

LEAVE - MILITARY	PROCEDURE	
	Document Number:	AS-HR-PR-3321
	Version Number:	01

1.0 Purpose:

To provide guidelines and controls for the use of military leave by VTA employees.

2.0 Scope:

This procedure applies to all VTA employees who are not covered by a collective bargaining agreement or where the collective bargaining agreement does not specifically address terms of the military leave that are addressed by this procedure.

Please refer to Policy AS-HR-PL-3322 Leave- Military (Supplemental Salary and Benefits) for the process for providing supplemental benefits for up to one year for employees called to active duty as a result of terrorist activities or actual armed conflict.

3.0 Responsibilities:

- 3.1 Employees must provide copies of "orders to report" to their supervisors. Employees must return to work within the applicable time period specified by the Uniformed Services Employment and Re-Employment Rights Act (USERRA) in order to receive its protections.
- 3.2 The Human Resources Department shall ensure that any required posting is posted.

4.0 Procedure:

- 4.1 Military leaves shall be granted to employees pursuant to the provisions of the Military and Veterans Code of the State of California and USERRA.
- 4.2 Employees requesting military leave must submit a copy of their signed military orders to their supervisor with their leave request. A copy of the leave request and orders shall be forwarded to the Human Resources Department for filing in the employee's personnel file. The orders are needed to determine the employee's pay status during the leave. If the orders are not immediately available, they shall be provided as soon as possible.
- 4.3 Employees who enlist, volunteer, or are called to active military duty in a branch of the U.S. Armed Forces or reserves, the Army or Air National Guard, the Commissioned Corps of the Public Health Service or any other category designated by the President in time of war or national emergency shall be granted a leave of absence. The limit of this leave shall be five years, except as otherwise provided by law, for those called to active duty for all services, other than the National Guard. There shall be no limit for those called to active duty for the National Guard. This five-year period includes both inactive and active duty. A call-up because of a war or national emergency declared by the President or Congress does not count against the five-year period.
- 4.4 **INACTIVE DUTY:** Employees shall not be entitled to pay during periods of inactive duty. Employees who are normally scheduled to work these days and who have unused accrued vacation may, but are not required to, use available vacation time to cover the period away from work.

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4.5 **ACTIVE DUTY LEAVE:** Unless the employee is eligible for additional benefits under the Military Leave- Supplemental Salary and Benefits Policy, the employee shall receive his/her regular straight time run or shift pay salary for only the first 30 calendar days of any military leave of absence during any single fiscal year for ordered active duty service.

4.5.1 To be eligible for the 30 days of full salary during an active duty leave, the employee must have completed one year of service with VTA. Recognized military service is included when computing the one year of service. National Guard members do not have a length of service requirement. Overtime or other premiums shall not be paid, unless they are included as part of the regular pay. Travel time to and from ordered military duty is included in the thirty (30) days.

4.5.2 For purposes of calculating payment, wages are to be paid for only the normal workdays during the 30-day period. An employee is not required to turn over their military pay in order to receive their salary, during the 30-day period (but is required to do so if receiving benefits under VTA's Supplemental Military Leave Salary and Benefits Policy).

4.5.3 Examples:

- (a) An employee on military leave for 30 calendar days would receive 20-22 days of pay (depending on how many workdays fell during the 30-day period). The employee would not be eligible for payment for future active duty leaves during the same fiscal year.
- (b) An employee on military leave for 60 calendar days would receive 20-22 days of pay attributable to the first 30 calendar days of his/her leave and no pay for the second 30 days of the 60 day active duty period. The employee would not be eligible for pay for additional period(s) of ordered temporary active duty since he/she had already received the maximum of 30 days pay in the fiscal year.
- (c) An employee on military leave 3 separate times of 14 calendar days each would receive pay for the number of work days falling within the first absence. (This would typically be 10 days). The employee would be eligible to receive full salary for the number of workdays falling during the second leave. (Again, typically 10 days). The employee would only eligible for the number of days of pay that fell during the first 2 days of the third leave. (0-2 workdays.)
- (d) An employee on 6 separate 5-day leaves would receive pay for all 30 workdays, assuming the leaves fell on the employee's regularly scheduled workdays.

4.6 After the 30 calendar days, vacation, personal leave, and other applicable pay may be used to extend paid time available, at the employee's discretion, or the employee may choose to

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integrate available leave balances with military pay to make up full salary, as applicable to their bargaining unit.

