

1981 WL 158105 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 12, 1981

*1 Rose D. Stuart, Esquire
Staff Attorney
S.C. Department of Mental Health
2414 Bull Street
Columbia, South Carolina 29202

Dear Ms. Stuart:

You have requested an opinion as to whether employees of the Department who leave to go into the military service are entitled to all general increases and merit increases which they would have received had they not been away in military service.

The Veterans Reemployment Rights Act, [38 U.S.C.A. § 2021\(a\)\(B\)\(i\)](#) governs employment rights of veterans upon their return from service. Although the statute liberally confers such rights as seniority and the right to general increases in salary upon the returning veteran, it has been held not to require the payment of wages and increases which are based on actual experience. [Brown v. Denver Post](#), 145 F.Supp. 351 (D. Colo. 1956). Merit salary increases would appear to constitute a reward for experience and satisfactory performance, rather than merely an automatic increase which comes with the passage of time. It is therefore the opinion of this Office that merit increases should not be awarded to returning veterans to the same extent those veterans would receive such increase had they remained in service. This conclusion appears to be reinforced by a United States Government publication entitled 'Facts About Veterans Job Rights,' which states that the employee's salary upon return 'may not include merit increases based on performance standards prescribed by contract or established practice.' The State Personnel Manual, § 3.11, is in accord, providing that 'such time while on military leave without pay shall not count toward eligibility for merit salary advancement

Sincerely yours,

Kenneth P. Woodington
Assistant Attorney General

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