

**STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION**

**PROCEDURE**

**PROCEDURE NUMBER:** 8-3-103.3

**PAGE:** 1 of 6

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**TITLE:** MILITARY LEAVE

**POLICY  
REFERENCE NUMBER:** 8-3-103

**DIVISION OF  
RESPONSIBILITY:** Human Resource Services

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**DATE OF LAST REVISION:** August 8, 2024

**DISCLAIMER**

**PURSUANT TO SECTION 41-1-110 OF THE CODE OF LAWS OF SC, AS AMENDED, THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE SC STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION/THE SC TECHNICAL COLLEGE SYSTEM. THE STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION/THE SC TECHNICAL COLLEGE SYSTEM RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.**

Refer to State Board for Technical and Comprehensive Education (SBTCE) Procedure 8-3-103.8 Family & Medical Leave Act regarding qualifying exigencies, as well as the US Department of Labor's website and CFR Title 20, Part 1002 - Regulations Under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).

# STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION

## PROCEDURE

**PROCEDURE NUMBER:** 8-3-103.3

**PAGE:** 2 of 6

---

### I. Eligibility

Paid military leave may apply to employees in full-time equivalent (FTE), temporary grant (TGP), time-limited project (TLP), and state temporary positions. Employees with official military orders are eligible for paid military leave to engage in training or any other duties to which they are lawfully ordered. All written or oral orders are considered official military orders when issued by an official military authority. An employee is required to provide official written military orders at the System Office/College's request; however, written military orders may not be available before the employee is required to leave for military service. The System Office/College cannot refuse military leave to an employee who has official oral or written military orders. If an employee who is eligible for holiday leave is out on military leave, and a holiday falls on a regularly scheduled workday, the employee should receive the holiday, and the holiday would not count towards military leave.

### II. Short-Term Military Training

Employees who are either enlisted or commissioned members of the South Carolina National Guard, the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, or the United States Coast Guard Reserve, are entitled to leaves of absence from their respective duties without loss of pay, time, or efficiency rating, for one or more periods not exceeding an aggregate of fifteen (15) regularly scheduled average work days in any one year during which they may be engaged in training or any other duties ordered by the Governor, the Department of Defense, the Department of the Army, the Department of the Air Force, the Department of the Navy, the Department of the Treasury, or any other department or agency of the government of the United States having authority to issue lawful orders requiring military service. Saturdays, Sundays, and State holidays may not be included in the 15-day aggregate unless the particular Saturday, Sunday, or holiday to be included is a regularly scheduled workday for the officer or employee involved. Employees who use the fifteen (15) regularly scheduled average workdays of short-term military leave should make a one-time declaration of whether the year is a considered calendar or federal fiscal

# STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION

## PROCEDURE

**PROCEDURE NUMBER:** 8-3-103.3

**PAGE:** 3 of 6

---

year. Typically, this determination is based on the year used by the employee's military unit. If an employee uses a portion of the fifteen (15) days of short-term military leave, an employee may use the remainder of the days for active military service if the unused portion of the fifteen (15) days is in the same year. The fifteen (15) workdays of short-term military leave are not required to be consecutive. The fifteen (15) days of short-term military leave are based on regularly scheduled average workdays.

### III. Travel Time

The fifteen (15) days of short-term military leave cannot be used for travel time outside of the dates on the orders. If available, an employee may request annual leave, compensatory time, or leave without pay for travel time to get to the assignment outside of the dates on the order.

### IV. Additional Military Leave

In accordance with S.C. Code Section 8-7-90, an employee who receives official military orders to serve during a declared emergency is entitled to thirty (30) days of paid leave per declared emergency in addition to the fifteen (15) workdays of paid military leave granted each year. In accordance with S.C. Code Section 8-7-90, a full-time employee who serves on active duty in a combat zone and who has exhausted all available military leave is entitled to receive up to thirty (30) additional days of military leave in any one year. Part-time employees are not eligible.

