

October 4, 2004

TO THE ADMINISTRATORS ADDRESSED:

SUBJECT: MILITARY LEAVE FOR SCHOOL DISTRICT EMPLOYEES

This letter is in response to request for clarification concerning any school district employee who is a member of the Texas National Guard, Texas State Guard, or reserve component of the armed forces, that is called to serve, and their entitlement to some of the benefits as mandated under Chapter 431 and 613 of the Government Code, and Chapter 22 of the Texas Education Code.

Chapter 431, Section 431.005, subsection (a) of the Government Code, as amended by S.B. 1800, Acts of the 78th Legislature, 2003 Regular Session, state that: "Except as provided by Subsection (b), a person who is an officer or employee of the state, a municipality, a county, or another political subdivision of the state and who is a member of the state military forces or a reserve component of the armed forces is entitled to a paid leave of absence from the persons duties on a day on which the person is engaged in authorized training of duty ordered or authorized by proper authority for not more that 15 workdays in a federal fiscal year. During a leave of absence the person may not be subjected to loss of time efficiency rating, or vacation time."

In addition, Chapter 431, Section 431.005, Subsection (a) of the Government Code, as amended by S.B. 1669, Acts of the 78th Legislature 2003 Regular Session, states that: "A person who is an officer or employee of the state, a, a municipality, a county, or another political subdivision of the state and who is a member of the state military forces or a reserve component of the armed forces is entitled to leave of absence from the persons duties on a day on which the person is engaged in authorized training of duty ordered or authorized by proper authority. During a leave of absence the person may not be subjected to loss of time, efficiency rating, vacation time, personal time, sick leave, or salary." Therefore, school district employees that are called to serve are entitled to receive up to 15 workdays of paid leave per federal fiscal year (October 1-September 30) for authorized military training or duty by the proper authority without loss of any accumulated leave. (Please refer to the Attorney General's Opinion MW-300 dated March 9, 1981). In Addition, employees on military leave have the right to use any accrued state or local leave, but do not continue to accumulate any state or local leave during their leave of absence from the district. School districts may not force employees on military leave to use their accumulated days. In addition, Attorney General's Opinion MW-240 (1980) state that a teacher who is engaged in military leave, may not be required to pay for a substitute employed by the school district during that time.

Chapter 613, Section 613.002 of the Government Code, concerning reemployment to same position following military service, states: "(a) A public employee who leaves a state position or a position with a local government entity to enter active military service is entitled to be reemployed:

- (1) By the state of local governmental entity;
- (2) In the same department, office commission, or board of this state, a state institution, or local governmental entity in which the employee was employed at the time of the employee's induction or enlistment in, or order to, active military service; and

(3) In:

- (A) The same position held at the time of the induction, enlistment, or order; or
- (B) A position of similar seniority, status, and pay.

(b) To be entitled to reemployment under Subsection (a), the employee must be:

- (1) discharged, separated, or released from active military service under honorable conditions not later than the fifth anniversary of the date of induction, enlistment, or call to active military service; and
- (2) physically and mentally qualified to perform the duties of the position.”

Therefore, employees who have been called to serve and wish to return to the school district, not later than five years after the anniversary date of induction, enlistment, or call to active military service, must be reemployed in the same position or a similar position upon return, provided they are still qualified to perform the require duties of such position. (Please refer to chapter 613, Section 613.003 of the Government code concerning reemployment to another position following military service.)

Chapter 22, Section 22.003, Subsection (d) of the Education Code states: “A school district employee with available personal leave under this section is entitled to use the leave for compensation during a term of active military service. This subsection applies to any personal or sick leave available under former law or provided by local policy of a school district, including a home-rule school district.” Therefore, a district employee is entitled to use the accumulated leave for compensation purposes during the term of active military service.

Chapter 22, Section 22.003, Subsection (e) of the Education Code state: “ A school district, including a home-rule school district, may adopt a policy providing for the paid leave of absence of employees taking leave for active military service as part of the consideration of employment by the district. : School districts may adopt a policy providing employees on military leave with a paid leave of absence, or for a supplemental pay to make up the difference between the teacher’s pay and the military pay; however, this will be a local policy and not required by the state.

I can be reached at (512) 463-7285 if you need further assistance concerning this matter.

Sincerely,

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