

SUBJECT: UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA)/MILITARY LEAVES OF ABSENCE

In accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 ([USERRA](#)) and State Law, the BOCES, upon advance notice by the employee, shall grant leaves of absence for service in the uniformed services and/or military duty (hereinafter referred to as "military service" or "military duty") to its employees who are ordered to duty or volunteer for qualifying military service. The employee's notice may be either verbal or written. No advance notice is required if military necessity prevents the giving of notice, or the giving of notice is otherwise impossible or unreasonable under all the circumstances.

Employment Rights

Time during which an employee is absent pursuant to military leave shall not constitute an interruption of continuous employment in the BOCES and no such 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; nor shall any employee be prejudiced by reason of such absence with reference to continuance in employment, reemployment, reinstatement, transfer or promotion.

Salary/Compensation

Every employee shall be paid his/her salary or other compensation 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. This payment of salary/compensation shall not exceed a total of thirty (30) days or twenty-two (22) working days, whichever is greater, in any one calendar year; and shall not exceed thirty (30) days or twenty-two (22) working days, whichever is greater, in any one continuous period of such absence.

The employee must be permitted, upon request, to use any accrued vacation, annual, or similar leave with pay during the period of military service in order to continue his/her civilian pay. The BOCES may not require the employee to use accrued leave.

The employee is not entitled to use accrued sick leave during the period of military service.

Employee Benefits

Health Plan Coverage

If the employee has coverage under a health plan in connection with his/her employment with the BOCES, the employee must be permitted to elect to continue the coverage for a certain period of time as designated in law.

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When the employee is performing military service, he/she is entitled to continuing coverage for himself/herself and dependents under a health plan consistent with the coverage prior to the military leave of absence. The plan must allow the employee an opportunity to continue coverage for a period of time that is the lesser of:

- a) The 24-month period beginning on the date on which the employee's absence for the purpose of performing military service begins; or
- b) The period beginning on the date on which the employee's absence for the purpose of performing military service begins, and ending on the date on which the employee fails to return from service or apply for a position of reemployment.

Continuing coverage may be elected by the employee, consistent with the terms of the health plan administration and [USERRA's](#) exceptions to the requirement that the employee give advance notice of military service. Further, procedures for employee payment to continue coverage will be consistent with [USERRA](#), COBRA (Consolidated Omnibus Budget Reconciliation Act), and the terms of the health plan.

If the employee performs military service for fewer than thirty-one (31) days, he/she will not be required to pay more than his/her regular employee share for health plan coverage. If the employee performs military service for thirty-one (31) or more days, he/she will pay one hundred percent (100%) of the full premium under the health plan.

Pension/Retirement Plans

While on military duty, any BOCES employee who is a member of the New York State Retirement System may elect to contribute to such retirement system the amount which he/she would have contributed had such employment been continuous. Upon making such contribution, the employee shall have the same rights in respect to membership in the retirement system as he/she would have had if the employee had been present and continuously engaged in the performance of his/her position. 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 retirement system.

Alternatively, employees will have an opportunity to make up contributions to the retirement system upon return to employment in the BOCES in accordance with law and the New York State Retirement System. The payment of member contributions required under law to obtain military service credit is waived for members called to active military duty on or after September 11, 2001, and prior to January 1, 2006, as the result of Non-Contributory Military Service Credit legislation signed as Chapter 326 of the Laws of 2005 (New York State Military Law Section 243-d).

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Time during which an employee 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 in the retirement system unless the employee contributes to the retirement system the amount he/she would have been required to contribute if the employee had been continuously employed during the period of military duty, or unless such contributions are waived in accordance with Section 243-d of NYS Military Law.

Leaves of Absence for Military Spouses

The spouse of a member of the armed forces of the United States, national guard or reserves who has been deployed during a period of military conflict (defined as a period of war declared by the United States Congress, or in which a member of a reserve component of the armed forces is ordered to active duty pursuant to the United States Code), to a combat theater or combat zone of operations shall be allowed up to ten (10) days unpaid leave. Such leave shall only be used when such person's spouse is on leave from the armed forces of the United States, National Guard or reserve while deployed during a period of military conflict to a combat theater or combat zone of operations.