The fifteen (15) days of short-term military leave and the thirty (30) additional days of leave for a declared emergency are based on regularly scheduled average workdays. In addition, a permanent full-time state employee, who earns annual or sick leave, may use up to forty-five (45) days of annual leave and up to ninety (90) days of sick leave in a calendar year to serve on active duty because of an emergency or conflict declared by the President of the United States.<sup>1</sup>

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<sup>1</sup> Please refer to the related General Appropriations Bill, for any additional options that may be provided in the current fiscal year.

# STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION

## PROCEDURE

**PROCEDURE NUMBER:** 8-3-103.3

**PAGE:** 4 of 6

---

V. Volunteers for Military Service Assignment

An employee who volunteers for a military service assignment and an official military order is issued, is eligible to receive paid military leave.

VI. Leave Without Pay for Military Service

An employee in a leave-earning position who works or is on paid leave at least half of their scheduled workdays for the month, is eligible to receive their monthly annual and sick leave accruals. In general, employees on extended periods of leave without pay for military service do not accrue annual or sick leave during the period of leave without pay. The state service date, continuous service date, and leave accrual date must not be adjusted for an employee on a military tour of duty with reemployment rights protected under federal or state law.

VII. Reemployment Rights

In accordance with the Uniformed Service Employment and Reemployment Rights Act (USERRA), the System Office/College must reemploy employees returning from military service as long as the length of military service does not exceed five years.<sup>2</sup> USERRA provides that returning service members are to be reemployed in the job that they would have attained had they not been absent for military service (the "escalator" principle), with the same seniority, status, and pay, as well as other rights and benefits determined by seniority. USERRA also requires that reasonable efforts (such as training or retraining) be made to enable returning service members to qualify for reemployment. If the service member cannot qualify for the "escalator" position, he or she must be reemployed, if qualified, in any other position that is the nearest approximation to the escalator position and then to the pre-service position. USERRA also provides that while an individual is performing military service, they are deemed to be on a furlough or leave of absence and is entitled to the non-seniority rights accorded to other similarly situated individuals on non-military leaves of absence. The time limits for returning to work are as follows:

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<sup>2</sup> See 38 U.S.C. § 4312(c) for a complete list of exceptions.

# STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION

## PROCEDURE

**PROCEDURE NUMBER:** 8-3-103.3

**PAGE:** 5 of 6

---

- Period of service less than thirty-one (31) days: By the beginning of the first regularly scheduled work period after the end of the calendar day of duty, plus time required to return home safely and an eight (8) hour rest period. If this is impossible or unreasonable, then as soon as possible.
- Period of service thirty-one (31) days to one hundred eighty (180) days: The employee must apply for reemployment no later than fourteen (14) days after completion of military service. If this is impossible or unreasonable through no fault of the employee, then as soon as possible.
- Period of service one hundred eighty-one (181) days or more: The employee must apply for reemployment no later than ninety (90) days after completion of military service.
- Service-connected injury or illness: Reporting or application deadlines are extended for up to two years for persons who are hospitalized or convalescing.

Once an employee notifies their immediate supervisor and the System Office/College Human Resource Office of their intent to return to work, the actual date for reporting to work is negotiable.

### VIII. Performance Review Date

Employees on approved military leave with or without pay for more than thirty (30) consecutive workdays may have their performance review date advanced up to ninety (90) calendar days after those first thirty (30) workdays.

### IX. Insurance and Retirement Services

Employees should contact their System Office/College Human Resource Office for questions on insurance or retirement.

# STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION

## PROCEDURE

**PROCEDURE NUMBER:** 8-3-103.3

**PAGE:** 6 of 6

---

X. Leave Records

The System Office/College shall maintain all leave records for each employee eligible for such leave. Such records shall be reviewed by or reported to the employee no less than once per calendar year and be supported by individual leave requests. It is acceptable for employee leave requests to be created, approved and maintained via a secure (password protected) electronic system. If such a system is used, approval through the system will be considered the required signature of the employee and supervisor. Employees shall be able to view and print the leave records.

Failure to report leave taken is considered a falsification of work/time records and could be construed as being paid for hours not worked in violation of the S.C. Code Section 8-11-30 and may be subject to disciplinary action up to and including termination.