

## Paid Military Leave for New York Employees<sup>2</sup>

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1.18: USERRA and Other Laws

2.0: Paid Leave

The New York legislature has enacted a large body of legislation on military leave for officials and employees of the state of New York, as well as its political subdivisions. Codified in New York's Military Law, Article 11 Privileges, Prohibitions, and Penalties, there are multiple statutes that address different aspects of an employee's rights.

The rights provided by New York's legislature exist in conjunction with federal rights provided by USERRA – nonetheless, USERRA is *a floor and not a ceiling* on the rights of employees who leave work for voluntary or involuntary service in the uniformed services. Many of the New York provisions go beyond USERRA and are therefore not preempted. One important distinction is that the New York statutes protect both federal and state military service. For example, if you are a member of the National Guard and are called to perform state service for riots, national disasters, etc., USERRA would not protect you, but the New York statutes will. New York law also protects members of New York military organizations that have no federal status, like the New York Naval Militia. Do note that these New York laws do not apply to employees of the federal government who work in New York, since applying state law to federal employees would violate the Supremacy Clause of the Constitution.

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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.

<sup>2</sup> This is another version of this article titled "Federal Law and New York Law Governing Non-Federal Public Employees in New York and Military Service" that is far longer and provides relevant examples of the application of these statutes in its first 10 pages.

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The first relevant section is cumbersome, but addresses military leaves of absence, paid military leave, and employee contributions to the employee retirement system. The entire section has been copied for the reader's convenience, with noteworthy sections in bold, italic font.

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**§ 242. Rights of public officers and employees absent on military duty as members of the organized militia or of reserve forces or reserve components of the armed forces of the United States**

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**1. Definitions.**

**(a) Public officer or employee.** The term "public officer or employee", as used in this section, shall include every person, by whatsoever title, description or designation known, who receives any pay, salary or compensation of any kind from the state or a municipal corporation or any other political subdivision thereof, or who is in any department of the state or in the service of any public authority, but shall not include a person holding a position in the exempt class of the civil service whose appointment is terminated or whose position is filled by other than a substitute appointee.

**(b) Ordered military duty.** The term "ordered military duty", as used in this section, shall mean:

Any military duty performed in the service of the state or of the United States, including but not limited to attendance at any service school or schools conducted by the armed forces of the United States, by a public officer or employee as a member of any force of the organized militia or of any reserve force or reserve component of the armed forces of the United States, pursuant to orders issued by competent state or federal authority, with or without the consent of such public officer or employee. Participation in routine reserve officer training corps training is not considered to be military duty except when performing advanced training duty as a member of a reserve component of the armed forces.

**2. Leave of absence while engaged in performance of ordered military duty.** Every public officer or employee shall be entitled to absent himself and shall be deemed to have a leave of absence from his duties or service as such public officer or employee while engaged in the performance of ordered military duty and while going to and returning from such duty.

**3. Leave of absence while attending service schools.** Every public officer or employee who is or becomes a voluntary member of any force of the organized militia or of any reserve force or reserve component of the armed forces of the United States shall be entitled to absent himself and shall be deemed to have a leave of absence from his duties or service as such public officer or employee while in attendance, as a member of such force or reserve components, at any service school or schools conducted by the armed forces of the United States, and while going to and returning from such school or schools, notwithstanding that orders for such attendance are or may be issued with the consent of such public officer or employee.

**3-a.** Leave of absence while performing full-time training duty or active duty for training with or in an armed force of the United States. Every public officer or employee who is or becomes a member of any force of the organized militia or of any reserve force or reserve component of the armed forces of the United States shall be entitled to absent himself and shall be deemed to have a leave of absence from his duties or service as such public officer or employee while performing, as a member of such force or reserve component, initial full-time training duty or initial active duty for training with or in an armed force of the United States under the provisions of this chapter or the laws of the United States or both, and while going to and returning from such full-time training duty or active duty for training, notwithstanding that orders for such duty are or may be issued with the consent of such public officer or employee.

**4.** Employment rights. Time during which a public officer or employee is absent pursuant to the provisions of subdivisions two, three and three-a of this section shall not constitute an interruption of continuous employment and, notwithstanding the provisions of any general, special or local law or the provisions of any city charter, no such officer or employee shall be subjected, directly or indirectly, to any loss or diminution of time service, increment, vacation or holiday privileges, or any other right or privilege, by reason of such absence, or be prejudiced, by reason of such absence, with reference to continuance in office or employment, reappointment to office, re-employment, reinstatement, transfer or promotion.

**5. Pay for military duty.**

(a) Every public officer or employee shall be paid his or her salary or other compensation as such public officer or employee for any and all periods of absence while engaged in the performance of ordered military duty, and while going to and returning from such duty, *not exceeding a total of thirty days or twenty-two working days, whichever is greater, in any one calendar year and not exceeding thirty days or twenty-two working days, whichever is greater, in any one continuous period of such absence.*

(b) Every public officer or employee employed by the state of New York who served in a combat theater or combat zone of operations as documented by a copy of his or her DD214, certificate of release or discharge from active duty, or other applicable department of defense documentation, shall be paid his or her salary or other compensation as such public officer or employee for any and all periods of absence while utilizing any healthcare related services related to such duty, not exceeding five working days, in any one calendar year.

(c) Public officers or employees, as defined by paragraph (a) of subdivision one of this section, who are not employees of the state of New York and therefore not entitled to the benefits contained in paragraph (b) of this subdivision, who have served in a combat theater or combat zone of operations as documented by a copy of his or her DD214, certificate of release or discharge from active duty, or other applicable department of defense documentation, may be entitled to additional paid leave for health related services related to duty in a combat theater or combat zone of operations. The governing body of a municipal corporation may, in its sole discretion, adopt a resolution or local law providing

for the payment of the salary or other compensation of such public officers or employees for any and all periods of absence while utilizing healthcare related services related to duty in a combat theater or combat zone of operations, not exceeding five working days, in any one calendar year. Any such local law or resolution adopted must apply to both combat theater veterans and combat zone of operations veterans employed by such public employer. Nothing in this paragraph shall be construed to diminish the rights, privileges, or remedies of any employee under any collective bargaining agreement.

**5-a.** Pay for employees of a city with a population of one million or more. This subdivision shall govern the calculation of compensation and, where applicable, repayment of same by public officers or employees of a city with a population of one million or more who are engaged in the performance of ordered military duty, including time spent traveling to and returning from such duty. In any conflict between this subdivision and any other provision of law with respect to such public servant soldiers, this subdivision shall be controlling.

