

## Military Leave under California Law

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1.8: USERRA and Other Laws

2.0: Paid Leave

The State of California decided to provide additional protections to state employees leaving their civilian jobs to serve in a National Guard or reserve military capacity, both on short-term and long-term leave. It is important to note that these additional protections do not apply to the other uniformed services such as the National Disaster Medical System or the Commissioned Corps of the Public Health Service. Since USERRA is a floor, not a ceiling, and these additional state benefits go above and beyond the federal benefits provided by USERRA, this exclusion of non-military uniformed services does not run afoul of USERRA.

First, the California Government Code<sup>2</sup> provides that:

An employee who is granted a long-term military leave of absence and who for a period of not less than one year immediately prior to the effective date active duty begins has had continuous state service as defined by rule which is not broken by a permanent separation shall be entitled to receive his or her salary or compensation for the first 30 calendar days of active duty served during the absence.

CAL. GOVERNMENT CODE § 19775 (Deering 2022). Pay under this provision must not exceed 30 calendar days in any one fiscal year.<sup>3</sup> It is important to note that this benefit is only available for state employees who have been employed for at least a year leading up to their military duty. In addition to this section on long-term military leave, California also provides compensation for employees on short-term military leave:

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<sup>2</sup> The California Code is enumerated by subject. In order to find every section of code referenced in this article from the Deering's California Codes Annotated, select "Government Code" → Title 2 Government of the State of California → Division 5 Personnel → Part 2 State Civil Service → Chapter 11 Military Service → Article 3 Pay and Benefits

<sup>3</sup> CAL. GOVERNMENT CODE § 19775.2 (Deering 2022).

(a) An employee who is granted a short-term military leave of absence for active military duty, including, but not limited to, scheduled military reserve unit drill periods and National Guard active duty and inactive duty training drill periods, and who for a period of not less than one year immediately before the effective date of active duty has had continuous state service as defined by rule that is not broken by a permanent separation, or who has had continuous state service immediately before the effective date of active duty not broken by a permanent separation and sufficient recognized military service that need not be contiguous to equal one year, shall be entitled to receive their salary or compensation for the first 30 calendar days of active duty served during the absence. The term “active duty” for the 30-day salary or compensation shall include National Guard inactive duty training.

(b) An employee who is granted emergency military leave under Section 19773, shall receive their salary or compensation as a state employee while going to, engaging in, and returning from the duty. The employee shall not receive their salary or compensation for more than 30 days each time they are granted the emergency military leave.

CAL. GOVERNMENT CODE § 19775.1 (Deering 2022). Pay under this provision must not exceed 30 calendar days in any one fiscal year.<sup>4</sup> This section was amended in 2022, to become effective January 1, 2023. The most significant change in this amendment was the additional grant of paid military leave for time spent in inactive duty training (drills) and for National Guard active duty. Also, compensation for National Guard inactive duty training is a new addition for the 2022 Amendment.

Employees who meet the conditions under either Section 19775 or 19775.1 (for short or long-term leave), shall receive the same vacation, sick leave, and other civil service status, rights and benefits they would have if they had not been on military leave, except that their probationary period will be extended by the length of the absence.<sup>5</sup>

In addition to these paid leave laws, California grants additional benefits to state and locally employed California National Guardsmen and United States Reservists called up to active duty under special circumstances:

(a) In addition to the benefits provided pursuant to Sections 19775 and 19775.1, a state employee who, as a member of the California National Guard or a United States military reserve organization, is ordered to active duty by Presidential determination that it is necessary to augment the active forces for any operational mission, or when in time of national emergency declared by the President of the United States or otherwise authorized by law, shall have the benefits provided for in subdivision (b).

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<sup>4</sup> CAL. GOVERNMENT CODE § 19775.2 (Deering 2022).

<sup>5</sup> CAL. GOVERNMENT CODE § 19775.3 (Deering 2022).

(b) Any state employee to which subdivision (a) applies, while on active duty, shall receive from the state, for the duration of the event described in subdivision (a), but not for more than 180 calendar days, as part of the state employee's compensation, both of the following:

(1) The difference between the amount of the state employee's military pay and allowances and the amount the employee would have received as a state employee, including any merit raises that would otherwise have been granted during the time the individual was on active duty. The amount an employee, as defined in Section 18526, would have received as a state employee, including any merit raises that would otherwise have been granted during the time the individual was on active duty, shall be determined by the Department of Human Resources.

