or she must not be discharged except for cause--
 - a. For 180 days after the employee's date of reemployment if his or her most recent period of service was more than 30 days but less than 181 days; or,
 - b. For one year after the date of reemployment if the employee's most recent period of service was more than 180 days. See 20 CFR s. 1002.247 and s. 321.65 (5)(c), Wis. Stats.
2. An unclassified employee may not be discharged without cause within one year after restoration following federal active duty of 90 days or more, or any period of service requested by the federal government for national defense work as a civilian during a period officially proclaimed to be a national emergency or a limited national emergency. This provision does not apply if the pre-service unclassified position was a temporary position.

Sec. 720.180 Dual State and Military Employment

1. **Early Reemployment in Anticipation of Release from Military Service.** The obligation to provide prompt reemployment is in force following the completion of the military service obligation, as determined by the dates provided on military orders. However, if an employee is under military orders, but reasonably expects to be on military furlough through the end date of the military orders, an agency may at its discretion reemploy / restore the employee prior to the end date of the military orders.
2. **Concurrent Employment.** At the discretion of the employing agency, an employee may be allowed to work an alternative or reduced work schedule, or in a temporary position, while the employee is concurrently under military active duty orders. However, agencies are cautioned that military orders will take precedence over state job obligations, and the employee may forfeit eligibility for any pay differential that is available to employees on military leave of absence.

Sec. 720.190 Military Leave and the Family Medical Leave Act

Under USERRA, a reemployed service member would be eligible for leave under either the federal or Wisconsin Family and Medical Leave Act, if the number of months and the number of hours of work for which the service member was employed by the state, together with the number of months and the number of hours of work for which the service member would have been employed by the state during the period of uniformed service, meet the state or federal FMLA eligibility requirements.

Sec. 720.200 Referral of Questions

Questions regarding the information contained in this Chapter should be referred to DOA – Division of Personnel Management, Bureau of Classification & Compensation: Phone: (608) 266-8232; Fax: (608) 267-1020; Email: DOADPMCompEmploymentRelGenInfo@wisconsin.gov.

Sec. 720.210 Administrative Information

This chapter was issued in October 2018 to address the uniqueness of Military Leave.