**(a)** Definitions. As used in this subdivision:

(i) "Base pay of city salary" means the base pay received by a public officer or employee from employment by a city. For public officers and employees who, prior to the effective date of this subdivision, elected to participate in a "full pay/repayment plan", have returned to city employment from ordered military duty as of the effective date of this subdivision and are, on the effective date of this subdivision, public officers or employees, the base pay of city salary shall be calculated by the implementing agency as the salary received by the public servant soldier as of the effective date of this subdivision or the date of return to city service, whichever is later.

For public officers and employees who, prior to the effective date of this subdivision, elected to participate in a "full pay/repayment plan" and who return to city employment from ordered military duty after the effective date of this subdivision, the base pay of city salary shall be calculated on the date of return to city employment.

For public officers and employees who, prior to the effective date of this subdivision, elected to participate in a "full pay/repayment plan" and who have, by the effective date of this subdivision, already separated from city employment in a manner other than by retirement, and except where the implementing agency shall determine the existence of hardship, the base pay of city salary shall be calculated as the salary received by the public servant soldier as of the date of separation from city service.

For public officers and employees who, prior to the effective date of this subdivision, elected to participate in a "full pay/repayment plan" and who separate from city employment in a manner other than retirement after the effective date of this subdivision, and except where the implementing agency shall determine the existence of hardship, the base

pay of city salary shall be calculated as the salary received by the public servant soldier as of the date of return to city service.

(ii) "Balloon payment" means the payment required for full satisfaction of any remaining outstanding repayment obligation after ten years from the date of return from ordered military duty pursuant to paragraph (e) of this subdivision.

(iii) "City" means a city with a population of one million or more.

(iv) "City salary" means the gross salary received by a public officer or employee from employment by a city, before taxes, deductions, or court-ordered payments, required or voluntary; but excluding payments by a city as employer for health, pension, and other benefits.

(v) "Covered operation" means those military operations designated by the federal government of the United States, in support of "Operation Enduring Freedom", "Operation Iraqi Freedom", "Operation Noble Eagle", or successors thereto, or operations specifically connected by federal designation, action or implication with homeland security. The implementing agency may make such additional designations on a case-by-case basis as it shall deem, in its discretion, to be in keeping with the spirit and intent of this subdivision.

(vi) "Differential pay" means the pay calculated as the difference between a public servant soldier's military salary and city salary, where the military salary is less than the city salary.

(vii) "Full pay/repayment plan" means a salary and benefits plan in effect in a city prior to the effective date of this subdivision whereby a public servant soldier elected to receive city salary while on military duty, but is required to repay the lesser of such city salary or military salary to a city upon return from military duty.

(viii) "Implementing agency" means an agency of a city, as designated by the mayor of such city in writing, that is authorized to implement the provisions of this subdivision.

(ix) "Military salary" means the gross salary paid by the government of the United States to a public servant soldier for ordered military duty in the armed forces of the United States in a covered operation, as further defined by the implementing agency, provided that such military pay shall be calculated without regard to such extra or additional stipends as hazard pay, housing or food allowances, or other similar additions.

(x) "Public officer" or "employee" means a public officer or an employee of a city.

(xi) "Public servant soldier" means a public officer or employee of a city performing ordered military duty in connection with a covered operation.

(b) The mayor of a city shall designate an agency of such city to be the implementing agency that will administer and implement this subdivision. The implementing agency is hereby authorized to and shall:

**(i)** provide for the continuation of health insurance benefits, to the public servant soldier and to such public servant soldier's family, if the family had been included in such coverage prior to the public servant soldier beginning ordered military duty, under the same terms and conditions as applied to such public servant soldier prior to leaving city employment for ordered military duty; and

**(ii)** provide for hardship under certain conditions determined by the implementing agency for public servant soldiers who elected to participate in a "full pay/repayment plan". Such conditions shall include, but shall not be limited to, any material unforeseen or compelling changes in circumstances affecting a public servant soldier's ability to repay that occurred since such public servant soldier elected to participate in the "full pay/repayment plan," including but not limited to injuries sustained while on ordered military duty, or a determination by the implementing agency that the public servant soldier is or will be experiencing severe economic hardship due to a change in circumstances. Relief may include an extension of the repayment term or a reduction in the percentage of salary dedicated to repayment, or a modification to the requirement for a balloon payment. Such determinations of economic hardship may be made on a case-by-case basis, and the implementing agency may require the provision of such information by the public servant soldier as it deems necessary to make such determination.

**(c)** Subdivision five of this section or any other law to the contrary notwithstanding, until August first, two thousand ten, unless the mayor of a city, in his or her discretion, extends such date, a public officer or employee shall be paid city salary as such public officer or employee for any and all periods of absence while engaged in the performance of ordered military duty, and while going to and returning from such duty, not exceeding thirty working days in any one calendar year and not exceeding thirty working days in any one continuous period of such absence.

**(d)** Subdivision five of this section or any other law to the contrary notwithstanding, until August first, two thousand ten, unless the mayor of a city, in his or her discretion, extends such date, a public servant soldier shall, after having received the city salary to which he or she is entitled pursuant to paragraph (c) of this subdivision, be paid differential pay thereafter on his or her regularly scheduled pay period for the duration of such ordered military duty, if such ordered military duty is in connection with a covered operation. No repayment shall be required to the city for such differential pay received by a public servant soldier, provided that this prohibition on repayment shall not apply in the case of a material error in calculation that results in an unwarranted increase to the public servant soldier. Repayment of any such overage shall be governed by the terms of paragraph (e) of this subdivision.

(e) A public officer or employee who, prior to the effective date of this subdivision, elected to participate in a “full pay/repayment plan” and, in having done so, incurred a repayment obligation, shall make repayments in accordance with terms adopted by the implementing agency, except that, with respect to such repayment obligations, such officer or employee shall have satisfied the obligation to repay when he or she has repaid eighty-five percent of the amount of city salary or military salary, whichever is less, less other such discounts implemented by the implementing agency as of the effective date of this subdivision and such incentives as may be implemented by the implementing agency to encourage payment, and no such term shall:

- (i) require a public officer or employee, while employed by such city, to pay in any pay period more than seven and one-half percent of his or her base pay of city salary toward satisfying his or her repayment obligation, except that a term may provide for full satisfaction of any remaining outstanding repayment obligation after ten years from the date of return from ordered military duty; or
- (ii) require a retired public officer or employee to pay, in any month, an amount more than seven and one-half percent of his or her monthly pension payment, except that a term may provide for full satisfaction of any remaining outstanding repayment obligation after ten years from the date of return from ordered military duty; or
- (iii) require a public officer or employee separated from employment by such city in a manner other than by retirement, to pay, in any year, an amount more than seven and one-half percent of the base pay of city salary, except that a term may provide for full satisfaction of any remaining outstanding repayment obligation after ten years from the date of return from ordered military duty.

(f) Notwithstanding paragraph (e) of this subdivision, a city shall not require the satisfaction of any repayment obligation in the event that a public servant soldier is killed in the performance of ordered military duty.

