

Paid Military Leave for Public Employees in Texas

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1.8: USERRA and Other Laws

2.0: Paid Leave

The Texas Government Code section 437.202 provides employees of the State of Texas and its political subdivisions with 15 workdays of paid military leave per year. This statute was recently amended in 2021 to add section (a-1), which became effective September 1, 2021:

- (a) Except as provided by Subsections (b) and (c), a person who is an officer or employee of this state, a municipality, a county, or another political subdivision of this state and who is a member of the Texas military forces, a reserve component of the armed forces, or a member of a state or federally authorized urban search and rescue team is entitled to a paid leave of absence from the person's duties on a day on which the person is engaged in authorized training or duty ordered or authorized by proper authority for not more than 15 workdays in a fiscal year. During a leave of absence, the person may not be subjected to loss of time, efficiency rating, personal time, sick leave, or vacation time.
- (a-1) In addition to the leave provided under Subsection (a), a person described by Subsection (a) called to state active duty by the governor or another appropriate authority in response to a disaster is entitled to a paid leave of absence from the person's duties for each day the person is called to active duty during the disaster, not to exceed seven workdays in a fiscal year. During a leave of absence under this subsection, the person may not be subjected to loss of time, efficiency rating, personal

¹ I invite the reader's attention to 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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time, sick leave, or vacation time. For purposes of this subsection, "disaster" has the meaning assigned by Section 418.004.

(b) An officer or employee of this state is entitled to carry forward from one fiscal year to the next the net balance of unused accumulated leave under Subsection (a) that does not exceed 45 workdays.

(c) A member of the legislature is entitled to pay for all days that the member is absent from a session of the legislature and engaged in training or duty as provided by Subsection (a).

(d) An employee of this state or a municipality, a county, or another political subdivision of this state with at least five full-time employees who is a member of the Texas military forces, a reserve component of the armed forces, or a member of a state or federally authorized urban search and rescue team and who is ordered to duty by proper authority is entitled, when relieved from duty, to be restored to the position that the employee held when ordered to duty.

(e) This state, a municipality, a county, or another political subdivision of this state shall provide written notice of the number of workdays of paid leave to which an officer or employee described by Subsection (a) is entitled each fiscal year under Subsection (a) and, if applicable, the number of workdays of paid leave to which an officer or employee described by Subsection (a) is entitled to carry forward each fiscal year under Subsection (b):

(1) on employment, in the case of an employee; or

(2) as soon as practicable after appointment or election, in the case of an officer.

(f) This state, a municipality, a county, or another political subdivision of this state shall, on the request of an officer or employee described by Subsection (a), provide to that officer or employee a statement that contains:

(1) the number of workdays for which the officer or employee claimed paid leave under Subsection (a) in that fiscal year; and

(2) if the statement is provided to an officer or employee of this state:

(A) the net balance of unused accumulated leave under Subsection (a) for that fiscal year that the officer or employee is entitled to carry forward to the next fiscal year; and

(B) the net balance of all unused accumulated leave under this section to which the officer or employee is entitled.³

The allowance for paid leave under this article is in addition to a servicemembers job-protected military leave under the Uniformed Services Employment and Reemployment Rights Act (USERRA).⁴

Texas Government Code Section 437.204 provides for the reemployment of service members called to training or duty:

(a) An employer may not terminate the employment of an employee who is a member of the state military forces of this state or any other state because the employee is ordered to authorized training or duty by a proper authority. The employee is entitled to return to the same employment held when ordered to training or duty and may not be subjected to loss of time, efficiency rating, vacation time, or any benefit of employment during or because of the absence. The employee, as soon as practicable after release from duty, must give written or actual notice of intent to return to employment.

(b) A violation of this section is an unlawful employment practice. A person injured by a violation of this section may file a complaint with the Texas Workforce Commission civil rights division under Subchapter I.⁵

Section 437.204 must be read together with the federal law called the Uniformed Services Employment and Reemployment Rights Act (USERRA).⁶ USERRA applies to state and local governments, private employers, and the Federal Government. USERRA accords the right to unpaid but job-protected military leave to persons who have left civilian jobs to perform voluntary or involuntary service in the uniformed services, as defined by USERRA.

USERRA is a floor and not a ceiling on the employment and reemployment rights of veterans and Reserve and National Guard personnel. USERRA does not supersede a state law that provides greater or additional rights.⁷ USERRA supersedes a state law that purports to limit USERRA rights or that imposes an additional prerequisite on the exercise of USERRA rights.

USERRA provides for absences of 1-30 days, the service member is allowed time to travel home, plus 8 hours of rest, and must then report to work on the next working day. For absences of 31-180 days, the service member has 14 days to apply for reemployment.

³ TEX. GOV'T CODE ANN. § 437.202 (LexisNexis 2022).

⁴ 38 U.S.C. 4301-35.

⁵ TEX. GOV'T CODE ANN. § 437.204 (LexisNexis 2022).

⁶ 38 U.S.C. 4301-35.

⁷ 38 U.S.C. 4302(a).

For absences of more than 180 days, the service member has 90 days to apply for reemployment. If the service member is recovering from an injury suffered during military service, they have up to two years to apply for reemployment.⁸

To the extent that the Texas statute attempts to shorten these protected time frames, it is superseded by USERRA.

Access the Texas Code on Your Own

We do our best to keep these state law articles up-to-date and provide the most relevant sections of the applicable statute for you to review. Nonetheless, we still recommend you consult the most recent version of the law to make sure nothing has changed from what we discussed in this article. You can find a public version of the entirety of the Texas Code for yourself online, for free, at <https://statutes.capitol.texas.gov/?link=GV>. To access the Government Code and section 437.202 discussed in this article, scroll down and select “Government Code” → “Title 4 Executive Branch” → “Subtitle C State Military Forces and Veterans” → “Chapter 437 Texas Military” → “Sec. 437.202 Leave of Absence for Public Officers and Employees”.

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⁸ 38 U.S.C. 4312 (e)(1).

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If you are not eligible to join, please contribute financially, to help us keep up and expand this effort on behalf of those who serve. Please mail us a contribution to:

Reserve Organization of America
1 Constitution Ave. NE
Washington, DC 20002¹⁰

⁹ Congress recently established the United States Space Force as the 8th uniformed service.

¹⁰ You can also contribute on-line at www.roa.org.