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Employee Leave

Dear Reader:

The following document was created from the CTAS website (ctas.tennessee.edu). This website is maintained by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

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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Employee Leave

Reference Number: CTAS-177

Giving employees time off from work is sometimes mandated by state or federal law, and sometimes it is simply good management practice. The following pages review the common types of leave as well as the various laws that affect employee leave in counties. It is important to understand what leave is required by law and what is left to the discretion of the employer. State law requires that counties have written policies in place setting out their practices with regard to employee leave.^[1]

Personnel Policies including sample policies
Sample Leave Request Form

[1] T.C.A. § 5-23-101 *et seq.*

Holidays

Reference Number: CTAS-178

By state statute, T.C.A. § 15-1-101, the General Assembly has established certain days as legal holidays in Tennessee:

January 1; the third Monday in January, "Martin Luther King, Jr. Day"; the third Monday in February, known as "Washington Day"; the last Monday in May, known as "Memorial" or "Decoration Day"; June 19, known as "Juneteenth"; July 4; the first Monday in September, known as "Labor Day"; the second Monday in October, known as "Columbus Day"; November 11, known as "Veterans' Day"; the fourth Thursday in November, known as "Thanksgiving Day"; December 25; and Good Friday; and when any one (1) of these days falls on Sunday then the following Monday shall be substituted; and when any of these days falls on Saturday, then the preceding Friday shall be substituted; also, all days appointed by the governor or by the president of the United States, as days of fasting or thanksgiving, and all days set apart by law for holding county, state, or national elections, throughout this state, are made legal holidays, and the period from noon to midnight of each Saturday which is not a holiday is made a half-holiday, on which holidays and half-holidays all public offices of this state may be closed and business of every character, at the option of the parties in interest of the same, may be suspended.^[1]

The Tennessee Attorney General has opined that the only days that county offices are authorized to close are those listed in the statute.^[2] Closing county offices on days other than legal holidays can result in serious consequences. For example, in the case of *Wright v. Blalock*,^[3] a clerk of court closed the clerk's office on the day after Thanksgiving, which is not a legal holiday, and a litigant was unable to file a notice of appeal that was due on that date, and the court refused to extend the time for filing the notice of appeal.

The Attorney General has opined that which of the listed legal holidays a particular county observes is to be determined under policies adopted pursuant to the County Personnel Law, codified at T.C.A. § 5-23-101 *et seq.*^[4] The policies should state which days will be observed as holidays for each county office, what happens if a holiday falls on a weekend, and any special pay and/or time off provisions the employer may want to adopt for employees who are required to work on a holiday.

The observance of religious holidays can trigger a duty to accommodate employees who do not celebrate these occasions or who celebrate other religious holidays. Reasonable accommodations should be made when possible for those employees who observe other religious holidays. Whether reasonable accommodations can be made often depends upon the hardship created on the conduct of the employer's business. For more on religious accommodation, see Religious Discrimination.

Veteran's Day

Pursuant to T.C.A. § 15-1-105, an employer is required to allow veteran employees to have the entirety of November 11, Veterans' Day, as a non-paid holiday if: (1) the veteran employee provides the employer with at least one-month's written notice of the veteran employee's intent to have the entirety of that day

as a non-paid holiday; (2) the veteran employee provides the employer with proof of veteran status, which may include, but is not limited to, a DD Form 214 or other comparable certificate of discharge from the armed forces; and (3) the veteran employee's absence, either alone or in combination with other veteran employee's absences, on that day will not impact public health or safety, or cause the employer significant economic or operational disruption as determined by the employer in the employer's sole discretion.

This law does not prohibit an employer from allowing the employer's veteran employees to have the entirety of Veterans Day as a paid holiday. T.C.A. § 15-1-105.

[1] T.C.A. § 15-1-101.

[2] Op. Tenn. Att'y Gen. U87-77 (July 28, 1987), U97-005 (February 6, 1997), and 98-058 (March 9, 1998). However, county offices are not required to remain open on "half-holidays" and each elected official may decide whether to open on those days. Op. Tenn. Att'y Gen. 81-146 (March 9, 1981).

[3] 1986 WL 5033 (Tenn. Ct. App. April 30, 1986).

[4] Op. Tenn. Atty' Gen. 98-058 (March 9, 1998).