In accordance with law, such leave entitlement is mandated for any employee who performs services for hire for the BOCES for an average of twenty (20) or more hours per week, but shall not include independent contractors.

The BOCES will not retaliate against an employee for requesting or obtaining a leave of absence as provided above. The provisions of this section shall not affect or prevent the BOCES from providing leave for military spouses in addition to leave allowed under any other provision of law, contract or policy, nor shall an employee's rights with respect to any other employee benefit be affected by these provisions.

Reemployment/Restoration Rights ("Escalator Principle")

Per [USERRA](#), as a general rule, the employee is entitled to reemployment in the job position that he/she would have attained with reasonable certainty if not for the absence due to military service. The position to which the returning service member should be restored has become known as the "escalator position." The escalator principle requires that the employee be reemployed in a position that reflects with reasonable certainty the pay, benefits, seniority, and other job benefits that he/she would have attained if not for the period of military service.

Depending on the circumstances/intervening events, the escalator principle may cause an employee to be reemployed in a higher or lower position, transferred, laid off, or even terminated.

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The employee must be qualified for the reemployment position. The BOCES shall make reasonable efforts to help the employee become qualified to perform the duties of this position. The BOCES is not required to reemploy the employee on his/her return from military service if the employee cannot, after reasonable efforts by the BOCES, qualify for the appropriate reemployment position.

Per New York State law, an employee restored to his/her position after the termination of military duty shall be entitled to the rate of compensation he/she would have received had the employee remained in his/her position continuously during the period of military duty; further, the employee shall be deemed to have rendered satisfactory and efficient service in the job position during the period of military leave of absence. Further, the employee shall not be subjected directly or indirectly to any loss of time service, increment, or any other right or privilege; nor shall an employee be prejudiced in any way with reference to promotion, transfer, reinstatement or continuance in employment.

All other rights, benefits, and responsibilities of a BOCES employee serving in the military shall be in accordance with law, regulations, and/or the applicable contract/collective bargaining agreement.

Probationary Service

Public Employees in General

If a public employee (with the exception of the probationary service of "teachers" as described below) enters military duty before the expiration of the probationary period in any position to which he/she may have been appointed, or to which he/she may thereafter be appointed or promoted, the time such employee is absent on military duty shall be credited as satisfactory service during this probationary period.

Teachers/Supervisory Staff

In any case where a "teacher" (as defined in [State Education Law Section 3101](#), the term "teacher" encompasses a broad category of full-time members of the teaching and supervisory staff of the BOCES, and is not limited to "instructional" employees) enters military duty before the expiration of the probationary period to which he/she may have been appointed, the time the "teacher" is absent on military duty shall be credited as satisfactory service during this 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 military duty, the period of the probationary service may be extended by the Board of Education for a period not to exceed one year from the date of termination of military duty. However, in no event shall the period of probationary service in the actual performance of teaching services extend beyond that required by the BOCES at the time of the "teacher's" entry into military service.

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Personnel

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Collective Bargaining Agreements/Contracts/Plans/Practices

In accordance with [USERRA](#), any state or local law, contract, agreement, policy, plan, or practice, that establishes an employment right or benefit that is more beneficial than, or is in addition to, a right or benefit under USERRA, such greater employment right or benefit will supersede this federal law.

Notice of Rights and Duties

The BOCES shall provide notice of the rights, benefits and obligations of employees and the BOCES under [USERRA](#), both in the employee handbook and by posting it where employee notices are customarily placed.

The Uniformed Services Employment and Reemployment Rights Act of 1994 ([USERRA](#))
[38 United States Code \(USC\) Sections 4301-4333](#)
[Public Law 108-454](#)
[20 Code of Federal Regulations \(CFR\) Part 1002](#)
Military Law Sections 242 and 243
Education Law Section 3101

Adopted: 1/15/2009