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Paid Military Leave for Public Employees in Iowa

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1.8: Relationship between USERRA and other laws/policies
2.0: Paid Leave

Iowa law provides up to 30 days paid military leave for employees of the state and its political subdivisions who serve not only in the federal armed forces and National Guard, but in the civil air patrol and state nurse corps, too. The law also gives guidance on use of replacement employees and servicemembers returning to their jobs.

The law follows:

“1. a. All officers and employees of the state, a subdivision thereof, or a municipality, other than employees employed temporarily for six months or less, who are members of the national guard, organized reserves or any component part of the military, naval, or air forces or nurse corps of this state or nation, or who are or may be otherwise inducted into the military service of this state or of the United States, or who are members of the civil air patrol, shall, when ordered by proper authority to state active duty, national guard duty, or federal active duty, or when performing a civil air patrol mission pursuant to section 29A.3A, be entitled to a leave of absence from such civil employment for the period of state active duty, national guard duty, federal active duty, or civil air patrol duty without loss of status or efficiency rating, and without loss of pay during the first thirty days of such leave of absence.

“b. Where state active duty, national guard duty, federal active duty, or civil air patrol duty is for a period of less than thirty days, a leave of absence under this section shall only be required for those days that the civil employee would normally perform services for the state, subdivision of the state, or a municipality. The provisions of this section shall also apply to a leave of absence by a member of the national disaster medical system of the United States when activated for federal service with the system. If the workday for a civil employee encompasses more than one calendar day, the civil employee shall only be required to take a leave of absence for one day for that workday if a leave of absence is required under this paragraph.

“2. A state agency, subdivision of the state, or municipality may hire a temporary employee to fill any vacancy created by such leave of absence. Temporary employees hired to fill a vacancy created by a leave of absence under this section shall not count against the number of full-time equivalent positions authorized for the state agency, subdivision of the state, or municipality.

“3. Upon returning from a leave of absence under this section, an employee shall be entitled to return to the same position and classification held by the employee at the time of entry into state active duty, national guard duty, federal active duty, or civil air patrol duty, or to the position and classification that the employee would have been entitled to if the continuous civil service of the employee had not been interrupted by state active duty, national guard duty, federal active duty, or civil air patrol duty. Under this subsection, “position” includes the geographical location of the position.” (Iowa Code, section 29A.28.)

Key Terms Defined¹

Active service for which service members are entitled to paid military leave includes “weekend training, competitions or other training sessions”. Op.Atty.Gen. (Hansen), Aug. 10, 1978.

For the purpose of calculating paid leave time, thirty days means thirty calendar days, including weekends and other days off. If Cpl. Smith is called up for one week, it counts as seven of his thirty days. The fact that two of the days he was gone for were weekend days, for which he would receive no compensation, does not matter. *Painters and Allied Trades Local Union 246 v. City of Des Moines*, 451 N.W.2d 825 (Iowa Supreme Court 1990).

IOWA PAID MILITARY LEAVE UPDATE AND CLARIFICATION September 2018

I have been asked to reconsider my statement to the effect that a state or local government employee in Iowa who is away from his or her civilian job for military training or duty is to be charged day-for-day to the limited entitlement of paid military leave days for short or long periods of military training or service, and that the employee should be charged for Saturdays, Sundays, and state holidays, even if he or she does not ordinarily work in the civilian job on such days.

In 1990, the Iowa Supreme Court held that the state or local government employee away from his or her job for military training or service should be charged day-for-day for the entire period of the military duty, including weekends and state holidays.² But a later enacted statutory provision seems to indicate that, for short periods of military training or service, weekends and holidays should not count toward exhausting the employee’s entitlement to paid military leave:

¹ Section drafted by Gavriel Swerling, an ROA Service Members Law Center Associate. He is in his third year at the University Of Maryland School Of Law and is a First Lieutenant in the Marine Corps Reserve. After he graduates from law school and passes the Maryland bar exam, he will go on active duty in the Marine Corps, as a judge advocate, for at least four years. Thank you to RADM James J. Carey and the Washington Scholars for sending him our way.

*The views expressed in this article do not represent the Maryland Law School or the Marine Corps.

² See *Painters and Allied Trades Local Union 246 v. City of Des Moines*, 451 N.W.2d 825 (Iowa 1990).

Where state active duty, national guard duty, federal active duty, or civil air patrol duty is for a period of less than thirty days, a leave of absence under this section shall only be required for those days that the civil employee would normally perform services for the state, subdivision of the state, or a municipality.³

Section 29A.28 was enacted in 2001 and amended in 2003, 2004, 2006, 2007, 2008, and 2012. It is unclear when the quoted sentence was enacted or amended into its present form, but that must have been after the Iowa Supreme Court decided *Painters* in 1990. It must be presumed that the Legislature intended to change the *Painters* result for short periods of military duty or training, and that for those short periods only regular work days should count in exhausting the employee's bank of paid military leave days.

To illustrate how this provision works, let us consider two hypothetical state employees, both of whom are military reservists. Alexander Adams, a Lieutenant (O-3) in the Navy Reserve, is away from his State of Iowa job for a traditional 12-day annual training tour, from Monday (9/10/2018) through Friday (9/21/2018). Adams does not ordinarily work weekends in his civilian job. Does the middle weekend (Saturday, 9/15/2018 and Sunday, 9/16/2018) count in exhausting his entitlement to paid military leave? I say no, because section 29A.28(1)(b) explicitly provides that for a short period like this only work days count.

Brenda Barnes, a Captain (O-3) in the Army Reserve, is also a state employee. She is away from her state job for a year of voluntary or involuntary active duty, from 10/1/2018 through 9/30/2019. Because her military period is scheduled to last more than 30 days, all days (including weekends and holidays) count in exhausting her entitlement to paid military leave days. Her 30-day paid military leave starts on 10/1/2018 and expires 30 days later, on 10/30/2018.

Let us assume that Adams, the Navy Reserve Lieutenant, is away from his state job several times during the year. No individual duty period lasts more than 30 days, but cumulatively Adams is away from his state job for military duty more than 30 days during the year. At what point do weekends and holidays start counting toward exhausting his paid military leave entitlement? I contend that the weekends and holidays never count, so long as no period of military duty lasts for more than 30 days.

I did a computerized search on *Painters*, the 1990 Iowa Supreme Court case. The case is cited in several later Iowa Supreme Court and Iowa Court of Appeals decisions, but none of those cases deal with the computation of the exhaustion of paid military leave. Neither Iowa's high court nor its intermediate appellate court have addressed this specific issue since 1990. I believe that my interpretation will be upheld by Iowa courts when this issue eventually does arise, but of course we will see about that.

³ Iowa Code section 29A.28(1)(b) (emphasis supplied).

It should be emphasized that Iowa can constitutionally limited the number of days of *paid* military leave that it will grant, but Iowa cannot limit the number of days of *unpaid* but job-protected military leave under USERRA. The right to unpaid military leave is essentially unlimited. USERRA provides:

In any determination of a person's entitlement to protection under this chapter, the timing, frequency, and duration of the person's training or service, or the nature of such training or service (including voluntary service) in the uniformed services, *shall not be a basis for denying protection of this chapter* if the service does not exceed the limitations set forth in subsection (c) and the notice requirements established in subsection (a)(1) and the notification requirements established in subsection (e) are met.⁴

⁴ 38 U.S.C. 4312(h) (emphasis supplied). Please see Law Review 30 (October 2001) for a detailed discussion of this provision.