Vacation/Annual Leave

Reference Number: CTAS-1003

Because employees generally are more productive and happier if they periodically are given time off from work, employers usually provide a specific number of vacation days per year for each employee, which is sometimes called annual leave. Employers are not required by law to give employees paid vacations, but state law does require that county government employers have a written policy stating whether paid vacation leave is given and if so, how it accumulates and how it may be used, whether employees will be paid for unused vacation days, and provisions for maintaining records.^[1]

[1] T.C.A. § 5-23-104.

Sick Leave

Reference Number: CTAS-1004

The law does not mandate paid sick leave for most county employees,^[1] although a certain amount of unpaid leave may be required under the federal Family and Medical Leave Act (FMLA) for illness that meets the definition of a "serious health condition." More on FMLA

Since employers generally are not required by law to give employees paid sick leave, an employer may establish any paid sick leave policy that suits the employer's needs. However, state law requires that county government employers have a written policy stating whether paid sick leave is given and if so, how it accrues and how it may be used, and provisions for maintaining leave records.^[2]

[1] Paid sick leave for teachers is required and is regulated under T.C.A. § 49-5-710. Also, employees who are injured on the job receive leave with a portion of their regular pay under the state Workers' Compensation Law, discussed elsewhere in this manual.

[2] T.C.A. § 5-23-104.

Bereavement/Funeral Leave

Reference Number: CTAS-1005

Employers are not required by law to provide bereavement leave, but many employers choose to allow an employee paid time off for the death of a family member. If the employer offers this kind of leave, a written policy is required under T.C.A. § 5-23-104. The policy should state whether this leave is paid or unpaid leave, set out a specific number of allowable days, and define the family members to which it

applies.

Voting Leave

Reference Number: CTAS-1006

Under state law found at T.C.A. § 2-1-106, any person who is entitled to vote in an election held in Tennessee is entitled to take a reasonable amount of time off from work, up to three (3) hours, in order to vote during the time the polls are open in the county where the employee is a resident. The employer may specify the hours during which the employee may be absent, and the employee is required to apply for voting leave to the employer before noon of the day before the election. The state law further provides that the employee cannot be penalized or suffer a reduction in pay due to the absence. There is an exception to this requirement—if the employee's work period begins three or more hours after the opening of the polls or ends three or more hours before the closing of the polls, then the employer is not required to allow any time off from work.

Jury and Court Duty

Reference Number: CTAS-1007

State law requires that employees be excused from work when they are summoned for jury service. Upon receiving a summons to report for jury duty, an employee must present the summons to the supervisor on the next day he or she works. The employee must be excused from work for the entire day or days the employee is required to serve as a juror, except the employee can be required to return to work on days when the employee is required to serve less than three (3) hours. The employee is entitled to his or her usual compensation, less the amount of fee or compensation received for serving as a juror (or the employer may choose to pay the employee the usual compensation without deducting the juror fee). The employer is not required to compensate an employee for more time than was actually spent serving and traveling to and from jury duty. These provisions do not apply to any employee who has been employed on a temporary basis less than six (6) months, and special rules apply to night-shift employees. T.C.A. § 22-4-106.

Employees may not be discharged, demoted or suspended for taking time off for jury service when they have given the required notice. T.C.A. § 22-4-106. Federal law also prohibits the discharge of an employee for performing jury service in federal court. 28 U.S.C. § 1875.

Employees also may be subpoenaed to testify in court. Although no state law establishes specific requirements, public policy dictates that employees be given time off in order to comply with a validly issued subpoena to appear in court. Employers are not required to compensate employees for appearing in court as a party or as a witness.

As with all other forms of leave, policies covering these areas must be set out in writing under T.C.A. § 5-23-104.

Pregnancy Leave and other Parental Leave

Reference Number: CTAS-1008

The federal Pregnancy Discrimination Act (PDA), an amendment to the Civil Rights Act of 1964,^[1] prohibits employment discrimination against women on the basis of pregnancy, childbirth or related medical conditions. This means that pregnancy-related conditions must be treated the same as any other temporary medical incapacity. The PDA applies to employers who have 15 or more employees. For this purpose the county generally is treated as the employer (not the individual office). The term "employees" includes local government employees, but does not include elected officials and their personal staff or policy-making appointees.

