

## Paid Military Leave for Indiana Employees

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1.18: USERRA and Other Laws

2.0: Paid Leave

The Indiana paid military leave laws are somewhat misleading, in that they are under “Chapter 7. Training and Active Duty of National Guard; Benefits of Members”. This would lead one to believe that they only apply to Guard Members, but § 10-16-7-2 makes it clear that “Members” includes Reserve Components.<sup>3</sup> Indiana provides all members employed by the state, “or any county, township, municipality, or school corporation”, with fifteen days<sup>4</sup> of paid military leave. Indiana Code, section 10-16-7-5 provides that:

- (a) Except as provided in subsections (d) and (e), this section applies to all officers and employees of the state or any county, township, municipality, or school corporation in Indiana who are members.
- (b) A member is entitled to receive from the member’s employer a leave of absence from the member’s respective duties in addition to regular vacation period without loss of time or pay for the time that the member is:
  - (1) on training duties of the state under the order of the governor as commander in chief; or
  - (2) a member of any reserve component under the order of the reserve component authority;

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<sup>1</sup> I invite the reader’s attention to [www.roa.org/lawcenter](http://www.roa.org/lawcenter). You will find approximately 1500 “Law Review” articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA) and other laws that are especially pertinent to those who serve our country, along with a detailed Subject Index, to facilitate finding articles about very specific topics. The Reserve Officers Association (ROA) initiated this column in 1997. In our “state laws” section, we have an article for each state about the state laws that grant paid military leave and other benefits, over and above USERRA, to employees of the state and (often) to employees of the state’s political subdivisions.

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<sup>3</sup> IND. CODE ANN. § 10-16-7-2 (LexisNexis 2022).

<sup>4</sup> Please see the next section of this article for an explanation of the term “day”.

for any consecutive or nonconsecutive period that does not exceed a total of fifteen (15) days in any calendar year. The entitlement to a leave of absence without loss of time or pay provided in this subsection is not at the discretion of the member's employer.

(c) A member is entitled to receive from the member's employer a leave of absence from the member's respective duties in addition to the member's regular vacation period for the total number of days that the member is on state active duty under section 7 [IC 10-16-7-7] of this chapter or other active duty described in section 23 [IC 10-16-7-23] of this chapter. Except as provided in subsections (d) and (e), a leave of absence provided under this subsection may be with or without loss of time or pay at the discretion of the member's employer.

(d) A leave of absence granted under subsection (c) to a qualified member by the qualified member's employer must be granted without loss of time.

(e) In addition to any other benefits provided in this chapter, a qualified member is entitled to receive compensation equal to the difference between the qualified member's active duty military pay and the salary that the qualified member would have received from the qualified member's employer if the qualified member had not been called to active duty. The employer shall pay the qualified member compensation under this subsection for the duration of the qualified member's active duty military service. The employer shall pay the qualified member's compensation under this subsection from money appropriated to the employer.

The Indiana law is somewhat ambiguous on who qualifies for leave with pay. It is not inherently clear if section 5(b)(2) means that reserve components and Guard members are only eligible for paid leave if they are on active duty orders for a combined total of 15 days a year, or less, or if they get up to 15 days a year of paid leave for time missed due to being activated. However, in the annotated version of the Indiana Code, a note provides "Officers and employees specified in this section are entitled to civilian and military pay for up to 15 days a year when on training duties pursuant to proper orders issued by the appropriate military authority."<sup>5</sup>

Note: Indiana Code, section 10-16-7-6 provides that employers can grant paid leave at their own discretion. However, Indiana Code, section 10-16-7-1 defines "employer" as an employer "other than the state or a county, township, municipality, or school corporation in Indiana". Therefore, section 10-16-7-6 only applies to private employers. Section 10-16-7-6 is mandatory for state and local employees.

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<sup>5</sup> *Downing v. Columbus*, 505 N.E.2d 841, 1987 Ind. App. LEXIS 2555 (Ind. Ct. App. 1987).

**The Definition of “Day” in Indiana:  
*Koppin v. Strode, 761 N.E. 2d 455 (Ind. Ct. App. 2002).***

Indiana Code Section 10-6-7-5 accords to employees of the state and its counties, townships, municipalities, and school corporations (school districts) paid leave for military training and service “for any consecutive or nonconsecutive period that does not exceed a total of 15 days in any calendar year.” The Indiana Legislature did not define the word “day.” This court decision addresses that ambiguity, in the context of firefighters who have unusual working hours.

This is a decision of Indiana’s intermediate appellate court, above the trial court but below the Indiana Supreme Court. The state’s high court did not review this decision, and this case has been considered to establish the definition of “day” for public employees in Indiana.