(2) All benefits that the state employee would have received had the individual not served on active duty unless the benefits are prohibited or limited by vendor contracts.

(c) Any individual receiving compensation pursuant to subdivision (b) who does not reinstate to state service following active duty, shall have that compensation treated as a loan payable with interest at the rate earned on the Pooled Money Investment Account. This subdivision shall not apply to compensation received pursuant to Section 19775.

(d) Benefits provided under paragraph (1) of subdivision (b) shall only be provided to a state employee who was not eligible to participate in a federally sponsored income protection program for National Guard personnel or military reserve personnel, or both, called into active duty, as determined by the Department of Human Resources. For a state employee eligible to participate in a federally sponsored income protection program, and whose monthly salary as a state employee was higher than the sum of the state employee's military pay and allowances and the maximum allowable benefit under the federally sponsored income protection program, the state employee shall receive the amount payable under paragraph (1) of subdivision (b), but that amount shall be reduced by the maximum allowable benefit under the federally sponsored income protection program. For individuals who elected the federally sponsored income protection program, the state shall reimburse for the cost of the insurance premium for the period of time on active duty, not to exceed 180 calendar days.

(e) For purposes of this section, "state employee" means an employee as defined in Section 18526 or an officer or employee of the legislative, executive, or judicial department of the state.

(f) This section shall not apply to any state employee entitled to additional compensation or benefits pursuant to Section 19775.16 or 19775.18 of this code, or Section 395.08 of the Military and Veterans Code.

CAL. GOVERNMENT CODE § 19775.17 (Deering 2022). The statute in this form is effective beginning January 1, 2023. There are no substantive changes between this amendment and the prior version; the amendment served to make the statute easier to read and to replace gendered pronouns with gender-neutral terms. The primary purpose of Section 19775.17 is to provide employees with pay for the difference between their military pay and allowances and their state employee pay, for a period of 180 days. This applies for service members who are called to active duty by Presidential determination to support an operation mission or in time of national emergency declared by the President of the United States or otherwise authorized by law.

The California Code also has two parallel statutes that provide the same benefits as Section 19775.17 to state employees who are members of the California National Guard or a United States military reserve organization who get called into active duty to support specific conflicts. Section 18775.15 provides benefits for active duty service as a result of the Iraq-Kuwait crisis on or after August 2, 1990. Section 18775.16 provides benefits for active duty service as a result of the Bosnia crisis on or after November 21, 1995. The State of California elected to provide even more benefits for state employees who serve on active duty as members of the California National Guard or a United States military reserve organization on or after September 11, 2001 as a result of the War on Terrorism:

(a) In addition to the benefits provided pursuant to Sections 19775 and 19775.1, a state employee who, as a member of the California National Guard or a United States military reserve organization, is ordered to active duty on and after September 11, 2001, as a result of the War on Terrorism, shall have the benefits provided for in subdivision (b).

(b) Any state employee to which subdivision (a) applies, while on active duty, shall receive from the state, for the duration of the event known as the War on Terrorism, as authorized pursuant to Sections 12302 and 12304 of Title 10 of the United States Code, but not for more than 365 calendar days, as part of his or her compensation both of the following:

(1) The difference between the amount of his or her military pay and allowances and the amount the employee would have received as a state employee, including any merit raises that would otherwise have been granted during the time the individual was on active duty. The amount an employee, as defined in Section 18526, would have received as a state employee, including any merit raises that would otherwise have been granted during the time the individual was on active duty, shall be determined by the Department of Human Resources.

(2) All benefits that he or she would have received had he or she not served on active duty unless the benefits are prohibited or limited by vendor contracts.

(c) Any individual receiving compensation pursuant to subdivision (b) who does not reinstate to state service following active duty, shall have that compensation treated as a loan payable with interest at the rate earned on the Pooled Money Investment Account. This subdivision does not apply to compensation received pursuant to Section 19775.