- 4.7 Active duty military leave, whether paid or unpaid, shall be counted as time spent in a salary step in computing eligibility of the employee for further salary increases.
- 4.8 **BENEFITS DURING ACTIVE DUTY MILITARY LEAVE:** Employees shall receive health benefits as long as they are in a paid status. Employees must continue to make any required employee co-payments for these benefits. Once their pay status ends, they shall receive benefits in accordance with the most favorable leave policy applicable to their bargaining unit.
- 4.8.1 Employees, who resign (or take a leave of absence) to perform military service, and those who have exhausted their VTA paid health benefits, may continue their health benefits for up to 24 months under COBRA. Employees must pay the premiums plus a 2% administrative fee (no administrative fee for the first month) to continue their health benefits.
- 4.8.2 Payments should be sent to Human Resources-Benefits by the first of every month. Non-payment for longer than 30 days shall result in benefits being discontinued.
- 4.8.3 Life insurance, Accidental Death and Dismemberment, and Long Term Disability benefits shall end the day the employee enters active military service.
- 4.8.4 Upon return from leave, an employee who has been employed by VTA for at least one (1) year immediately prior to the date upon which a military leave of absence began (including active military time), shall receive accrued vacation, sick leave, and holiday privileges the same as if he or she had been on the most favorable type of leave available to the employee.
- 4.8.5 Active military duty leave shall be considered benefits service for pension purposes providing the employee returns to work within the timeframes specified under the applicable pension plan.
- 4.9 **RETURN TO WORK:** An employee who fails to return from a military leave of absence within the timeframe established by law shall be presumed to have resigned from their position. Employees who have been on leave for 30 days or less must return to work on the first regularly scheduled workday that begins within eight hours after returning home. Employees must return to work within 14 days if their service was 31 to 180 days. Employees must return to work within 90 days if their service was for more than 180 days. Employees hospitalized or convalescing from an illness or injury incurred or aggravated during uniformed service have an extended period of time (up to two years). If it is impossible or unreasonable to report within the required time period, the employee must report as soon as possible. For periods of service

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in excess of 30 days, the employee shall provide documentation of the timeliness of his/her return to work, the period of service, and that s/he was honorably discharged. VTA shall not deny reemployment if the documentation is not readily available. The documentation shall be provided as soon as it is available.

- 4.9.1 If the employee is honorably discharged, and if the employee applies for reinstatement to the same position within the timeframe specified by law, the employee shall be re-employed in as favorable a position as he or she would have attained had he or she not entered the service but remained on the job (excludes promotions achieved through performance). Benefits and seniority while on leave shall be determined in accordance with the provisions of applicable laws and the collective bargaining agreement.
- 4.9.2 Employees shall have a right to reinstatement to the position and status formerly held. If the position has been abolished or otherwise ceased to exist, the employee shall be reinstated to a position of like seniority, status and pay, if such a position exists. If no such position exists, the employee shall have the same rights and privileges that he or she would have had if he or she occupied the position when it ceased to exist.
- 4.10 **PHYSICAL EXAM TO DETERMINE FITNESS FOR DUTY:** VTA may require employees to have a physical examination to determine fitness for work prior to return from a military leave of absence, if there is a good faith reason to believe the employee has become medically unable to perform his/her job duties.
- 4.11 **GROUND TO REVOKE MILITARY LEAVE:** A military leave of absence may be revoked upon evidence that the cause for granting the leave was misrepresented, or has ceased to exist.
- 4.12 **PROBATIONARY EMPLOYEES:** When a military leave of absence is granted to a probationary employee, the period of work time missed shall not be credited toward the completion of the employee's probationary period.
- 4.13 **RESIGNATION:** If an employee resigns in order to serve in the armed forces, the employee shall have a right to return to his employment as provided by law. Under present law, the employee must receive a qualifying type of discharge and return within the later of 6 months of the termination of the employee's active service or 12 months after the first date upon which the employee could have terminated the employee's active military service (e.g. if the employee chooses to serve a second tour of duty, and does not return to work within 12 months of the end of the first tour of duty), VTA may discharge/not re-hire the employee. In general, the employee may perform service in the uniformed services for a cumulative period of up to five (5) years, under the current statute, and retain reemployment rights with VTA. There are exceptions to this five (5) year limit.

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- 4.14 **ADDITIONAL RESOURCES:** Please refer to the website (<http://www.esgr.org/site>) for the Employer Support of the Guard and Reserve for additional resources and a comprehensive list of Frequently Asked Questions.

5.0 Definitions:

- 5.1 **ACTIVE DUTY:** Ordered active duty for training, encampment, naval cruises, special exercises, etc. Active duty includes travel time only if included in the employee's active duty orders.
- 5.2 **ENLIST:** Voluntarily choose to join a branch of the military service.
- 5.3 **INACTIVE DUTY:** Ordered inactive duty, such as reserve drill periods (i.e. weekend training drills).
- 5.4 **SERVICE:** Defined as duty on a voluntary or involuntary basis and includes: active duty, active duty for training, inactive duty training, full-time National Guard duty, and absence for examinations to determine fitness for duty.

6.0 Records:

The Human Resources Department shall be responsible for maintaining copies of the employee's signed military orders and leave request in his/her personnel file.

7.0 Appendices:

Frequently Asked Questions.

Policy AS-HR-PL-3322 Leave- Military (Supplemental Salary and Benefits).


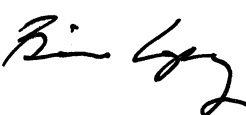
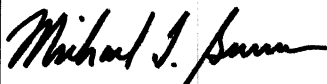
8.0 Training Requirements:

Because the provisions of state and federal law are complex, all individual cases should be reviewed with Human Resources and Payroll before any action is taken.

9.0 Summary of Changes:

This policy was created as a stand-alone policy. It was formerly a part of the Leaves of Absence Policy.

10.0 Approval Information:

<i>Prepared by</i>	<i>Reviewed by</i>	<i>Approved by</i>
 Shellie Albright Human Resources Manager	 Bill Lopez Chief Administrative Officer	 07/01/10 Michael T. Burns General Manager

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