If the employer grants paid sick leave for temporary medical disabilities, female employees must receive the same benefit for pregnancy-related medical conditions. In other words, the employee must not be required to take unpaid leave during the time that she is medically unable to work due to pregnancy and childbirth if paid leave is available for other medical conditions. The employer must provide leave for pregnancy-related conditions in the same manner as all other reasons for leave under the employer's policies. For example, if other employees are allowed only two weeks paid sick leave, but may take unpaid

leave for other purposes, a pregnant employee who is unable to work must be allowed to take the two weeks paid sick leave together with the amount of unpaid leave allowed other employees. Female employees cannot be penalized for taking maternity leave if other employees are not penalized for taking similar leaves of absence. For example, if retirement or seniority rights continue to accrue while an employee is on vacation or sick leave, those rights must continue to accrue during maternity leave. Pregnant employees are entitled to the same benefits (paid leave, health insurance, temporary disability payments, temporary work reassignment, etc.) as are provided for other temporary medical disabilities. However, if the employer does not provide a particular benefit for other temporary medical incapacities, that benefit is not required for pregnant employees. Finally, an employer may not set mandatory leave dates for pregnant employees. An employee must be allowed to continue to work as long as she is able to perform her job.

Eligible male and female employees are entitled to leave for the birth of a child, or for the adoption or placement of a child for foster care, under the federal Family and Medical Leave Act. See Leave for Birth, Adoption and Foster Care under Family and Medical Leave Act (FMLA) for more information. In addition to federal law, Tennessee has enacted a parental leave law, found at T.C.A. § 4-21-408, which applies to all employers who employ 100 or more full-time employees at a job site or location (generally the county would be treated as the employer, not the individual office). The state law allows up to four months off for adoption, pregnancy, childbirth and nursing an infant for both male and female employees who have been employed for 12 months. The leave may be with or without pay. The Tennessee Attorney General has opined that this state law does not conflict with the federal Pregnancy Discrimination Act.^[2] The statute requires that the provisions of the Tennessee parental leave law be included in the next employee handbook published by the employer after May 27, 2005.

[1] 42 U.S.C. § 2000e(k).

[2] Op. Tenn. Atty. Gen. 91-22 (March 12, 1991).

Administrative Leave with Pay

Reference Number: CTAS-1009

Sometimes an emergency will arise that requires an employee to miss work. When this occurs, the employee may not have any accumulated vacation time or comp time to use to cover the absence. Most employers do not mind allowing the employee some extra time to cope with these emergencies. To cover these occurrences, the employer can adopt a written policy that allows the employer to grant additional leave with pay to an employee. This leave should be called administrative leave since it is granted at the discretion of the employer. Some maximum amount of leave should be set for this type of leave, if it is used.

Administrative Leave without Pay

Reference Number: CTAS-1010

Circumstances can arise when an employee needs to take time off work but has no available paid leave time, and the employer may want to allow the employee to miss work but the employer does not want to grant paid leave during the absence. In these instances, the employer may want to adopt a policy providing for administrative leave without pay. During leave without pay, the employee normally would not accrue sick leave, vacation or other benefits. A limit should be placed on the length of time that an employee could be absent from work under this type of leave. This type of leave is not required by law. If it is used, however, it should be granted in a non-discriminatory manner.

Leave After an Arrest

Reference Number: CTAS-2478

Under T.C.A. § 7-51-1701, if a county has or implements a personnel policy that places an employee on leave immediately following an arrest of the employee, the county is required to implement a policy that restores back pay to the employee if the charges are dropped or an employee is found not guilty of the charges. This requirement does not apply if the employee pleads guilty; separates from employment voluntarily before the employee is found guilty; or is terminated for a reason other than the arrest.

In Line of Duty Injury Leave

Reference Number: CTAS-1011

In private industry, on-the-job injuries are governed by the Workers' Compensation Law found at T.C.A. § 50-6-101 *et seq.* The application of this law is mandatory in the private sector. In the public sector, pursuant to T.C.A. § 50-6-106, the General Assembly has allowed counties and municipal corporations to elect whether they want to be covered by the Workers' Compensation Law. The county should have a resolution of the county legislative body and a policy in place stating whether the employer has elected to come under the Workers' Compensation Law, and if not, how leave for these injuries is handled. If the county has elected not to be covered by the Workers' Compensation Law, then the leave policies will need to include more extensive provisions concerning leave for in-line-of-duty injury. The policy needs to address such areas as notice of the injury, injuries not covered, compensation and extended injury leave provisions.

Workers' compensation issues are complex and the county employer should seek the advice of competent legal counsel and risk management experts in determining its policies and procedures with regard to this topic.

Leave for Arrested Employees

Reference Number: CTAS-1012

If a county has a policy that places an employee on leave for any period of time following an arrest of the employee, the county's policy must include a provision requiring restoration of back pay to the employee if the charges are dropped or the employee is found not guilty of the charges. This requirement does not apply if the employee pleads guilty to the charges or enters into a plea agreement on the charges.^[1]

[1] T.C.A. § 7-51-1701.

