

The State of South Carolina



Office of the Attorney General

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February 20, 1986

Timothy E. Meacham, Esquire
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Dear Mr. Meacham:

You have asked for the opinion of the Attorney General as to interpretation of a portion of the City of Florence Employee Handbook relative to employees taking military leave. This Office has issued numerous opinions on the state statutes concerning most of the issues raised in your letter; we are enclosing herewith copies of these opinions as discussed more fully below.

Following the decision by the South Carolina Supreme Court in Marchant v. Hamilton, 309 S.E.2d 781 (S. C. Ct. App. 1983), Florence City Council adopted the following policy relative to military leave:

7.6 Military Leave

A permanent employee who has been, or shall be, enlisted or selected for service for a period not to exceed (15) fifteen days for military training for ninety (90) days for emergency or other requirements and regulations relating to training or other duties ordered by the Governor or other authorities, during any one year, be entitled to leave of absence from their duties. The employee shall be entitled to full salary during their absences for military training without regard to any compensation received from military sources.

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An employee going on military leave shall present a copy of their orders to their department/division manager not more than three (3) days after receiving them.

The veteran who desires to return to the organization following active duty will be considered under the provisions established by Veterans Reemployment Rights Law: an eligible veteran who left a position to enter military service shall be restored to "such position" or to "a position of like seniority, status, and pay."

Employees who are members of the S.C. National Guard or Armed Forces Reserve are entitled to a leave of absence without loss of pay for a period not exceeding 15 days in any one (1) year.

City of Florence Employee Handbook,
Section 7.6, pp. 19, 20.

Your questions, in light of this policy, Sections 8-7-90 and 25-1-2250, Code of Laws of South Carolina (1976) and the decision in Marchant v. Hamilton, supra, include:

1. whether the ninety-day period includes all types of training;
2. whether days are counted as work days or calendar days;
3. what effect the leave would have on accrual of sick leave or annual leave or such benefits; and
4. what types of activity fall under the "without loss of pay" language.

The answers to your first and fourth questions are found within statutes and prior opinions of this Office. Section 8-7-90 of the Code provides the following:

All officers and employees of this State or any political subdivision thereof, who are either enlisted or commissioned members of the South Carolina National

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Guard, the United States Naval Reserve, the Officers Reserve Corps, the Enlisted Reserve Corps, the Reserve Corps of the Marines, the Coast Guard Reserve and the United States Air Force Reserve shall be entitled to leave of absence from their respective duties without loss of pay, time or efficiency rating, for a period not exceeding fifteen days in any one year during which they may be engaged in training or other such duties ordered by the Governor, the War Department, the Treasury Department, the Navy Department or the Air Force Department. In the event any such person is called upon to serve during an emergency he shall be entitled to such leave of absence for not exceeding thirty additional days. [Emphasis added.]

Similarly, but without limiting the number of days of military service annually, Section 25-1-2250 provides:

Officers and employees of the State of South Carolina, and departments and subdivisions thereof, shall be entitled to military leave without loss of pay, seniority or efficiency rating, when attending National Guard encampments or schools for training, under proper authority, and on all other occasions when ordered to active duty, in the service of the State of South Carolina.

This Office has consistently advised that "the passage of [Section 8-7-90] at a later point [than Section 25-1-2250] had the effect of amending Section [22-1-2250] so as to place a 15-day limitation upon leave allowed to National Guardsmen without loss of pay, time, or efficiency rating." Op. Atty. Gen. dated April 24, 1968. Military leave without loss of pay during an emergency is also limited by Section 8-7-90 to a period "not to exceed thirty days" in addition to the fifteen-day training period. Op. Atty. Gen. dated April 10, 1973. Thus, public employees may receive military leave "without loss of pay, time, or efficiency rating" for no more than fifteen days annually for training or other duties and for no more than thirty additional days if called upon to serve in an emergency. To the extent that the City's policy or ordinance is in conflict

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with these statutes, such policy or ordinance would be invalid. Central Realty Corporation v. Allison, 218 S.C. 435, 63 S.E.2d 153 (1951).

This Office has also opined on your second question as to how the fifteen days are to be counted, determining that the time limitations should be construed in "the aggregate." Op. Atty. Gen. No. 4479 dated October 6, 1976. This requires that the leave be counted as "calendar days." Op. Atty. Gen. dated November 8, 1977. As an example, "if a public employee is called to duty for a fifteen calendar day period, which starts on a Saturday and ends on a Saturday, he would only be entitled to ten work days of military leave within that year" Op. Atty. Gen. No. 4479.

Your third question deals with the effect of the "no loss of pay" statutes on other benefits. In construing a statute which provided for military leave "without loss of pay, time, efficiency rating, annual vacation, or sick leave ..." the Alabama Supreme Court held that "this does not mean that an employee [participating in military activities] thereby is granted an annual vacation or sick leave. It simply means that an employee who is covered by this section shall not be denied any right to such leave which he might have otherwise." City of Birmingham v. Hendrix, 58 So.2d 626, 632 (Ala. 1952). In Clopton v. Scharrenberg, 106 Cal. App.2d 430, 235 P.2d 84 (1951), a California court construed a statute which provided that reservists "shall not be subjected by reason of absence to any loss or diminution of vacation or holiday privilege" as not entitling the reservists to accrue vacation and holiday time during his absence. Id., 235 P.2d at 88.

Applying these principles to this State's statutes, it would appear that employee benefits will not accrue while the employee is on military leave but that also he will suffer no loss of such benefits because of his service to the State or nation.

In conclusion, as you will see from the enclosed prior opinions of this Office, the City of Florence may provide for its employees military leave without loss of pay for a period not exceeding fifteen days annually for training or other such duties as ordered by the Governor or federal government. If called upon to serve during an emergency, the employee's leave of absence without loss of pay shall be extended for no more than thirty days. These days are to be counted in the aggregate, or calendar days. Finally, benefits such as sick leave and

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annual leave most probably could not be accrued during this period but conversely could not be taken away, either.

Sincerely,

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PDP/an

Enclosures

REVIEWED AND APPROVED BY:



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