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ST39-2 Oregon (December 2010)

**Employment Rights Of Members Of Organized Militia
When Called Into Active State Service**

§ 659A.086¹

(1) An employee shall be granted a leave of absence by the employer of the employee to perform active state service if:

(a) The employee is a member of the organized militia of this state and is called into active service of the state under ORS 399.065 (Ordering organized militia into active state service) (1) or active state duty under ORS 399.075 (Ordering organized militia to active state duty).

(b) The employee is a member of the organized militia of another state and is called into active state service by the Governor of the respective state.

(2) The employer shall grant the employee a leave of absence until release from active state service permits the employee to resume the duties of employment. The regular employment position of an employee on a leave of absence for active state service under this section is considered vacant only for the period of the leave of absence. The employee is not subject to removal or discharge from the position as a consequence of the leave of absence.

(3) Upon the termination of the leave of absence for active state service, an employee shall:

(a) Resume the duties of employment within seven calendar days; and

(b) Be restored to the employee's position or an equivalent position by the employer without loss of seniority, vacation credits, sick leave credits, service credits under a pension plan or any other employee benefit or right that had been earned at the time of the leave of absence.

(4) An employer is not required to pay wages or other monetary compensation to an employee during a leave of absence required under subsection (1) of this section.

(5) Notwithstanding subsection (4) of this section:

(a) The State of Oregon shall continue coverage under an employer-sponsored health plan to an employee of the State of Oregon and any other individual provided coverage under the employee's plan on the day before the date the employee goes on leave for a period not exceeding a total of 12 months during a leave of absence required under subsection (1) of this section.

(b) An employer other than the State of Oregon may continue coverage under an employer-sponsored health plan to an employee and any other individual provided coverage under the employee's plan on the day before the date the employee goes on leave during a leave of absence required under subsection (1) of this section.

(6)(a) Notwithstanding subsection (4) of this section, the State of Oregon, a county, a municipality or other political subdivision of this state may establish and administer a donated leave program that:

(A) Allows an employee who is on a leave of absence required under subsection (1) of this section to receive donated leave; and

(B) Allows an employee to voluntarily donate vacation time to an eligible employee on a leave of absence required under subsection (1) of this section.

(b) An employee who is on a leave of absence required under subsection (1) of this section and who receives donated leave under paragraph (a) of this subsection may receive an amount of donated leave that supplements any pay received as a member of the organized militia, but may not receive more than the amount the employee was earning in total compensation on the date the employee began the leave of absence.

(7) For the purpose of calculating total compensation under subsection (6) of this section, the State of Oregon, a county, a municipality or other political subdivision of this state shall:

(a) Include any amounts attributable to hours of overtime that equal the average number of hours of overtime for the same employee class;

(b) Determine the average number of hours of overtime for an employee class based on a reasonable expectation of the average number of hours of overtime employees in that class would perform over the course of a calendar year; and

(c) Maintain records of the average number of hours of overtime for each employee class for each calendar year.

(8) As used in this section:

(a) "Employee" means any individual, other than a copartner of the employer or an independent contractor, who renders personal services in this state to an employer who pays or agrees to pay wages or other compensation to the individual for those services.

(b) "Employee class" means a group of similarly situated employees whose positions have been designated by their employer in a policy or a collective bargaining agreement as having common characteristics.

(c) "Employer" means any person who employs one or more employees in this state. The term includes the State of Oregon or any county, city, district, authority, public corporation or entity and any of their instrumentalities organized and existing under law or charter, but does not include the federal government.

(d) "Total compensation" means the total of an employee's base salary, differentials and overtime. [Formerly 399.230 (Employment rights of members of organized militia when called into active state service)]

Note: 659A.086 (Employment rights of members of organized militia when called into active state service) and 659A.088 (Violation of ORS 659A.086 as unlawful employment practice) were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 659A or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.