## 6. Rights and contributions under retirement systems.

(a) The amount of required contributions to any pension or retirement system of which a public officer or employee absent while engaged in the performance of ordered military duty is a member shall be deducted from the salary or other compensation paid to him as such public officer or employee as provided in this section. If such required contributions exceed the amount of such salary or other compensation to which a public officer or employee is entitled while engaged in the performance of military duty, the amount of such salary or other compensation shall be applied upon such required contributions and such public officer or employee shall have the right to pay to such pension or retirement system the amount by which such contributions exceed such salary or other compensation. *Such public officer or employee shall also have the right to pay to such system, for any period of such absence during which he shall receive no salary or other compensation as such public officer or employee, the amount*

*that he would have contributed to such system if he had been present and continuously engaged in the performance of the duties of his position during such period.*

- (b) Such payments, other than those deducted from his salary or other compensation as such officer or employee, may be paid from time to time at any time while engaged in such ordered military duty or within five years after the date of termination of such ordered military duty, or, in the event of the death of such public officer or employee while engaged in ordered military duty, such payments, or any part thereof, may be made by the named beneficiary or the legal representative of such public officer's or employee's estate within one year following proof of such death.
- (c) To the extent that such contributions are paid, absence while engaged in the performance of military duty shall be counted in determining the length of total service under such pension or retirement system.
- (d) Any such public officer or employee, while engaged in the performance of ordered military duty, or his beneficiary, as the case may be, shall be entitled to all the benefits of the pension or retirement system of which he is a member except accidental disability retirement and accidental death benefit.

7. [Repealed]<sup>4</sup>

Please note that the following section, Section 243, becomes effective April 1, 2023. There is no change in the substantive law between this amendment and the prior effective version. The amendment edits various internal references from section three hundred fifty of the executive law to section one of the veterans' service law. The amendment also adds gender inclusive pronouns.

There are also some sections of this New York statute that purport to run afoul of USERRA. First, sub-section 2(a) seems to require police officers to obtain prior *permission* from their employer to take military leave. Under USERRA, the only requirement is that the employer be given *notice*. The same section discusses a limit of four years of military service for employees. While the limit for a period of military service to retain reemployment rights under USERRA is also 4 years, USERRA provides a list of 9 exceptions to that general rule; these exceptions are not carved out in the New York statute.

Subsection 5 states that if a returning service member is "incapable of efficiently performing the duties of his position" that they may be transferred to a different position. However, USERRA requires that the employer make reasonable accommodations for a service member who returns with injuries. If no reasonable accommodations allow a service member to hold their prior position, they must be offered a position of like pay, status, and seniority for which they are qualified or can become qualified for with reasonable efforts by the employer.<sup>5</sup>

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<sup>4</sup> N.Y. MIL. LAW § 242 (LexisNexis 2022).

<sup>5</sup> 38 U.S.C. 4313(a)(3).

It is important that you read this section carefully and in conjunction with USERRA. If your personal issue relates to one of these issues, you should consult legal counsel with specific USERRA knowledge. Again, some of the most relevant sections are in bold, italic font.

**§ 243. Provisions applicable to public employees who are absent on military duty.**  
**[Effective April 1, 2023]**

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**1. Definitions.** As used in this section:

(a) The term “public employee” shall mean an officer or employee holding a position by appointment or employment in the state of New York or in the cities, counties, towns, villages or school districts thereof, or in any other political or civil division of the state or of a municipality, or in any public or special district, or in the service of any public authority, public benefit corporation, commission or board, or in any other branch of the public service.

(b) The term “military duty” shall mean military service in the military, naval, aviation or marine service of the United States subsequent to July first, nineteen hundred forty, or service under the selective training and service act of nineteen hundred forty, or the national guard and reserve officers mobilization act of nineteen hundred forty, or any other act of congress supplementary or amendatory thereto, or any similar act of congress hereafter enacted and irrespective of the fact that such service was entered upon following a voluntary enlistment therefor or was required under one of the foregoing acts of congress, or service with the United States public health service as a commissioned officer, or service with the American Red Cross while with the armed forces of the United States on foreign service, or service with the special services section of the armed forces of the United States on foreign service, or service in the merchant marine which shall consist of service as an officer or member of the crew on or in connection with a vessel documented under the laws of the United States or a vessel owned by, chartered to, or operated by or for the account or use of the government of the United States, or service by one who was employed by the War Shipping Administration or Office of Defense Transportation or their agents as a merchant seaman documented by the United States Coast Guard or Department of Commerce, or as a civil servant employed by the United States Army Transport Service (later redesignated as the United States Army Transportation Corps, Water Division) or the Naval Transportation Service; and who served satisfactorily as a crew member during the period of armed conflict, December seventh, nineteen hundred forty-one, to August fifteenth, nineteen hundred forty-five, aboard merchant vessels in oceangoing, i.e., foreign, intercoastal, or coastwise service as such terms are defined under federal law (46 USCA 10301 & 10501) and further to include “near foreign” voyages between the United States and Canada, Mexico, or the West Indies via ocean routes, or public vessels in oceangoing service or foreign waters and who has received a Certificate of Release or Discharge from Active Duty and a

discharge certificate, or an Honorable Service Certificate/Report of Casualty, from the Department of Defense, or who served as a United States civilian employed by the American Field Service and served overseas under United States Armies and United States Army Groups in world war II during the period of armed conflict, December seventh, nineteen hundred forty-one through May eighth, nineteen hundred forty-five, and who (i) was discharged or released therefrom under honorable conditions, or (ii) has a qualifying condition, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable from such service, or (iii) is a discharged LGBT veteran, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable from such service, or who served as a United States civilian Flight Crew and Aviation Ground Support Employee of Pan American World Airways or one of its subsidiaries or its affiliates and served overseas as a result of Pan American's contract with Air Transport Command or Naval Air Transport Service during the period of armed conflict, December fourteenth, nineteen hundred forty-one through August fourteenth, nineteen hundred forty-five, and who (iv) was discharged or released therefrom under honorable conditions, or (v) has a qualifying condition, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable from such service, or (vi) is a discharged LGBT veteran, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable from such service; or service in police duty on behalf of the United States government in a foreign country, if such person is a police officer, as defined by section 1.20 of the criminal procedure law, and if such police officer obtained the prior consent of his or her public employer to absent himself or herself from his or her position to engage in the performance of such service; or as an enrollee in the United States maritime service on active duty and, to such extent as may be prescribed by or under the laws of the United States, any period awaiting assignment to such service and any period of education or training for such service in any school or institution under the jurisdiction of the United States government, but shall not include temporary and intermittent gratuitous service in any reserve or auxiliary force. ***It shall include time spent in reporting for and returning from military duty and shall be deemed to commence when the public employee leaves his or her position and to end when he or she is reinstated to his or her position, provided such reinstatement is within ninety days after the termination of military duty,*** as hereinafter defined. Notwithstanding the foregoing provisions of this paragraph, the term "military duty" shall not include any of the foregoing services entered upon voluntarily on or after January first, nineteen hundred forty-seven and before June twenty-fifth, nineteen hundred fifty; and, on or after July first, nineteen hundred seventy, ***the term "military duty" shall not include any voluntary service in excess of four years performed after that date, or the total of any voluntary services, additional or otherwise, in excess of four years performed after that date, shall not exceed five years, if the service in***