Military Leave

Reference Number: CTAS-1013

County officers and employees who are called to active military duty are entitled to military leave and to re-employment and restoration of benefits under both state and federal law upon their return from active duty. County employers must provide the benefits mandated by these statutory provisions to returning employees. The rights and benefits provided for in the two statutes are similar but not identical.

Following is a summary of the provisions of the state and federal laws:

- Employment discrimination because of past, current or future military service is prohibited.
- Employers are required to grant employees a leave of absence for the period necessary to perform military service. Employees cannot be required to use accrued leave or vacation time, but if the employee requests annual leave or paid vacation the employer must allow it.
- Employees returning from military service are entitled to restoration of employment with seniority, status and pay rate as if continuously employed.
- Employees on leave of absence for military service do not continue to accumulate vacation or sick leave. However, if the employer allows accrual of vacation or sick leave for employees who are on furlough or leave of absence, then an employee who is absent for military service is entitled to the same benefit.
- Employees on military leave are entitled to elect to continue their health insurance for up to 18 months and may be required to pay the employee's share of the premium. And, an employee may be required to pay the employee cost of any other continued funded benefit to the extent other employees on furlough or leave of absence are required to do so.
- State law 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. 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.

Federal Law-USERRA

Reference Number: CTAS-1014

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. §§ 4301 - 4333, protects the rights and benefits of employees who are absent from work because of service in the armed forces. This federal law prohibits employment discrimination because of past, current, or future military obligations, which includes hiring, promotion, reemployment, termination, and benefits.^[1]

USERRA does not apply to the state call-up of National Guardsmen.^[2] State call-up of National Guardsmen is addressed by state law.^[3]

Under USERRA, re-employment rights extend to persons who have been absent from a position of employment because of "service in the uniformed services." USERRA applies to persons who perform duty, voluntarily or involuntarily, in the "uniformed services."^[4] The "uniformed services" include the Army National Guard and Air National Guard, in addition to the Army, Navy, Marine Corps, Air Force, Coast Guard, and the reserve components of each of these services.^[5]

Any person whose absence from a position of employment is necessitated by service in the uniformed services is entitled to USERRA reemployment rights and benefits if:

- The person gave notice to the employer that he or she was leaving the job for service in the uniformed services, unless giving notice was precluded by military necessity or otherwise impossible or unreasonable;^[6]
- The period of service did not exceed five years;^[7]
- The person reported back to the civilian job in a timely manner or submitted a timely application for re-employment; and^[8]
- The person was not released from service under dishonorable or other punitive conditions.^[9]

The employee returning from service must notify the employer of his or her intent to return to work within a specific time period that depends on the length of time the employee was in service. These time periods are:

Less than 31 days of service: The employee must report to the employer by 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 the safe transportation of the person from the place of that service to the person's residence; or as soon as possible after the expiration of the eight-hour period referred to above, if reporting within the period referred to above is impossible or unreasonable through no fault of the person.^[10]

31 to 180 days of service: The employee must submit an application for re-employment with the employer not later than 14 days after the completion of the period of service or if submitting the application within that time period is impossible or unreasonable through no fault of the employee, the next first full calendar day when submission of such application becomes possible.^[11]

181 days or more: The employee must submit an application for re-employment with the employer not later than 90 days after the completion of the period of service.^[12]

With a service-connected injury or illness: Reporting or application deadlines are extended for up to two years for persons who are hospitalized or convalescing.^[13]

Under USERRA, the position into which a returning employee is reinstated is also based on the length of military service. These rules are:

Less than 91 days of service: The employee must be re-employed and placed in the position in which the person would have been employed if continuous employment had not been interrupted by such service, and which the person is qualified to perform; or, if the person is not qualified to perform the duties of the position after reasonable efforts by the employer to qualify the person, the employee must be re-employed in the position in which the person was employed on the date of the commencement of the service in the uniformed services.^[14]

91 days of service or more: The employee must be re-employed in the position in which the person

would have been employed if continuous employment had not been interrupted by such service, or a position of like seniority, status and pay, the duties of which the person is qualified to perform; or, if the person is not qualified to perform the duties of former position after reasonable efforts by the employer to qualify the person, the employee must be re-employed in the position which the person was employed on the date of the commencement of the service in the uniformed services, or a position of like seniority, status and pay, the duties of which the person is qualified to perform.^[15]

