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State Law

Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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State Law

Reference Number: CTAS-1015

In addition to the federal law, state law found at T.C.A. § 8-33-101 *et seq.* provides protections for employees in military service.^[1] Pursuant to T.C.A. § 8-33-109, all county officers and employees who are, or may become, members of any reserve component of the armed forces of the United States, including members of the Tennessee army and air national guard, are entitled to a leave of absence from their jobs, without loss of time, pay, regular leave or vacation, impairment of efficiency rating, or any other rights or benefits to which they are otherwise entitled, for all periods of military service during which they are engaged in the performance of duty or training in the service of this State, or of the United States, under competent orders. When performing military service, the officer or employee is entitled to receive his or her full salary or compensation for up to, but not exceeding, 20 working days in any one calendar year. After the 20 working days of full compensation, any public employer may, but is not required to, provide partial compensation to its employees while under competent orders. Also, after the 20 working days of compensation reservists may use up to 5 days of sick leave in lieu of annual leave for the purpose of not having to take leave without pay.

Paid leave is required under T.C.A. § 8-33-109 regardless of whether the employee is a full-time or part-time employee.^[2] The statute also applies to weekend National Guard drills when an employee must miss scheduled weekend work to attend these drills under orders issued by their unit commanders.^[3]

It is important to note that, while T.C.A. § 8-33-109 grants paid military leave for up to 20 working days in any one calendar year to county officers and employees while they are performing military service, the Attorney General has opined that this statute does not provide for the continued accumulation of vacation or sick leave while a covered person is on military leave. Rather, the purpose of the statute is to protect the rights and benefits that the military member has already earned, such as seniority and accrued leave time.^[4]

In addition to the provisions of T.C.A. § 8-33-109, sheriff's deputies, police officers, and firefighters, who served or serve on active duty in the armed forces of the United States during Operation Enduring Freedom or any other period of armed conflict prescribed by presidential proclamation or federal law that occurs following the period involving Operation Enduring Freedom, are entitled to receive the cash salary supplement provided pursuant to T.C.A. §§ 38-8-111 and 4-24-202, respectively, if their military service prevented or prevents them from attending an in-service training program.

Tennessee Code Annotated § 8-33-102 provides re-employment rights after discharge from military service. County employees who leave a position in order to perform military duty must apply for re-employment within 90 days after being released or discharged from military duty. An employee who makes the proper application, and was not dishonorably discharged, shall, "[i]f still physically qualified to perform the duties of such position, be restored to such position if it exists and is not held by a person with greater seniority, otherwise to a position of like seniority, status and pay."^[5] A county employee who is not qualified to perform the duties of his or her prior position due to a disability sustained during military service, "shall be placed in such other position, the duties of which such employee is qualified to perform as will provide the employee like seniority, status and pay, or the nearest approximation thereof consistent with the circumstances of the case."^[6]

Tennessee Code Annotated § 8-33-104 provides additional rights after re-employment following discharge from military service. Any person who is restored to a position in accordance with this law is considered as having been on furlough or leave of absence during the period of military duty. A restored employee cannot be discharged without cause within one year after restoration. The employee is entitled to be restored without loss of seniority (including, upon promotion or other advancement following completion of any period of employment required therefore, a seniority date in the advanced position that will place the person ahead of all persons previously junior to the person who advanced to the position during the employee's absence in armed forces). Upon reinstatement, the employee also is entitled to participate in insurance (including retirement, pension plans and medical insurance) and other benefits dependent on length of employment, including vacation privilege and severance pay. The employee is protected against reduction in seniority, status, or pay during employment, except as such reduction may be made for all employees whose employment situations are similar.

Under T.C.A. § 8-33-110, all officers and employees of this state, or any department or agency of state, or of any county, municipality, school district, or other political subdivision, all other public employees of this state, and all private sector employees who are members of the Tennessee army and air national guard, the Tennessee state guard, or civil air patrol and are on active state duty pursuant to § 58-1-106

are entitled to following protections subject to the eligibility requirements described below and in addition to the leave of absence provided in T.C.A. § 8-33-109.

1. An unpaid leave of absence from their respective duties, without loss of time, pay not specifically related to leave of absence time, regular leave or vacation, or impairment of efficiency rating for all periods of service during which they are engaged in the performance of duty or training in the service of this state under competent orders, including the performance of duties in an emergency; and
2. Equivalent protections regarding the right to reemployment to those protections afforded under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) (38 U.S.C. § 4301 et seq.) to service members called to federal active service.

To be eligible for protections provided above, a person must satisfy the following conditions:

1. A person whose period of service in the uniformed services was 30 days or less must report for work to the person's employer not later than the first full regularly scheduled work period following a period of eight hours after the person has completed service and has been safely transported to the person's residence, unless reporting for work within that time period is not reasonably practicable through no fault of the person, in which case the person must report for work as soon as reasonably practicable;
2. A person whose period of service in the uniformed services was greater than 30 days but not more than 180 days must apply for reemployment with the person's employer within 14 days after completion of the person's period of service, unless doing so is not reasonably practicable through no fault of the person, in which case the person must apply for reemployment as soon as reasonably practicable; or
3. A person whose period of service in the uniformed services was greater than 180 days must apply for reemployment with the person's employer within 90 days after completion of the period of service.

Persons covered under T.C.A. § 8-33-110 must provide advance notice to their employer that they have been called to active duty unless doing so is impossible or unreasonable under the circumstances.

The chancery court for the jurisdiction for which the person is employed has jurisdiction and authority to enforce and order compliance with T.C.A. § 8-33-110.

[1] Under state law it is a Class E felony for any person, firm or corporation to refuse employment to any person for the sole reason that the person is a member of the Tennessee national guard or to terminate the employment of any such person for such reason or because of absence from employment while attending any prescribed drill, including annual field training. T.C.A. § 58-1-604.

[2] Op. Tenn. Att'y Gen. 00-093 (May 17, 2000).

[3] Op. Tenn. Att'y Gen. 98-155 (August 17, 1998).

[4] Op. Tenn. Att'y Gen. 92-12 (February 19, 1992).

[5] T.C.A. § 8-33-102(1).

[6] T.C.A. § 8-33-102(2).

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