

NE-2021-LV

January, 2021

(checked January 2021--no changes)

PAID MILITARY LEAVE FOR PUBLIC EMPLOYEES IN NEBRASKA

Nebraska law provides as follows for *paid* military leave for employees of the State of Nebraska and its political subdivisions:

(1) All employees, including elected officials of the State of Nebraska, or any political subdivision thereof, who are members of the National Guard, Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve, and Coast Guard Reserve, shall be entitled to a military leave of absence from their respective duties, without loss of pay, when employed with or without pay under the orders or authorization of competent authority in the active service of the state or of the United States. Members who normally work or are normally scheduled to work one hundred fifty-nine hours or more in three consecutive weeks and scheduled to work twenty-four hour shifts shall receive a military leave of absence of one hundred sixty-eight hours each calendar year. Members who normally work or are normally scheduled to work one hundred twenty hours or more but less than one hundred fifty-nine hours in three consecutive weeks shall receive a military leave of absence of one hundred twenty hours each calendar year. Members who normally work or are normally scheduled to work less than one hundred twenty hours in three consecutive weeks shall receive a military leave of absence each calendar year equal to the number of hours they normally work or would normally be scheduled to work, whichever is greater, in three consecutive weeks. Such military leave of absence may be taken in hourly increments and shall be in addition to the regular annual leave of the persons named in this section.

(2) When the Governor of this state declares that a state of emergency exists and any of the persons named in this section are ordered to active service of the state, a state of emergency leave of absence will be granted until such member is released from active service of the state by competent authority. A military leave of absence shall not be used during a state of emergency declared by the Governor. Other forms of leave may be granted. During a state of emergency leave of absence because of the call of the Governor, any official or employee subject to this section shall receive his or her normal salary or compensation minus the state active duty base pay he or she receives in active service of the state. Governmental officers serving a term of office shall receive their compensation as provided by law.¹

Note: Congress recently created the United States Space Force as the sixth armed force and the United States Space Force Reserve as the eighth reserve component of the armed forces.

¹ Nebraska Revised Statutes section 55-160. This section was most recently amended in 2018.

Nebraska should add “Space Force Reserve” to the list of reserve components, members of which are entitled to paid military leave. Better, Nebraska should delete the list of reserve components and substitute “reserve components of the United States armed forces as defined by federal law.”

Section 55-160 should be read together with the federal law called the Uniformed Services Employment and Reemployment Rights Act (USERRA). USERRA gives National Guard and Reserve members the right to *unpaid but job-protected military leave*, and that entitlement is essentially unlimited.²

USERRA is a floor and not a ceiling on the employment and reemployment rights of veterans and National Guard or Reserve personnel. USERRA does not supersede a state law that provides *greater or additional rights*.³ USERRA supersedes a state law that purports to limit USERRA rights or that imposes additional prerequisites upon the exercise of USERRA rights.⁴

² 38 U.S.C. 4312(h).

³ 38 U.S.C. 4302(a).

⁴ 38 U.S.C. 4302(b),