*excess of four years is at the request and for the convenience of the federal government, except if such voluntary service is performed during a period of war, or national emergency declared by the president.*

**(c)** The term "termination of military duty" shall mean the date of a certificate of honorable discharge or a certificate of completion of training and service as set forth in the selective training and service act of nineteen hundred forty, and the national guard and reserve officers mobilization act of nineteen hundred forty or, or a certificate of release or discharge from active duty where an employee (i) has a qualifying condition, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable from such service, or (ii) is a discharged LGBT veteran, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable from such service, or in the event of the incurrence of a temporary disability arising out of and in the course of such military duty, the date of termination of such disability. The existence and termination of such temporary disability, in the case of a public employee occupying a position in the classified civil service or of a person on an eligible list for a position in such service, shall be determined by the civil service commission having jurisdiction over such position and, in the case of a public employee occupying a position not in the classified civil service, shall be determined by the officer or body having the power of appointment.

**(d)** The term "position" shall mean the office or position held by a public employee at the time of his entrance upon military duty.

**2.** Leave of absence and re-employment.

**(a)** *Every public employee shall be entitled to absent himself or herself from his or her position while engaged in the performance of military duty, except for those police officers who are required by paragraph (b) of subdivision one of this section to obtain the prior consent of their public employers before absenting themselves from their positions for military service*, who accordingly shall be entitled to absent themselves from their positions only after obtaining such prior consent, and shall be deemed to have a leave of absence for the duration of such military duty. Such public employee shall be reinstated to his position as soon as possible provided he makes application for such reinstatement within ninety days after the termination of his military duty, or at any time during his terminal leave. Thereafter, he may be so reinstated, at any time after such ninety-day period and within one year after the termination of his military duty, in the discretion of the appointing officer or body.

**(b)** A public employee who resigned from his position during his military duty, or within six months prior to the commencement of such military duty, may, in the discretion of the appointing officer or body, be reinstated to his position within one year after the date of his resignation, excluding from said period the time he was on military duty. Every public employee reinstated under the provisions of this subdivision or pursuant to subdivision one-a of rule sixteen of the rules for the classified civil service for the state or pursuant to any comparable rule of a

municipal civil service commission, shall be deemed to have been on a leave of absence for the duration of his military duty.

**3. Substitutes.** A position held by a public employee who is absent on military duty shall, so far as practicable, be continued in existence but shall be deemed temporarily vacant and shall be filled only when the public interest so requires. Any appointment to fill such vacancy shall be designated as a substitute appointment and the request for certification, the certification and the indicia of appointment shall show that the person is being appointed as a substitute. Any public employee, who accepts appointment as a substitute shall be granted a leave of absence from his former position until the termination of such appointment and the temporary vacancy resulting from such leave of absence shall be filled in like manner only when the public interest so requires and any appointment to such position shall also be designated as a substitute appointment and the request for certification, the certification and the indicia of appointment shall show that the person is being appointed to such position as a substitute. Every such substitute appointment shall be for a period not exceeding the leave of absence of the former incumbent and shall be made in accordance with the provisions of law applicable to such position, provided, however, that such substitute appointment may be continued for a period in excess of one year, notwithstanding the provisions of section fifteen of the civil service law. Such substitute employee shall acquire no right to permanent appointment or tenure by virtue of his service as a substitute and such service may be terminated at any time in the discretion of the appointing officer or body. His rights, if any, with respect to appointment or tenure, shall not, however, be impaired in any way by his acceptance of an appointment as a substitute and his name shall remain on any eligible or other list and he shall be certified as eligible for any other appointment authorized by law during the existence of such list.

The appointment of a substitute shall terminate (a) upon the return of the former incumbent to his position or (b) upon the death or permanent total disability of the former incumbent or (c) upon failure of the former incumbent to return to said position within ninety days after the termination of his military duty or (d) upon the appointment or promotion of the former incumbent to another position as authorized by subdivision six of this section, and, upon the happening of any of such events, said position may then be filled in the manner provided by law.

**4. Pensions.** *Any public employee who is a member of any pension or retirement system may elect, while on military duty, to contribute to such pension or retirement system the amount which he would have contributed had his employment been continuous and upon making such contribution he shall have the same rights in respect to membership in the retirement system as he would have had if he had been present and continuously engaged in the performance of the duties of his position.*

Time during which a member is absent on military duty shall not constitute an interruption of continuous employment, but *such time shall not be counted or included in determining the length of total service unless such member contributes to the retirement system the amount he or she would have been required to contribute if he or she had been continuously employed during such period.* Such contribution, or any part thereof, may be paid at any time and from time to time, while in military duty, or

within five years after the date of his or her restoration to his or her position or before December thirty-first, nineteen hundred sixty-two, whichever date is later, or in the event of the death of the member while in military duty such contribution, or any part thereof, may be paid by the named beneficiary or the legal representative of the member's estate within one year following proof of such death. A member of the New York state employees' retirement system or of the New York state and local police and fire retirement system, other than a member of the state police in a collective negotiating unit established pursuant to article fourteen of the civil service law, who is in the employ of the state on March thirty-first, nineteen hundred seventy, ***who failed to make such contributions during the prescribed period of time may nonetheless obtain credit for time during which he or she was on military duty by depositing with such retirement system an amount equal to the contribution he or she would have made had he or she made a timely election***, with regular interest, on or before March thirty-first, nineteen hundred seventy-two, provided, however, such member may elect to deposit such amount over a period of time no greater than the period for which credit is being claimed, in which case such payments must commence no later than March thirty-first, nineteen hundred seventy-two. If the full amount of such payments is not paid to the retirement system, the amount of service credited shall be proportional to the total amount of the payments made. A member of the New York state and local police and fire retirement system who is a member of the state police in a collective negotiating unit established pursuant to article fourteen of the civil service law, who is in the employ of the state on March thirty-first, nineteen hundred seventy-one, who failed to make such contributions during the prescribed period of time may nonetheless obtain credit for time during which he or she was on military duty by depositing with such retirement system an amount equal to the contribution he or she would have made had he or she made a timely election, with regular interest, on or before March thirty-first, nineteen hundred seventy-two, provided, however, such member may elect to deposit such amount over a period of time no greater than the period for which credit is being claimed, in which case such payments must commence no later than March thirty-first, nineteen hundred seventy-two. If the full amount of such payments is not paid to the retirement system, the amount of service credited shall be proportional to the total amount of the payments made.

