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Florida Law on Military Leave for Public Officials and Employees

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1.8: Relationship between USERRA and other laws/policies

2.0: Paid Leave

The Florida Legislature has enacted a whole chapter on military leave for officials (including elected officials) and employees of the state of Florida, as well as counties, municipalities, and other political subdivisions of the state (including school districts).

This chapter is well written—care has been taken to ensure that the state law does not conflict with the Uniformed Services Employment and Reemployment Rights Act (USERRA). Indeed, the final section of this chapter makes clear the intent of the Legislature to make the provisions of USERRA applicable to the state and its political subdivisions. The state also goes beyond USERRA in providing for 30 days of full pay upon mobilization, and allows for differential pay thereafter.

It is also important to note that this chapter explicitly applies to *elected officials* of the state and its political subdivisions. By state law, the elected official has the right to return to his or her position after release from active military service, assuming that the term of office has not expired. It is by no means clear that USERRA applies to elected officials of state and local governments.

The full text of the chapter follows:

“Any county or state official of the state, subject to the provisions and conditions hereinafter set forth, may be granted leave of absence from his or her office, to serve in the volunteer forces of the United States, or in the National Guard of the state, or in the regular Army or Navy of the United States, when the same shall be called into active service of the United States during war between the United States and a foreign government.” (Florida Statutes, section 115.01.)

Note: What about the Air Force, the Marine Corps, and the Coast Guard? The armed services include the Marine Corps, Coast Guard, and Air Force, as well as the Army and Navy. See 10 U.S.C. 101(a)(4). This section should be amended.

“When any such officer shall be granted a leave of absence pursuant to this chapter, the governor shall, upon application being made by such officer, grant such officer leave of absence during the time he or she shall be retained in such military service; provided, such

service shall not extend beyond the term of office of such officer, in which event the office shall be filled by election at the expiration thereof.” (Florida Statutes, section 115.02.)

“Before applying for a leave of absence, the officer shall appoint a capable and competent deputy to take over and perform the duties of the office, and any bond required of the officer must remain in full force during the remainder of his or her term of office. Such deputy may be required to furnish bond in a sum of not more than one-half of the amount of the bond of the officer appointing him or her as such deputy, for the faithful performance of such duties.” (Florida Statutes, section 115.03.)

“The provisions of sections 115.01 through 115.06 shall only apply to such officers as are now authorized by law to appoint deputies.” (Florida Statutes, section 115.04.)

“Any deputy qualifying under the provisions of sections 115.01 through 115.06 shall perform all of the duties that may devolve upon the officer appointing him or her, and the deputy shall sign all official papers and documents in the name of the officer so appointing him or her as such deputy, and his or her said acts as such deputy shall in all respects be as binding as if performed by the officer appointing such deputy.” (Florida Statutes, section 115.05.)

“Upon being mustered out of the service of the United States, such officer granted leave under section 115.01 shall immediately enter into the duties of his or her office for the remainder of the term for which he or she was elected.” (Florida Statutes, section 115.06.)

“(1) All officers or employees of the state, of the several counties of the state, and of the municipalities or political subdivisions of the state who are commissioned Reserve officers or Reserve enlisted personnel in the United States military or naval service or members of the National Guard are entitled to leaves of absence from their respective duties, without loss of vacation leave, pay, time, or efficiency rating, on all days during which they are engaged in training ordered under the provisions of the United States military or naval training regulations for such personnel when assigned to active or inactive duty.

“(2) Leaves of absence granted as a matter of legal right under the provisions of this section may not exceed 240 working hours in any one annual period. Administrative leaves of absence for additional or longer periods of time for assignment to duty functions of a military character shall be without pay and shall be granted by the employing or appointing authority of any state, county, municipal, or political subdivision employee and when so granted shall be without loss of time or efficiency rating.

“(3) When an employee's assigned employment duty conflicts with ordered active or inactive duty training, it is the responsibility of the employing agency of the state, county, municipal, or political subdivision to provide a substitute employee, if necessary, for the assumption of such employment duty while the employee is on assignment for the training.

“(4) It is the intent of the Legislature that the state, its several counties, and its municipalities and political subdivisions shall grant leaves of absence for active or inactive training to all employees who are members of the United States Reserve Forces or the National Guard, to ensure the state and national security at all times through a strong armed force of qualified and mobilization-ready personnel.” (Florida Statutes, section 115.07.)