(d) Benefits provided under paragraph (1) of subdivision (b) shall only be provided to a state employee who was not eligible to participate in a federally sponsored income protection program for National Guard personnel or military reserve personnel, or both, called into active duty, as determined by the Department of Human Resources. For a state employee eligible to participate in a federally sponsored income protection program, and whose monthly salary as a state employee was higher than the sum of his or her military pay and allowances and the maximum allowable benefit under the federally sponsored income protection program, the state employee shall receive the amount payable under paragraph (1) of subdivision (b), but that amount shall be reduced by the maximum allowable benefit under the federally sponsored income protection program. For individuals who elected the federally sponsored income protection program, the state shall reimburse for the cost of the insurance premium for the period of time on active duty, not to exceed 365 calendar days.

(e) The Governor may, by executive order, extend the period of time for the receipt of benefits provided pursuant to this section by no more than an additional 1,460 calendar days.

(f)

(1) "Military pay and allowances" for the purposes of this section does not include hazardous duty pay, hostile fire pay, or imminent danger pay. A state employee is entitled to retain these and any other special and incentive pay provided by the federal government.

(2) "State employee" for the purposes of this section means an employee as defined in Section 18526 or an officer or employee of the legislative, executive, or judicial department of the state.

(g) This section does not apply to any state employee entitled to additional compensation or benefits pursuant to Section 19775.16 or 19775.17 of this code, or Section 395.08 of the Military and Veterans Code.

(h) This section does not apply to any active duty served after the close of the War on Terrorism.

CAL. GOVERNMENT CODE § 19775.18 (Deering 2022). Further, California provides for the protection of employees who are available for certification for possible permanent employment:

Except as provided in Section 19781, a person in recognized military service whose name was high enough on an employment list to be available for certification for possible permanent appointment to a position while he or she was in the armed forces of the United States shall retain his or her place on the list for three years following the date of his or her release from military service or until six months after the termination of the state military emergency, whichever is the earlier, provided, that a name shall not be retained on a list for longer than eight years after the list is established. The name of a person whose eligibility is retained under the provisions of this section beyond the time other names are removed from a list pursuant to Section 18901 shall be certified ahead of the names of persons on more recently prepared lists, except that the name shall be removed from the list if he or she refuses or has refused to accept appointment to a permanent position after certification thereto subsequent to his or her release from the armed forces.

Notwithstanding Section 19770, this section shall also be applicable to persons who are not civil service employees and were on active military duty because of the Iraq-Kuwait crisis.

CAL. GOVERNMENT CODE § 19775.4 (Deering 2022). The subsequent section of the code provides that any person whose name is retained on a list subject to 19775.4 “shall have his name certified to fill any vacancy which may occur during the period his name is so retained on such list.”<sup>6</sup>

Lastly, California considers time spent on military leave as “time spent in state service for the purpose of computing state service for a higher rate of vacation credit, other benefits accruing on the basis of state service, and rights to merit salary adjustments at the time of return to state service” and for layoff seniority credits for the time spent on leave.<sup>7</sup> California requires the state employee to have access to any procedural requirements or examinations for appointment or promotion to a higher position that they were unable to complete or begin, by reason of entry into military service.<sup>8</sup> Similarly, employees are permitted to take any regular examination held while they were in military service for which they had the minimum qualifications.<sup>9</sup>

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<sup>6</sup> CAL. GOVERNMENT CODE § 19775.5 (Deering 2022).

<sup>7</sup> CAL. GOVERNMENT CODE § 19775.6 (Deering 2022).

<sup>8</sup> CAL. GOVERNMENT CODE § 19775.7 (Deering 2022); CAL. GOVERNMENT CODE § 19775.8 (Deering 2022).

<sup>9</sup> CAL. GOVERNMENT CODE § 19775.9 (Deering 2022).

### **Access the California Statute on Your Own**

We do our best to keep these state law articles up-to-date and provide the most relevant sections of the applicable statute for you to review. Nonetheless, we still recommend you consult the most recent version of the law to make sure nothing has changed from what we discussed in this article. You can find a public version for yourself online, for free, at <https://leginfo.ca.gov/faces/codesTOCSelected.xhtml?tocCode=GOV&tocTitle=+Government+Code+-+GOV>. When you click this link, you will be taken to the relevant section of the California Code, the "California Government Code". Then select "Title 2. Government of the State of California". Scroll down to "Chapter 11. Military Service [19770-19786]", and then click "Article 3 Pay and Benefits" to access the sections addressed in this article.

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<sup>10</sup> Congress recently established the United States Space Force as the 8<sup>th</sup> uniformed service.

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