A member of the New York state teachers' retirement system, whose service terminates on the expiration of his contract, and for whom there is no employer to cover the cost of his accruing pension rights while in military service following the cessation of his contract, may pay in addition to his own contributions, an amount equal to the percentage of his salary which his employer would have paid had he remained under contract, which contributions shall be paid into the pension accumulation fund of the aforementioned retirement system and be treated as if they had been continued by his employer except that in the event of his death as a member prior to retirement or on his withdrawal of his accumulated contributions from the system, the amounts so paid by him shall be returnable, with regular interest, as if they were a part of his accumulated contributions. Such contributions or any parts thereof may be paid at any time and from time to time while in military duty or within five years after the member

has returned to public school teaching in New York state or before December thirty-first, nineteen hundred sixty-two, whichever date is later.

Any such member, while on military duty, or his beneficiary, as the case may be, shall be entitled to all benefits of the retirement system of which he is a member except accidental disability retirement and accidental death benefit.

Any public employee holding a position by appointment who is or was a member of any pension or retirement system and who, while such member and while on military duty, applied for retirement as a member of such system to take effect within thirty days prior to the date of expiration of his appointment and who shall accordingly have been retired pursuant to such application but thereafter and within thirty days after the effective date of such retirement shall have been reappointed to his said position and shall have applied thereafter, before or upon his release from military duty, for membership in such pension or retirement system, shall be deemed to have had continuous membership in such pension or retirement system and shall be entitled to all the rights, benefits and privileges under his contract of membership as it existed at the time of such retirement, provided he shall (1) return any pension, annuity and retirement allowance payments received by him during the period of such retirement, (2) consent to the termination of his right to receive pension, annuity or retirement allowance payments on the basis of such retirement, (3) pay into the appropriate fund of such pension or retirement system the amount he would have contributed thereto, if he had not so retired, on the basis of the salary he was receiving when he so retired, and (4) pay into the appropriate fund of such pension or retirement system the amount which his employer would have paid thereto on his account if he had continued as a member during such period of retirement.

**4-a.** Notwithstanding the provisions of subdivision four of this section, in any case where any member of any pension or retirement system maintained under any provision of the administrative code of the city of New York, or under section twenty-five hundred seventy-five of the education law, did not, within five years after the date of the restoration of such member to his position, pay the contribution required by such subdivision four to be paid within such period, as a prerequisite to obtaining service credit in such system for the period of his military duty, such contribution, or any part thereof remaining due, may be paid on or before June thirtieth, nineteen hundred fifty-seven, provided that any such member who, on or before such last-mentioned date, retires or is retired, without having paid such contribution, shall not be entitled to make such payment.

**4-b.**

**(a)** As used in this subdivision, the following terms shall mean and include:

**(1)** "New York city veteran of world war II". Any member of the New York city employees' retirement system in city-service who, after his or her last membership in such system began, served as a member of the armed forces of the United States during the period beginning on December seventh, nineteen hundred forty-one and ending on December thirty-first, nineteen hundred forty-six, and (i) was honorably discharged or released under honorable circumstances from such service, or (ii) has a

qualifying condition, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable from such service, or (iii) is a discharged LGBT veteran, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable from such service.

(2) "New York city veteran of the Korean conflict." Any member of the New York city employees' retirement system in city-service who, after his or her last membership in such system began, served as a member of the armed forces of the United States during the period beginning on the twenty-seventh of June, nineteen hundred fifty and ending on the thirty-first day of January, nineteen hundred fifty-five, and (i) was honorably discharged or released under honorable circumstances from such service, or (ii) has a qualifying condition, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable from such service, or (iii) is a discharged LGBT veteran, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable from such service.

(b) Notwithstanding any provision of subdivision four of this section to the contrary, any New York city veteran of World War II or New York city veteran of the Korean conflict who did not, within the applicable period of time prescribed by subdivision four of this section, comply with the requirements of such subdivision for obtaining service credit in the New York city employees' retirement system for the period of his military duty, may, by a written application duly executed and filed with the board of estimate of the city of New York, prior to July first, nineteen hundred sixty-nine, elect to purchase such service credit. If such veteran shall pay to such retirement system, prior to July first, nineteen hundred sixty-nine, the amount which he would have contributed thereto if he had been continuously employed during such period of military duty, he shall have in such retirement system the service credit which he could have obtained for such period of military duty if he had complied with the requirements of such subdivision four within the period of time therein prescribed.

5. Rights upon restoration to position. A public employee restored to his position after the termination of his military duty or after the termination of his substitute appointment shall thereafter be entitled to the rate of compensation he would have received had he remained in his position continuously during such period of military duty or during such period of service as a substitute and shall be deemed to have rendered satisfactory and efficient service in such position during the period of his leave of absence and shall not be subjected directly or indirectly to any loss of time service, increment, or any other right or privilege, or be prejudiced in any way with reference to promotion, transfer, reinstatement or continuance in office. *If a public employee, by reason of injuries sustained or disease contracted while on military duty, as hereinbefore defined, is incapable of efficiently performing the duties of his position after the termination of his military duty, he may, with the approval of the civil service*

*commission having jurisdiction of such position, be transferred to any vacant position in the same jurisdictional classification and in the same governmental unit for which he has applied in writing and for which he has been found qualified, after such tests as the commission may deem appropriate, provided the rate of compensation for such position is not greater than the rate of compensation for the position to which such public employee was restored.* If a promotion examination is held while a public employee entitled to participate therein is on military duty, such public employee shall be given a comparable examination, provided he makes request therefor within sixty days after restoration to his position. If he passes such examination his name shall be placed upon a special eligible list provided that his name would have been reached for certification between the date when he entered upon such military duty and the date that he was officially notified that he had passed such examination. Such special eligible list shall remain in existence for a period of two years from the date that the name of such person is placed thereon and such special eligible list shall be certified before certification shall be made from any subsequent or eligible list, whether open competitive, promotion or preferred which has been established for the same position, or from the original eligible list for such position. A public employee thus appointed after passing a comparable examination as herein provided, shall, for the purpose of computing seniority credit and training and experience credit upon promotion and seniority in the event of suspension or demotion, be deemed to have been appointed on the earliest date upon which any eligible, who was lower on the regular promotion eligible list, was appointed.

**6.** Appointment while on military duty. Any appointing officer or body may, in his or its discretion, fill a vacancy by the appointment or promotion of a public employee or any other person legally eligible for such appointment or promotion, notwithstanding the absence of such person or employee in military duty but such appointment or promotion shall not serve to increase in any degree any civil compensation which he may have been receiving pursuant to section six of chapter six hundred eight of the laws of nineteen hundred fifty-two. Such employee, upon the termination of his military duty shall have the same rights, privileges and obligations as if he had served continuously in such position from the date of his appointment thereto.