Service-related disability: If a person has a disability incurred in, or aggravated during, military service, and after reasonable efforts by the employer to accommodate the disability, is not qualified because of the disability for the position in which the person would have been employed if employment had not been interrupted by military service, the person must be placed in another position which is equivalent in seniority, status and pay, the duties for which the person is qualified or would become qualified with reasonable efforts by the employer, or the person must be placed in a position which is the nearest approximation to such a position in terms of seniority, status, and pay consistent with circumstances of the person's case.^[16]

A re-employed employee is entitled to seniority and other rights and benefits that the person had on the date of the commencement of service in the uniformed services plus the additional seniority and rights and benefits the person would have attained if the person had remained continuously employed.^[17] A re-employed employee cannot be discharged, except for cause, within one year after the date of re-employment, if the person's period of service before the re-employment was more than 180 days; or within 180 days after re-employment if the person's period of service before the re-employment was more than 30 days but less than 181 days.^[18]

Under USERRA, an employee who is absent from employment due to service in the uniformed services is deemed to be on furlough or leave of absence while performing such service and is entitled to such other rights and benefits not determined by seniority as are generally provided by the employer of the person to employees having similar seniority, status, and pay who are on furlough or leave of absence under a contract, agreement, policy, practice, or plan in effect at the commencement of such service or established while such person performs such service.^[19] However, an employee deemed to be on furlough or leave of absence under USERRA is not entitled to any benefits to which the person would not otherwise be entitled if the person had remained continuously employed. And, the employee may be required to pay the employee cost, if any, of any continued funded benefit to the extent other employees on furlough or leave of absence are so required.^[20]

An employee who is performing military service is permitted, upon request, to use any accrued vacation, annual, or similar leave with pay, but the employer cannot require an employee to use vacation, annual, or similar leave.^[21] Like the state statute, USERRA does not provide for the accumulation of vacation or sick leave while a covered employee is on military leave. However, if the employer allows accrual of vacation or sick leave for employees who are on furlough or leave of absence, then an employee having similar seniority, status, and pay who is absent for military service is entitled to the same benefit.

USERRA also provides for the continuation of health insurance benefits. An employee who is performing military service may elect to continue such coverage. The maximum period of coverage of a person and the person's dependents under such an election is 24 months. An employee who elects to continue health-plan coverage may be required to pay not more than 102 percent of the full premium under the plan. However, if the employee's military service is less than 31 days, that person cannot be required to pay more than the employee share, if any, for such coverage.^[22] USERRA also protects pension plan benefits that accrued during military service.^[23]

A non-technical resource guide to USERRA may be downloaded from the Department of Labor. Additional assistance is available from ESGR (Employer Support of the Guard and Reserve). Part of ESGR's mission is to assist in preventing, resolving, or reducing employer and/or employee problems and misunderstandings that result from National Guard or Reserve membership, training, or duty requirements through information services and informal mediation. To contact an ESGR representative call (615) 313-0657 or access the ESGR website.

[1] 38 U.S.C. § 4311(a).

[2] Although USERRA applies to National Guard duty assignments under federal authority, it does not apply to National Guardsmen called to duty under state authority, such as disaster relief or riot control.

[3] See T.C.A. §§ 8-33-101 *et seq.*, and 58-1-106.

- [4] 38 U.S.C. § 4303 (13).
- [5] 38 U.S.C. § 4303 (16).
- [6] 38 U.S.C. § 4312 (a)(1) and (b).
- [7] 38 U.S.C. § 4312 (a)(2) and (c).
- [8] 38 U.S.C. § 4312 (a)(3) and (e).
- [9] 38 U.S.C. § 4304.
- [10] 38 U.S.C. § 4312 (e)(1)(A).
- [11] 38 U.S.C. § 4312 (e)(1)(C).
- [12] 38 U.S.C. § 4312 (e)(1)(D).
- [13] 38 U.S.C. § 4312 (e)(2)(A).
- [14] 38 U.S.C. § 4313 (a)(1)(A) and (B).
- [15] 38 U.S.C. § 4313 (a)(2)(A) and (B).
- [16] 38 U.S.C. § 4313 (a)(3)(A) and (B).
- [17] 38 U.S.C. § 4316 (a).
- [18] 38 U.S.C. § 4316 (c).
- [19] 38 U.S.C. § 4316 (b)(1)(A) and (B).
- [20] 38 U.S.C. § 4316 (b)(3) and (b)(4).
- [21] 38 U.S.C. § 4316 (d).
- [22] 38 U.S.C. § 4317 (a)(1) and (2).
- [23] 38 U.S.C. § 4318.

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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