

123:1-34-05

**Uniformed service leave without pay.**

A permanent public employee shall be granted, upon giving notice to his or her appointing authority, a leave of absence to serve in the uniformed service, as defined in section 5903.01 of the Revised Code. This leave shall be without pay and shall be considered as a leave of absence from service with reinstatement rights. No single leave of absence or combination of uniformed service leaves of absence may exceed five years or a single, longer period required to complete an initial period of obligated service.

- (A) Continuation of health insurance and related benefits. Employees on uniformed service leave without pay for up to thirty days must be given the option of making direct payments of the employee's share of the health insurance premium. Employees with longer periods of service must be given the option of continuing health care coverage and related benefits for up to eighteen months. Such continuation shall be at the employee's expense. And the employee may be required to pay up to one hundred and two per cent of the entire health insurance and related benefits premium costs.
- (B) Application for reinstatement. An employee returning from uniformed service leave without pay must apply for reinstatement. The application must be made to the employee's appointing authority, or to the director of administrative services if the employee's agency is no longer in existence, within the period set forth below.
- (1) Leave of less than thirty days: immediately upon release from uniformed service, but appointing authorities must allow for travel time and eight hours of rest;
  - (2) Leave of thirty-one to one hundred and eighty days: within fourteen days of completing uniformed service requirement: or
  - (3) Leave of more than one hundred and eighty days: within ninety days of completing uniformed service requirement.

If the leave of absence was for more than ninety days, the appointing authority may require, with the application, evidence showing that the application is timely. The duration of all such leaves of absence does not exceed five years or the time to complete the initial period of obligated service, and the employee's entitlement to reemployment has not terminated according to the circumstances described in the Uniformed Services Employment and Reemployment Rights Act of 1994, 108 Stat. 3149 (1994), 38 U.S.C.A. 4301 and 4304, as amended.

- (C) Reinstatement. Upon return from a period of duty in the uniformed service lasting ninety calendar days or less, the employee shall be returned to the same or similar position within the employee's former classification. If the period of duty lasts more

than ninety days, the employee may be placed in any position of equivalent status, seniority, and pay. Regardless of the duration of duty, if the appointing authority demonstrates to the director that reinstatement is impossible or would impose undue hardship, the employee may be assigned to another position with like seniority, status, and pay or the nearest approximation thereof consistent with the circumstances of the case.

- (D) Permanent disability. If the employee is unable to perform the duties of his or her former position by reason of injury or illness incurred or aggravated during uniformed service, the appointing authority shall make reasonable efforts to accommodate the employee's disability. These efforts shall include placing the employee in another position in which the employee is qualified and able to perform the essential duties that will provide similar status, seniority, and pay.
- (E) Temporary disability. If an employee who is entitled to reinstatement under this rule is unable to report for or perform the duties of his or her position at the date of his or her application for reinstatement because of an injury or illness incurred or aggravated during uniformed service, he or she shall have up to two years to recover from that illness or injury before being required to report or reapply.
- (F) Benefits upon reinstatement. A reinstated employee shall receive all rights and benefits generally available to employees in a comparable leave of absence without pay, including the following:
  - (1) All sick leave, vacation leave, and personal leave which had been accumulated at the time of entering service.
  - (2) All seniority which would have accrued had the employee been on the job.
  - (3) Automatic salary adjustments associated with the position and due the employee had the employee been on the job.
  - (4) Any change in classification or pay range which would be due the employee had the employee been on the job.
  - (5) Reinstated health insurance and related insurance benefits with no waiting periods or pre-existing condition exclusions.
- (G) Termination.
  - (1) Uniformed service lasting between thirty-one and one hundred and eighty days. Employees reinstated after uniformed service leave without pay lasting from

thirty-one to one hundred and eighty days shall not be terminated from their position within one hundred and eighty days of reinstatement without cause.

- (2) Uniformed service lasting one hundred and eighty days or more. Employees reinstated after uniformed service leave lasting one hundred and eighty-one days or more shall not be terminated from their positions within one year of reinstatement without cause.
  
- (H) Agency no longer in existence. Where an employee is entitled to be reinstated to a position in accordance with this rule and the agency with which such person was employed is either no longer in existence and its functions have not been transferred to any successor agency, or that for any reason it would be unreasonable or would impose undue hardship to restore the employee to the agency, the director shall determine whether there is a similar position for which the employee is qualified and which is either vacant or held by an employee on temporary appointment with any other agency. If such a position exists, the employee shall be reinstated to that position by the agency in which it exists.
  
- (I) Extended duty and reenlistment. The provisions of this rule do not apply to an employee who accrues more than five years of cumulative, uniformed service, except as provided in 38 U.S.C. 4312, as amended.

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WITHDRAWN ELECTRONICALLY

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Certification

06/07/2007

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Date

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