**7.** Status of existing lists. Any person whose name is on any eligible list shall, while in military duty, retain his rights and status on such list. If the name of any such person is reached for certification during his military duty, it shall be placed on a special eligible list in the order of his original standing, provided he makes request therefor following termination of his military duty and during the period of his eligibility on such list. Such list shall be certified before certification shall be made from a subsequent open competitive or promotion eligible list for the same position or from the original eligible list for such position. Such names shall remain on such special eligible list for a period of two years after the termination of such military duty. Any such person thus appointed shall, for the purpose of computing seniority credit and training and experience credit for promotion and date of membership in the retirement system and seniority in the event of suspension or demotion, be deemed to have been appointed on the earliest date upon which any eligible, who was the lower on such original eligible list, was

appointed, provided, however that service credit shall be computed from the actual date of appointment. The retirement system contributions of any such person who made any contribution to the retirement system pursuant to article fourteen or fifteen of the retirement and social security law, and who was appointed on or after July twenty-seventh, nineteen hundred seventy-six shall not be refunded.

**7-a. [Repealed]**

**7-b.** Status of applicants called for military duty before taking all parts of an examination. Any person who has passed one or more of several parts of an examination for a position for which competitive examinations are required, and who has been prevented from taking or completing the remaining part or parts of the examination for such position by reason of his service in military duty shall be afforded an opportunity to take a comparable examination as to such remaining part or parts, provided he makes request therefor during the period of ninety days following termination of his military duty. If he passes such examination his name shall be placed upon a special eligible list provided that his name would have been reached for certification between the date when he entered upon such military duty and the date that he was officially notified that he had passed such examination. Such special eligible list shall remain in existence for a period of two years from the date that the name of such person is placed thereon. Such special eligible list shall be certified before certification shall be made from a subsequent eligible list whether open competitive, promotion or preferred for the same position or from the original eligible list for such position. Any such person thus appointed shall, for the purpose of computing seniority credit and training and experience credit for promotion and seniority in the event of suspension or demotion, be deemed to have been appointed on the earliest date upon which any eligible was appointed who was lower on such original eligible list or lower in relative order of rating thereon than such person would have been had his name been entered thereon.

**8.** Service and efficiency ratings. A public employee who is absent on military duty shall be credited with the average of the efficiency ratings which he received for the three periods immediately prior to his absence on military duty but such rating shall not be less than a passing grade for the period of such absence, nor shall it be less than the rating which he received for the period immediately prior to his absence on military duty. In computing seniority and service requirements for promotion eligibility, such period of military duty shall be counted as service in the position held by such employee.

**9.** Probationary service. If a public employee or other person enters military duty before the expiration of the probationary period in any position to which he may have theretofore been appointed, or to which he may thereafter be appointed or promoted pursuant to subdivision six of this section, the time he is absent on military duty shall be credited as satisfactory service during such probationary period.

**9-a.** Probationary service of teachers. Notwithstanding the provisions of subdivision five of this section and subdivision four of section two hundred forty-two of this chapter, in any case where a teacher, as defined in section thirty-one hundred one of the education law, enters military duty before the expiration of the probationary period to which he

may have theretofore been appointed, the time he is absent on military duty shall be credited as satisfactory service during such probationary period. If the end of such probationary service occurs while the teacher is on military duty or within one year following the termination of such military duty, the period of such probationary service may be extended by the local board of education for a period of not to exceed one year from the date of termination of such military duty, but in no event for a period of probationary service in the actual performance of teaching services, exclusive of such military service, beyond that required by the school district at the time of his entry into military service.

**10. Physical examination.** If a physical examination is required for employment in or promotion to any position in the public service, the physical disability of a candidate incurred by reason of injury sustained or disease contracted while in military duty, as hereinbefore defined, or during the world war shall not be deemed to disqualify him for such position unless the disability is of such a nature as to prevent him from efficiently performing the duties of such position.

**10-a. Age requirements.** If maximum age requirements are established by law, or rule or by action of a civil commission for examination for, or for appointment or promotion to, any position in the public service, the period of military duty as hereinbefore defined, the period of service after June twenty-seventh, nineteen hundred fifty, voluntarily entered upon between January first, nineteen hundred forty-seven, and June twenty-seventh, nineteen hundred fifty, if such service otherwise falls within the definition of military duty, and the period of terminal leave granted by the military authorities of a candidate or eligible shall not be included in computing the age of such candidate or eligible for the purposes of such examination or appointment or promotion; provided, however, that neither shall the total time deducted hereunder in computing the age of a candidate or eligible exceed seven years for any position including, but not limited to, in cities with a population of one million or more.

**10-b.** If a public employer consolidates, abolishes, displaces, or demotes a position, in accordance with section eighty, eighty-a or eighty-five of the civil service law, which is occupied by a public employee currently on active duty with the armed forces of the United States, as pursuant to title ten, fourteen or thirty-two of the United States code, such employer shall comply with subdivisions eleven and twelve of this section and, upon the termination of the public employee's active duty, as defined in title ten, fourteen or thirty-two of the United States code, such public employer shall provide full re-employment rights warranted to such employee under the Federal Uniformed Services Employment and Reemployment Rights Act of 1994, provided, however, the right of re-employment under this subdivision does not entitle such employee to displacement rights over any person with greater seniority. Such public employer shall not abolish any position or positions solely based upon the fact that the position or positions are currently filled by an individual or individuals engaged in military duty.

**11. Preferred lists.** If the position occupied by a public employee is abolished prior to the termination of his military duty his name shall be placed forthwith upon a preferred list, as herein provided. Public employees in the competitive class of the civil service shall have their names placed upon a preferred eligible list, pursuant to the provisions

of section eighty-one of the civil service law and public employees subject to sections twenty-five hundred ten, twenty-five hundred eighty-five and twenty-five hundred eighty-eight of the education law shall have their names placed upon a preferred list as provided in such section.

