

## **Paid Military Leave for Pennsylvania Employees**

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1.8: USERRA and Other Laws

2.0: Paid Leave

The Pennsylvania Consolidated Statutes, Title 51 Section 4102 provides for paid military leave for employees of the state and its political subdivisions who are members of the National Guard and reserve forces as follows:

***(a) Mandatory.***

(1) The following shall apply to paid military leaves of absence:

(i) All officers and employees of the Commonwealth, its political subdivisions or their instrumentalities shall be entitled to paid military leaves of absence from their respective duties without loss of pay or efficiency rating, and without being required to use annual vacation time, as follows:

(A) On all days during which they shall, as members of the Pennsylvania National Guard, be engaged in active State duty under section 508 (relating to active duty for emergency).

(B) On all days not exceeding 15 consecutive or nonconsecutive days in any one year during which they shall, as members of the Pennsylvania National Guard or as members of any reserve

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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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component of the armed forces of the United States, be engaged in training or other military duty under orders authorized by Federal or State law.

(ii) All officers and employees of the Commonwealth or its instrumentalities, except for officers and employees of political subdivisions and their instrumentalities, shall be entitled to up to 15 days of paid military leave in addition to the leave under subparagraph (i) in any one year if the officers and employees are ordered to active duty, other than active duty for training, and all of the following apply:

(A) The duty is ordered for a period of at least 30 consecutive days.

(B) The duty is involuntary or is performed in a zone of combat, in response to a domestic emergency or pursuant to a contingency operations service agreement.

(C) The duty is performed while the member is deployed at least 50 miles away from both the member's home duty station and place of residence.

(D) The duty is ordered under 10 U.S.C. § 12301 (relating to Reserve components generally), 12302 (relating to Ready Reserve) or 12304 (relating to Selected Reserve and certain Individual Ready Reserve members; order to active duty other than during war or national emergency) or 32 U.S.C. § 502(f) (relating to required drills and field exercises).

(2) All officers and employees of the Commonwealth, a political subdivision, or their instrumentalities shall, in addition to the leave provided under this subsection, be entitled to unpaid military leave of absence, up to the maximum cumulative period authorized by 38 U.S.C. Ch. 43 (relating to employment and reemployment rights of members of the uniformed services), from their respective duties without loss of seniority or efficiency rating and without being required to use annual vacation time on all days during which:

(i) they are engaged in training or other military duty under orders authorized by Federal or State law; and

(ii) they are not on paid military leave of absence.

**(b) Discretionary leave.** — The Commonwealth, its instrumentalities and political subdivisions and their instrumentalities shall be authorized and permitted to provide

paid military leave or other compensation and/or continue medical and other benefits to members of the Pennsylvania National Guard and other reserve components of the United States Armed Forces for days in excess of those provided in subsection (a) when the member shall be engaged in training or other military duty under orders authorized by Federal or State law.

***(c) Calculation of leave.***

(1) An employee who is on paid or unpaid military leave for a period encompassing one entire calendar day shall be charged with one day's military leave on each workday notwithstanding the number of hours encompassed in the employee's workday. An employee on paid military leave shall be paid for the leave based on the compensation due for the leave period.

(2) An employee who is on paid or unpaid military leave of absence for a shift that extends into two consecutive calendar days shall be charged with only one day of military leave if the employee returns to work for the next regular shift.<sup>3</sup>

The Pennsylvania statute does a good job at explaining how a "day" is to be interpreted in different situations and what days actually count in charging leave. This statute is also unique in that you are entitled to 15 days of paid leave, but then eligible for 15 more days based on meeting four criteria.

Please see [Law Review 15030](#) (March 2015) for a detailed discussion of the relationship between the Uniformed Services Employment and Reemployment Rights Act (USERRA) and Pennsylvania law concerning the rights of Pennsylvania state and local government employees who are members of the National Guard or Reserve.

**Access the Pennsylvania Consolidated Statutes 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 Pennsylvania Consolidated Statutes for yourself online, for free, at [https://www.legis.state.pa.us/cfdocs/legis/LI/Public/cons\\_index.cfm](https://www.legis.state.pa.us/cfdocs/legis/LI/Public/cons_index.cfm). To access Title 51 Section 4102 discussed in this article, scroll down and select "Title 51". From there, you will have to scroll down or search for Section 4102, which is around page 80.

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<sup>3</sup> 51 Pa. Cons. Stat. § 4102 (2022).

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This article is one of 2,300-plus “Law Review” articles available at [www.roa.org/lawcenter](http://www.roa.org/lawcenter). The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. New articles are added each month.

ROA is more than a century old—it was established on 10/1/1922 by a group of veterans of “The Great War,” as World War I was then known. One of those veterans was Captain Harry S. Truman. As President, in 1950, he signed our congressional charter. Under that charter, our mission is to advocate for the implementation of policies that provide for adequate national security. For almost a century, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation’s defense needs.

Through these articles, and by other means, including amicus curiae (“friend of the court”) briefs that we file in the Supreme Court and other courts, we educate service members, military spouses, attorneys, judges, employers, DOL investigators, ESGR volunteers, congressional and state legislative staffers, and others about the legal rights of service members and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA, but please understand that ROA members, through their dues and contributions, pay the costs of providing this service and all the other great services that ROA provides.

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Reserve Organization of America  
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<sup>4</sup> Congress recently established the United States Space Force as the 8<sup>th</sup> uniformed service.

<sup>5</sup> You can also contribute on-line at [www.roa.org](http://www.roa.org).