At the time they initiated this lawsuit, James Strode and Andrew Richardson worked for the Lawrence Township Fire Department (LTFD) as firefighters. Mr. Strode was an active member of the Air Force Reserve, and Mr. Richardson was an active member of the Kentucky Army National Guard. They performed one weekend of inactive duty training per month and approximately two weeks of active duty for training per year, in their respective Reserve Components. This case arose before the terrorist attacks of Sept. 11, 2001. After that fateful day, most Reservists and National Guard members have been asked to do far more military service than the minimum training requirement. Like other LTFD firefighters, Mr. Strode and Mr. Richardson regularly worked a “24 on then 48 off” schedule, a full 24-hour day, followed by two full days off. Lawrence Township defined a “work day” as “an eight (8) hour period of regularly scheduled duty.”<sup>6</sup> Thus, under the township’s policy, Mr. Strode and Mr. Richardson “were granted five twenty four-hour ‘duty days’ of paid military leave per year.”<sup>7</sup> Mr. Strode and Mr. Richardson contended, and the trial court agreed, that the Lawrence Township policy violated the state law. However, on appeal, The Indiana Court of Appeals reversed the trial court’s judgment for Mr. Strode and Mr. Richardson.

In their decision, the court explained:

“When construing a statute, the legislature’s definition of a word binds us. When the legislature has not defined a word, we give the word its common and ordinary meaning. In order to determine the plain and ordinary meaning of words, courts may properly consult English language dictionaries. ... ‘Day’ may be defined as either ‘the mean solar day of 24 hours beginning at mean midnight’ or ‘the time established by usage or law for work, school, or business.’ Merriam Webster’s Collegiate Dictionary, 294 (10th ed., 1994). Given these differing and equally plausible meanings, we disagree with employees’ contention and the trial court’s conclusion that the word ‘day’ ... is ‘clear and unambiguous.’”<sup>8</sup>

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<sup>6</sup> *Koppin v. Strode, 761 N.E. 2d 455, 458 (Indiana Court of Appeals 2002).*

<sup>7</sup> *Id.* at 459.

<sup>8</sup> *Id.* at 461.

After reviewing the legislative history of the statute, the Indiana Court of Appeals agreed with Lawrence Township's interpretation of "day" as "an eight-hour period of scheduled work." Thus, the appellate court held that it was not unlawful for the township to charge Mr. Strode or Mr. Richardson three days of paid military leave (out of the 15 allowed) for missing one 24-hour firefighter shift because of conflicting military duties.

Questions about the definition of "day" have arisen under many state laws granting paid military leave to state and local government employees. Courts in other states have reached different conclusions on this issue. That is not surprising, because the texts and legislative histories of the various state laws are not identical. Court decisions in other states are not binding on Indiana, and this Indiana court decision is not binding on other states.

The federal Uniformed Services Employment and Reemployment Rights Act (USERRA) requires employers (including state and local governments) to grant *unpaid* military leave for service in the uniformed services. Section 4302 of USERRA (38 U.S.C. 4302) provides that USERRA is a floor but not a ceiling on the rights of a member of a uniformed service. State law can give you greater or additional rights, but state law cannot take away the rights that Congress granted you when it enacted USERRA.

USERRA does not require your employer to grant you *paid* military leave, so the interpretation of a state law granting paid military leave is a state law question, not a federal law question. It is interesting to note that this case was originally filed in the United States District Court for the Southern District of Indiana but was dismissed and then filed in state court.<sup>9</sup> I also invite your attention to *Miller v. City of Indianapolis*, 281 F.3d 648 (7th Cir. 2002), holding that Indiana's interpretation of its paid military leave law does not violate USERRA.<sup>10</sup>

Note: The *Koppin* decision includes a lengthy quotation from Lawrence Township's written policy on military leave for township employees. One provision of that policy clearly violated USERRA. "Leave [paid military leave] not used up during the two-week training assembly may be used in the same calendar year for weekend drills, up to the yearly total of 15 working days. *Additional time off required for weekend drills shall be obtained through personal day leave or vacation leave or through obtaining stand-ins.*"<sup>11</sup> However, Lawrence Township has since revised this provision to not run afoul of USERRA.<sup>12</sup>

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<sup>9</sup> *Id.* at 459.

<sup>10</sup> See [Law Review 16065](#) (July 2016) for a discussion of *Miller*.

<sup>11</sup> *Id.* at 458-59 (emphasis added).

<sup>12</sup> LAWRENCE COUNTY EMPLOYEE HANDBOOK, [https://lawrencecounty.in.gov/private/uploads/LAWRENCE\\_COUNTY\\_EMPLOYEE\\_HANDBOOK.pdf](https://lawrencecounty.in.gov/private/uploads/LAWRENCE_COUNTY_EMPLOYEE_HANDBOOK.pdf) (last visited Dec. 22, 2022).

### Access the Indiana Code 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 of the entirety of the Indiana Code for yourself online, for free, at <https://iga.in.gov/legislative/laws/2022/ic/titles/001>. To access Section 10-6-7-5 discussed in this article, follow the link above, select “Article 16. Indiana Military Code” → “Chapter 7. Training and Active Duty of National Guard; Benefits of Members”, and the section should pop right up.

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<sup>13</sup> Congress recently established the United States Space Force as the 8<sup>th</sup> uniformed service.

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