

Paid Military Leave for Public Employees in Hawaii

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1.8—Relationship between USERRA and other laws/policies

2.0—Paid military leave for public employees.

The pertinent section of Hawaii law is as follows:

(a) All officers and employees of the State and the several counties who are appointed for at least six months of service shall be entitled, while on active duty, inactive-duty training, or during periods of camps of instruction or field maneuvers as members of the national guard or reserve of the armed forces under call of the President of the United States or the governor of the State, to receive pay as provided by law. During the absence of the officer or employee, while in the performance of ordered military or naval duty, including inactive-duty training, as a member of the national guard or reserve of the armed forces, the officer or employee shall receive the officer's or employee's salary or compensation as an officer or employee, but only for a period not exceeding fifteen working days in any calendar year.

(b) Notwithstanding subsection (a), if the officer or employee is called to active duty or otherwise required to report for camp training or field maneuvers by official military

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orders a second time within a calendar year, the officer or employee may elect to use the fifteen working days of the succeeding calendar year to which the officer or employee is entitled for such purposes within the current calendar year; provided that the officer's or employee's entitlement to fifteen working days under this section for the succeeding calendar year shall be canceled and the officer or employee shall so agree in writing.

Hawaii Code, section 78-16.5.

Under the federal law called the Uniformed Services Employment and Reemployment Rights Act (USERRA),² National Guard and Reserve service members have an essentially unlimited³ right to *unpaid but job-protected* military leave to perform “service in the uniformed services” as defined by USERRA, and that definition includes inactive duty training (drills), active duty for training, and voluntary or involuntary active duty.⁴

USERRA is a floor and not a ceiling on reemployment rights. USERRA supersedes a state law that purports to limit USERRA rights or that imposes an additional prerequisite upon the exercise of USERRA rights.⁵ USERRA does not supersede a state law that provides *greater or additional rights*.⁶

Under Hawaii law, an employee of the State of Hawaii or one of the Hawaii counties is entitled to 15 workdays per year of *paid* military leave. Thus, the Hawaii law quoted above provides greater or additional rights and is not superseded.

² 38 U.S.C. 4301-35.

³ 38 U.S.C. 4312(h).

⁴ 38 U.S.C. 4303(13).

⁵ 38 U.S.C. 4302(b).

⁶ 38 U.S.C. 4302(a).