



STATE OF OKLAHOMA  
OFFICE OF PERSONNEL MANAGEMENT

*"Serving Equal Opportunity Employers"*

**OPM 03-17**

**DATE:** April 23, 2003  
**TO:** All Appointing Authorities  
**FROM:** Oscar B. Jackson, Jr., Administrator and  
Cabinet Secretary of Human Resources and Administration  
**RE: Military Leave and Related Issues**

The Office of Personnel Management (OPM), the Oklahoma Public Employees Retirement System, and the Employees Benefits Council have been working together to ensure that state agencies receive consistent information in regard to military leave and related issues. For your information, following are some "frequently asked questions" and their responses:

- 1. Are state agencies required to pay employees who are members of the National Guard or the Reserve Components (Army and Air National Guard and the Army, Navy, Air Force, Marine Corps, and Coast Guard Reserves) who are called up to active or inactive military service?**

Yes. For the first 20 regularly scheduled work days of active or inactive service in any federal fiscal year (October 1 through September 30), an employee must be paid his or her regular state pay. After that, the law now requires that such state employees be paid the difference between their state pay and military pay during the period that Operation Enduring Freedom is in effect. **Please note that the requirement to pay the difference between military pay and state pay is retroactive to September 11, 2001.** [Section 209 of Title 44 and Section 48 of Title 72 of the Oklahoma Statutes.]

- 2. What is the meaning of "during the period that Operation Enduring Freedom is in effect"? Do the employee's orders have to specify "Operation Enduring Freedom" or can it be any assignment during the time frame that "Operation Enduring Freedom" lasts?**

Any service performed during the time Operation Enduring Freedom is in effect (from 9/11/2001 and thereafter) qualifies an employee for this pay subsidy.

- 3. What is the definition of "full regular pay" as it pertains to an employee's compensation by the state?**

As used in the statutes, the concept of "full regular pay" includes an employee's base pay, as well as any differentials the employee would normally be entitled to (e.g., shift differential, skill-based pay differentials). It would not include overtime pay.

- 4. What is included in military pay when computing the difference between State pay and military pay for the purposes of the payment required by the statute?**

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There is no generally accepted definition of military pay, nor do state and federal law provide a definitive answer. It is our belief that defining military pay as consisting of base pay plus the Basic Allowance for Housing (BAH), but no other allowances, is a fair and equitable interpretation and is in keeping with the intent of the statutes requiring payment of the difference between military and State pay.

**5. Can agencies make payment to employees on active duty upon the employee's return to work or must payment be made each pay period (e.g., monthly)?**

As we understand the legislative intent behind this provision, it is to relieve the hardship on those employees who are called to active duty and would otherwise have to take a significant reduction in their standard of living because their military pay is substantially less than their State pay. Consistent with this intent, we believe these employees should continue to receive the equivalent of their full regular State pay on the same basis that they were paid prior to their call to active duty. Accordingly, the payment should be disbursed on the same basis as their State pay (i.e., monthly).

**6. How would a state agency know what the difference between an employee's military and state pay is?**

The state agency may ask the employee for a Leave and Earnings Statement ("LES"). This document should reflect the employee's total military salary. The employee's military pay may include a cash allowance for housing ("BAH"), and this allowance should be taken into account as well.

**7. How should the agency code this payment in the payroll system?**

In the Payroll System, the difference in pay should be set up as a Special Partial. In the Browse Maintain Pay History Screen, tab down to the bottom where it says, "special pay type." You would add a special pay type of P and the begin date (month you are paying it for). Hit enter. You will need to enter the JFD/Class code and go to Special Pay and enter the dollar amount. You may put something in the remarks field such as "difference in Military/State Pay." Hit enter. When you run this payroll, you will run it as an S and P where you would normally enter R and N.

**8. Do employees being paid the difference between their military pay and state pay also receive benefits from the state?**

At the employee's option, the employee may retain health insurance for his or her family under the provisions of COBRA, but will be required to pay up to 102% of the premium. Employees choosing to keep the health insurance are not eligible for the benefit allowance.

**9. May employees who are called to active military duty use annual leave in monthly increments (e.g., one or two days per month) to enable them to continue to receive their employee benefit allowance?**

State employees who are called to active duty may use annual leave in monthly increments in order to continue receiving the employee benefit allowance. However, employees should carefully consider whether continuing State health coverage is necessary in light of military health coverage available to active duty members.

**10. If employees wish to use intermittent accrued leave while on military leave to maintain their benefits, should any adjustment be made to the payment of the difference between their military pay and regular base pay?**

Yes. Agencies should deduct the amount of State pay accruing to leave used by employees while on military leave from the payment of the difference between military pay and State pay.

**11. Can an agency require an employee to use their annual leave while on military duty?**

No. Such practice is a violation of federal law.

**12. Are employees on military leave entitled to payment of longevity on their return to State employment, or must they wait until their next anniversary date?**

Pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), a person who is reemployed under the provisions of the Act is entitled to the seniority and other rights and benefits determined by seniority that the person had on the date of the commencement of service in the uniformed services, plus the additional seniority and rights and benefits that such person would have attained if the person had remained continuously employed. As we interpret this, it means that an individual whose anniversary date for longevity pay purposes occurred while on military leave is entitled to the longevity pay upon return from military duty and should not be required to wait until the following year.

**13. What is the State's obligation under the statute to a former employee who was a state employee and called to active service on or after September 11, but who was no longer a state employee at the time the subsidy provision became law?**

The State has no legal obligation under the statute to former employees who were not on the rolls on the effective date of the Act.