**12. Military re-employment lists.** *If the position occupied by a public employee, who is not included in the provisions of subdivision eleven of this section, has been abolished or is no longer in existence upon the termination of his military duty such employee, upon filing a written request within ninety days after the termination of his military duty, shall have his name placed forthwith, upon a military re-employment list, as herein provided, for the position last held by him or any similar position.* The military re-employment list for public employees in the classified civil service, other than in the competitive class, shall be established by the civil service commission having jurisdiction of such position and such list for public employees who are not in the classified civil service shall be established by the officer who makes payment of the wages or salary for such position. Separate lists shall be established for positions in the non-competitive and the labor class of the classified civil service. After the establishment of a military re-employment list, it shall be made available to appointing officers and bodies and no position shall be filled until the appointing officer or body certifies to the civil service commission or to the disbursing officer, as the case may be, that no person on such military re-employment list, who formerly held the same or a similar position, is qualified to fill and willing to accept appointment to such vacancy. The civil service commission or the disbursing officer, as the case may be, shall refuse to approve the payroll for such position until such certificate is filed. Appointments from a military re-employment list may be made without regard to the order of standing on said list. Eligibility for appointment from such military re-employment list shall not continue for a period longer than four years from the date of termination of military duty. Refusal to accept an offer of appointment to a position similar to the last held by such public employee shall cause the removal of his name from such list. Upon a failure or refusal to comply with the provisions of subdivisions eleven and twelve of this section, the supreme court is empowered, upon the filing of a petition or other appropriate pleading, by the public employee entitled to the benefits of such provisions, to specifically require compliance therewith, and may, as an incident thereto, compensate such employee for any loss of wages suffered by reason of such unlawful action. The court shall order a speedy hearing in any such case and shall advance it on the calendar. Nothing in this subdivision shall be construed to apply to positions in the exempt class of the classified civil service.

**13. Temporary positions.** The provisions of subdivisions three and five of this section shall not be applicable to a public employee holding a temporary position, but such employee shall, nevertheless, be placed upon a military re-employment list, as provided in subdivision twelve of this section and, so far as practicable, shall be restored to a position similar to that held at the time such employee entered military duty.

**14. Public employees appointed for a definite term.** A public employee appointed for a definite term shall be deemed to have a leave of absence until the end of his term of

office and until his successor has been appointed, but not thereafter, for the purpose of determining his rights under this section.

**15. Elective officers.** The provisions of subdivision four of this section shall be applicable to an elective officer and he shall be deemed to continue in his office until his successor has been elected, but not thereafter, for the purpose of determining his rights under such subdivision. No other provisions of this section shall be applicable to elective officers.

**16. Salaries.** Nothing in this section shall be construed to give any public employee any claim for salary or compensation during his absence on military duty.

**17. Certificates as to service.** A certificate signed by the commander, total army personnel center as to persons in the army or in any branch of the United States service while serving pursuant to law with the army of the United States, signed by the commander, naval military personnel as to persons in the United States service while serving pursuant to law with the United States navy, and signed by the commandant, United States marine corps, as to persons in the marine corps, or in any other branch of the United States service while serving pursuant to law with the marine corps, signed by the chief, air force military personnel center as to persons in the United States service while serving pursuant to law with the United States air force or signed by an officer designated by any of them, respectively, for the purpose, shall when produced be prima facie evidence as to any of the following facts stated in such certificate: That a person named has not been, or is, or has been in military service; the time when and the place where such person entered military service, his residence at that time, and the rank, branch, and unit of such service that he entered, the dates within which he was in military service, the monthly pay received by such person at the date of issuing the certificate, the time when and the place where such person died in or was discharged from such service. It is the duty of the foregoing officers to furnish such certificate on application, and any such certificate when purporting to be signed by any one of such officers, or by any person purporting upon the face of the certificate to have been so authorized, shall be prima facie evidence of its contents and of the authority of the signer to issue the same.

**18. Rights and privileges of public employees and other persons while engaged in essential war work.** Every public employee, or other person to whom this section is applicable, who has been or may be discharged or relieved from military duty on condition that he engage in work essential to the prosecution of the war, shall be entitled, while engaged in such work, to all the rights and privileges to which he would have been entitled, under the provisions of this section, had he continued to perform military duty. A certificate of the war manpower commission, or of the United States employment service, or of the proper authorities in the armed forces of the United States, or of any other authorized federal agency, that any such public employee, or other person to whom this section is applicable, is or has been, for the period stated in such certificate, engaged in such work, shall be required in order to confer upon such employee or person the rights and privileges accorded by this subdivision, and such certificate shall be presumptive evidence of such facts.

**19.** Leaves of absence and re-employment of certain teachers and school supervisors. A member of the teaching or supervising staff in a school district other than a school district employing a superintendent of schools shall be entitled to absent himself from his position while engaged in the performance of military duty and shall be deemed to have a leave of absence for the duration of such military duty. Such person shall be reinstated to his position provided he makes application for such reinstatement within ninety days after the termination of his military duty, notwithstanding that his contract with the school district shall have expired.

**20.** Payment of pension contributions by city of New York.

**A.** As used in this subdivision:

(1) the term "New York city member" shall mean any public employee (a) who was granted a leave of absence for the period of his military duty pursuant to the provisions of subdivision two of this section and who was on April eleventh, nineteen hundred forty-seven, or shall become prior to January first, nineteen hundred fifty-two, a member of any pension or retirement system to which the city of New York, the Triborough bridge and tunnel authority, or the New York city housing authority is required by law to make contributions on account of such employee, or (b) who was on April eleventh, nineteen hundred forty-seven, or shall thereafter become a member of any such system and who is or shall be entitled to seniority credit and training and experience credit under the provisions of subdivision seven, seven-a or seven-b of this section by reason of appointment from an eligible list or special eligible list, but such term shall not include any public employee whose rights as to civil compensation are or were governed by section six of chapter six hundred eight of the laws of nineteen hundred fifty-two;

(2) the term "system" shall mean any pension or retirement system referred to in subsection (1) of paragraph A of this subdivision.

**B.** Except as otherwise provided in paragraphs C, D and E of this subdivision, any New York city member shall have as to any period of military duty performed by him the same rights and shall be entitled to the same benefits in respect to his membership in any system as he would have had if he had been present and continuously engaged in the performance of the duties

(1) of the position from which he was granted a leave of absence pursuant to the provisions of subdivision two of this section, if he is not entitled to seniority and training and experience credit as provided by subdivision seven, seven-a or seven-b of this section, and was not appointed to a position while on military duty as provided by subdivision six of this section, or

(2) if he was granted such leave and received an appointment as provided by subdivision six of this section, of the position from which he received such leave of absence, up to the date of such appointment, and thereafter as if he had been present and continuously engaged in the performance of the duties of such position to which he was appointed, or

(3) if granted such leave of absence and entitled to credit as provided by subdivision seven, seven-a or seven-b of this section, of the position from which he was granted such leave of absence, up to the date upon which he is deemed to have been appointed as provided in such subdivision seven, seven-a or seven-b and thereafter as if he had been present and continuously engaged in the performance of the duties of the position with respect to which the date on which he is deemed to have been appointed is specified by such subdivision seven, seven-a or seven-b, or (4) if he did not receive such leave, but is entitled to credit under such subdivision seven, seven-a or seven-b, of the position to which he is deemed to have been appointed on the date specified therein, and as if he had actually been appointed and had entered upon the performance of the duties of such position upon such date.