“(1) The term ‘active military service’ as used in this chapter shall signify active duty in the Florida defense force or federal service in training or on active duty with any branch of the Armed Forces or Reservists of the Armed Forces, the Florida National Guard, the Coast Guard of the United States, and service of all officers of the United States Public Health Service detailed by proper authority for duty with the Armed Forces, and shall include the period during which a person in military service is absent from duty on account of sickness, wounds, leave, or other lawful cause.

“(2) The term ‘period of active military service’ as used in this chapter shall begin with the date of entering upon active military service, and shall terminate with death *or a date 30 days immediately next succeeding the date of release or discharge from active military service*, or upon return from active military service, whichever shall occur first. [Emphasis supplied.]

Note: Under the Uniformed Services Employment and Reemployment Rights Act (USERRA), a person leaving a period of uniformed service of 181 days or more has 90 days to apply for reemployment. See 38 U.S.C. 4312(e)(1)(D). USERRA supersedes and overrides state laws that purport to limit USERRA rights or to impose additional prerequisites on the exercise of USERRA rights. See 38 U.S.C. 4302(b) and United States Constitution, Article VI, Clause 2 (Supremacy Clause). Thus, subsection (2) should not be read as requiring the employee released from active military service to return to work in 30 days.

“(3) The term ‘servicemember’ as used in this chapter shall have the same meaning as provided in section 250.01.” (Florida Statutes, section 115.08.)

“All officials of the state, the several counties of the state, and the municipalities or political subdivisions of the state, including district school and community college officers, which officials are also servicemembers in the National Guard or a Reserve Component of the Armed Forces of the United States, shall be granted leave of absence from their respective offices and duties to perform active military service, the first 30 days of any such leave of absence to be with full pay.” (Florida Statutes, section 115.09.)

“(1) In the event that the term of office of an official on leave shall expire during such leave, the office of that official shall be filled by election or appointment as may be required by law; provided, however, that said official on leave shall have the right to qualify and become a candidate for such office and, if nominated or elected, shall have the same rights and privileges herein accorded to an incumbent.

“(2) Should such military leave of absence for any elected municipal officer extend for more than 60 days, the temporarily unoccupied position created by such leave may be filled by majority vote of the remaining members of the legislative body of the municipality. This temporary appointment shall terminate upon the elected official’s return from active military service or upon the expiration of his or her original term of office, whichever occurs first.” (Florida Statutes, section 115.11.)

“(1) During such leave of absence such official shall be entitled to preserve all seniority rights, efficiency ratings, promotional status, and retirement privileges. The period of active military service shall, for purposes of computation to determine whether such person may be entitled to retirement under the laws of the state, be deemed continuous service in the office of said official. While absent on such leave without pay, said official shall not be required to make any contribution to any retirement fund.

“(2) The employing authority shall adhere to all the provisions contained in the Uniformed Services Employment and Reemployment Rights Act, chapter 43 of Title 38 U.S.C.” (Florida Statutes, section 115.12.)

“Upon said officer terminating his or her active military service, he or she shall enter upon the duties of office for the unexpired portion of the term for which he or she was elected or appointed, in accordance with the limits provided under the Uniformed Services Employment and Reemployment Rights Act, chapter 43 of Title 38 U.S.C.” (Florida Statutes, section 115.13.)

“All employees of the state, the several counties of the state, and the municipalities or political subdivisions of the state shall be granted leave of absence under the terms of this law; upon such leave of absence being granted said employee shall enjoy the same rights and privileges as are hereby granted to officials under this law, insofar as may be, including, without limitation, receiving full pay for the first 30 days. Notwithstanding the provisions of section 115.09, the employing authority may supplement the military pay of its officials and employees who are Reservists called to active military service after the first 30 days in an amount necessary to bring their total salary, inclusive of their base military pay, to the level earned at the time they were called to active military duty. The employing authority shall continue to provide all health insurance and other existing benefits to such officials and employees as required by the Uniformed Services Employment and Reemployment Rights Act, chapter 43 of Title 38 U.S.C.” (Florida Statutes, section 115.14.)

“The provisions of the Uniformed Services Employment and Reemployment Rights Act, chapter 43 of Title 38 U.S.C., shall be applicable in this state, and the refusal of any state, county, or municipal official to comply therewith shall subject him or her to removal from office.” (Florida Statutes, section 115.15.”