**14. What if an employee will not show us written orders?**

The state agency may not refuse to allow the employee military leave for failure to show written orders. Some employees receive individual written orders, while others may be called up on group orders and have no written document to show the employer. Under federal law, the employer may not require that the employee show written documentation regarding their need for military leave. However, federal law does grant the employer the right to request documentation at the time the employee returns in order to determine eligibility for reemployment.

In regards to paying the difference between military pay and state pay, a state agency may require the employee or a person having power of attorney for the employee to provide a copy of the Leave and Earnings Statement ("LES") in order to verify the amount of the employee's military pay. State agencies might expedite this process by providing the employee with a self-addressed stamped envelope that can be used to return a copy of the LES to the state agency.

**15. What effect does military leave have on FMLA (Family Medical Leave Act) eligibility?**

Time on military leave (whether paid or unpaid) counts toward both the 12-month service requirement and the 1,250 hour requirement for purposes of FMLA eligibility.

**16. May state agencies hire persons to perform the duties of employees called to active duty?**

Yes, state agencies are authorized under the provisions of Section 209 of Title 44 and Section 48 of Title 72 of the Oklahoma Statutes to hire "acting incumbents" to perform the duties of employees called to active duty. The law provides that these "acting incumbents" must meet the minimum qualifications of the position as required for the regular incumbent and shall receive the same salary as fixed by law. An unclassified authorization for "acting incumbents" is provided in Section 840-5.5(48) of Title 74 of the Oklahoma Statutes.

**17. Can employees continue to participate in the SoonerSave Deferred Compensation Plan?**

Yes, participants in the SoonerSave plans who have previously elected a deferral amount may continue to make deferrals into the Deferred Compensation Plan from the special pay or from any payroll resulting from the use of leave. If the special pay or leave payroll is not sufficient to cover the deferral amount, the deferrals should be discontinued by the agency payroll coordinator. The participant may also make a new deferral election to reduce the amount of the deferral while on military leave. The minimum deferral amount is \$25.00 per month. To make a new deferral amount election or to stop deferrals, the participant will need to contact the Plan's record keeper, Great-West, at 1-877-538-3457. Participants who have their personal identification number can also make deferral changes on the web site, [www.soonersave.com](http://www.soonersave.com).

**18. If employees continue to make deferrals into the Deferred Compensation Plan, will they receive the \$25 contribution to the Savings Incentive Plan?**

Yes, any employee participating in the Deferred Compensation Plan with at least a \$25 per month deferral will receive the \$25.00 per month employer contribution to the Savings Incentive Plan for each month the deferral is made.

**19. If an employee does not receive the special pay or a leave payroll while on military leave, can he or she make up these deferrals when they return to their state employment?**

Any employee who leaves state service for a period of military service and returns to his or her state job, may make up the missed deferrals and receive the employer contribution (subject to the time limits and eligibility requirements set forth in USERRA). There are limits on the time in which an employee has to request this benefit. Generally, an employee must return to employment within 90 days. (If the military service was for 30 to 180 days, he or she generally must return within 14 days). The employee has up to three times the length of the military leave not to exceed 5 years in which to make up these deferrals. The missed deferrals must be made up through a salary reduction, not by a direct payment to the Plan. Agencies will be invoiced for missed State contributions to the Savings Incentive Plan for those employees who make up missed contributions to the Deferred Compensation Plan.

**20. If an employee on military leave receives the special pay or leave payroll, will OPERS retirement contributions continue to be deducted?**

Yes, both the employee and employer will be required to pay retirement contributions on any leave payrolls or special pay made to an employee on military leave. The pay will be coded as indicated in Q&A #7 (above) and the appropriate OPERS retirement contributions will automatically be deducted. OPERS will credit the employee with a pro-rata share of service for each special pay or leave payroll.

**21. If an employee does not receive the special pay or a leave payroll while on military leave or only receives pro-rata service credit, can he or she make up these OPERS retirement contributions when they return to their state employment?**

Any employee who leaves state service for a period of military service and returns to his or her state job, may make up the OPERS retirement contributions he or she would have made had he or she not been on military leave (subject to the time limits and eligibility requirements set forth in USERRA). Employees receiving the special pay or leave payroll while absent on military leave will already have pro-rata service credit. They can accept that pro-rated service or may make the additional contributions necessary to receive the full credit they would have received had they not been on military leave. The employer shall also be required to make up any retirement contributions it would have paid if the employee chooses to make up these contributions. There are limits on the time in which an employee has to request this benefit. Generally, an employee must return to employment within 90 days. (If the military service was for 30 to 180 days, he or she generally must return within 14 days.) The employee has up to three times the length of the military leave not to exceed 5 years in which to make up these contributions. The contributions may be made by a direct payment to the Plan (after-tax dollars) or by salary reduction (pre-tax dollars), at the election of the returning employee.

If you have questions concerning any matter discussed in this memorandum, please address them as follows:

Questions regarding SoonerSave should be referred to the SoonerSave Administrative Office at (405) 858-6781 or 1-800-733-9008.

Questions regarding OPERS retirement benefits, contributions and eligibility should be directed to Member Services at (405) 858-6737 or 1-800-733-9008.

All other questions regarding this memorandum may be referred to Kimberlee Williams, OPM Chief Policy Attorney, at (405) 522-1736, or Tom Patt, OPM Director of Compensation, (405) 522-0422.