

**AZ-2013-LV**

(December 2007; Updated August 2013)  
(Updated June 2017) **(Updated January 2021)**

**Military Leave under Arizona Law**

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1.18: USERRA and Other Laws

2.0: Paid Leave

Arizona law provides as follows concerning military leave for public sector and private sector employees who are members of the National Guard and Military Reserve Components.

“An employer shall not refuse to permit members of the National Guard to take leaves of absence from employment for the purpose of complying with competent orders of the state or United States for active duty, or to attend camps, maneuvers, formations or armory drills. The leaves of absence shall not affect vacation rights that employees otherwise have, except that an employer need not consider the period of absence as a period of work performed for him in determining eligibility for vacation and the amount of vacation pay to which the employee is entitled.

“A member of the National Guard of the United States shall not lose seniority or precedence while absent under competent military orders. On return to employment the employee shall be returned to his previous position, or to a higher position commensurate with his ability and experience as seniority or precedence would ordinarily entitle the employee.

“An officer or employee of the state, or any department or political subdivision of this state, who is a member of the National Guard or the United States armed forces reserves shall be entitled to leave of absence pursuant to section 38-610 from the individual's duties without loss of time or efficiency rating on all days during which the individual is engaged in field training as provided by this chapter and for a period during leave of absence not to exceed 30 days in any two consecutive years the individual shall be entitled to pay. For purposes of this section, an officer or employee shall not be charged military leave for days on which the individual was not otherwise scheduled for work.

“When ordered by the governor to perform training or duty under this section or section 26-171, subsection C, section 26-172 or section 26-175, members of the Arizona national guard shall have the protections afforded to persons on federal active duty by the Soldiers and Sailors Civil Relief Act of 1940 (54 stat. 1178, 50 U.S. Code Annotated App. sections 501 through 548 and 560 through 591), and by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA—108 Stat. 3149, 38 U.S. Code Annotated sections 4301 through 4333).

“A person violating any provision of subsection A or B of this section is guilty of a class 1 misdemeanor. The County Attorney shall prosecute violations of this section in superior court. (Arizona Revised Statutes, section 26-168).

\*The following analysis was added by Gavriel Swerling

**The Meaning of a “Day”:**

For the purpose of this statute 30 days means 30 calendar days, not 30 work days. So “an employee should be charged military leave for all consecutive days for which he is on military orders whether they are work or non-work days”, but is only able to receive pay for “those days for which he would have been scheduled and paid”. Op.Atty.Gen. No. I87-031.

**The Meaning of “Field Training”:**

Field training “is the theoretical and practical training of troops for service against an enemy”, and includes drill weekends and annual training. However, it does not include parades and ceremonies. Op.Atty.Gen. No. 67-29-L; Op.Atty.Gen. No. 57-36.

Note: Section 26-168 refers to the Soldiers’ and Sailors’ Civil Relief Act (SSCRA). In 2003, Congress substantially rewrote and recodified the SSCRA, and the new law is called the Servicemembers Civil Relief Act (SCRA).

**UPDATE—JUNE 2017**

The second quoted paragraph of Arizona Revised Statutes section 26-168 is incorrect, due to a typographical error. That paragraph should read as follows:

A member of the National Guard or the United States armed forces reserves shall not lose seniority or precedence while absent under competent military orders. On return to employment the employee shall be returned to his previous position, or to a higher position commensurate with his ability and experience as seniority or precedence would ordinarily entitle the employee.

Section 26-168 has not been amended. With the above correction, the article is correct as written.

**UPDATE JANUARY 2021**

In each of the first three paragraphs of section 26-168, Arizona Revised Statutes, add “of this state or any other state” after “National Guard.” This amendment was made in 2018. The purpose of the amendment is to make clear that section 26-168 is not limited to members of the *Arizona* National Guard. This section also applies to members of the National Guard of other states who have civilian jobs in Arizona.

For example, Josephine Smith lives in western New Mexico and is a member of the New Mexico Army National Guard. For her civilian job, she commutes across the state line to eastern Arizona. Section 26-168 applies to Josephine, just as it applies to Bob Jones, who lives and works in Arizona and is a member of the Arizona National Guard.