**C.** No New York city member shall be entitled to any of the rights, benefits or credit conferred by this subdivision with respect to

(1) any period of military duty, or portion thereof, during which the military base pay of such member or his compensation for military duty performed other than as a member of the armed forces, exceeded the civil compensation of the position or positions with respect to which his rights and benefits for the corresponding period or portion thereof are determined by the provisions of paragraph B of this subdivision, or (2) any period of military duty or portion thereof prior to the date upon which any member, who was not granted a leave of absence pursuant to the provisions of subdivision two of this section, is deemed to have been appointed by virtue of the provisions of subdivision seven, seven-a or seven-b of this section.

As to any period of military duty or portion thereof referred to in subsection (1) of this paragraph, the rights of any such member with respect to membership in any system shall be governed by the provisions of subdivision four of this section.

**D.** Time during which any New York city member was absent on military duty shall not constitute an interruption of continuous employment and, except as provided in paragraph C of this subdivision, such time shall be counted and included in determining the length of total service.

**E.** Upon the death or retirement of a New York city member, but not otherwise, the city of New York, the Triborough bridge and tunnel authority, or the New York city housing authority (whichever shall have first employed such member after the termination of his military duty) shall pay into the appropriate fund of the system in which such member held membership at the time of his death or retirement, the amount of all contributions which such member would have been required to make if, during the period of his military duty, he had been present and had continuously performed the duties of the position or positions with respect to which his rights and benefits during the corresponding period or portion thereof are determined by the provisions of paragraph B of this

subdivision; provided that such city or authority shall not pay into any such fund any contributions payable or accruing for any period of military duty or portion thereof, referred to in paragraph C of this subdivision. Each such member shall be credited with such contributions paid in his behalf by such city or authority for all pension or retirement purposes; provided that (1) any portion of any retirement allowance, pension, death benefit or other benefit or right derived from such contributions paid in behalf of such member by such city or authority, shall be such amount as the payment required by this paragraph, made at the time herein specified, shall provide, (2) such member shall not under any circumstances have the right to withdraw the amount of such contributions, or any interest thereon, as a part of his accumulated deductions or otherwise, and (3) such contributions shall be excluded in determining the amount of any loan which any such member shall be entitled to make.

F. In any case where any New York city member has heretofore paid or shall hereafter pay to any system any contributions which the city of New York, the Triborough bridge and tunnel authority, or the New York city housing authority is required to pay to such system by the provisions of this subdivision, such contributions shall be regarded as excess contributions which are (1) creditable in lieu of regular contributions (a) upon the return of such member to his position after the termination of his military duty, or (b) upon his becoming a member of such system, if he did not become a member thereof until after the termination of such duty, or (2) payable in addition to other benefits upon separation meanwhile with benefit.<sup>6</sup>

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**§ 243-a. Non-contributory retirement service credit for members of the New York state and local retirement systems or the New York state teachers' retirement system called to active military duty on or after August first, nineteen hundred ninety**

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Notwithstanding any other provision of law, any member of the New York state and local employees' retirement system, the New York state and local police and fire retirement system, or the New York state teachers' retirement system who is called to active military duty on or after August first, nineteen hundred ninety and prior to January first, nineteen hundred ninety-three, who is not receiving full salary from a participating employer and is otherwise eligible to receive retirement service credit in such system for such active military duty pursuant to section two hundred forty-two or two hundred forty-three of this article, shall not be required to make member contributions to receive such credit.<sup>7</sup>

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**§ 244. Members of pension system absent on military duty**

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Where any duly elected office holder, or any officer or employee of the state or any municipality or political subdivision thereof, who is a member of any pension or retirement

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<sup>6</sup> N.Y. MIL. LAW § 243 (LexisNexis 2022).

<sup>7</sup> N.Y. MIL. LAW § 243-a (LexisNexis 2022).

system, entered or enters the armed forces of the United States before his term of office expired or expires, and prior to the date when he first would be eligible for pension benefits or payments provided for under such pension or retirement system of which he is a member had he continued in the office or employment of the state or such municipality or political subdivision, he may, during the period he is in the armed forces of the United States, remain a member of such pension or retirement system provided he paid or pays into such system monthly, until the date his term of office expired or expires, such amount as he would have paid if he had been present and continuously engaged in the performance of his regular duties as such office holder, officer or employee and provided that after his term of office expired or expires he paid or pays into such pension or retirement system monthly, such full and entire amount as he individually would have paid, together with such amount as would have been paid on his behalf by the state or such municipality or political subdivision of which he was an office holder, officer or employee, had he continued as such office holder, officer, or employee and had been present and continuously engaged in the regular performance of his duties, and he shall have and be entitled to the same rights in respect to membership in such pension or retirement system and the rights and obligations provided thereunder, as he would have had if he had continued as such office holder, officer or employee and had been present and continuously engaged in the regular performance of his duties except that a disability or injury occurred or an accidental death occurring while a member of the armed forces of the United States shall not entitle such office holder, officer or employee, his beneficiaries or representatives to any disability or accidental death benefits.

The provisions of this section shall be construed to include all elected office holders, officers or employees of the state or of a municipality or political subdivision thereof, whose term of office expired since January first, nineteen hundred forty-one, and who since January first, nineteen hundred forty-one, entered the armed forces of the United States, provided such office holder, officer or employee shall on or before July first, nineteen hundred forty-eight notify the fiscal officer of such pension or retirement system in writing that he has determined to take advantage of the rights and privileges afforded him hereunder and provided further that he pays within five years the full amount required to be paid into such system by him as provided for under this section and not already paid by him.<sup>8</sup>

New York code provides the following in terms of enforcement:

#### **§ 251. Depriving members of organized militia of employment**

A person who, either by himself or with another, wilfully deprives a member of the organized militia of his employment, or prevents his being employed by himself or another, or obstructs or annoys said member of said organized militia, or his employer, in respect of his trade, business, or employment, because, said member of said organized militia is such member, or dissuades any person from enlistment in the said organized militia by threat of injury to him in case he shall so enlist, in respect to his employment, trade, or business, is guilty of a misdemeanor.<sup>9</sup>

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<sup>8</sup> N.Y. MIL. LAW § 244 (LexisNexis 2022).

<sup>9</sup> N.Y. MIL. LAW § 251 (LexisNexis 2022).

## Access the New York Consolidated Laws 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 New York Consolidated Laws for yourself online, for free, at

<https://www.nysenate.gov/legislation/laws/CONSOLIDATED>. To access the Military Law section, scroll down on that page to “MIL”. From there, select Article 11 Privileges, Prohibitions and Penalties and scroll down to the relevant section. You can also follow this direct link to Article 11: <https://www.nysenate.gov/legislation/laws/MIL/A11>.

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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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