

# The State of South Carolina



## Office of the Attorney General

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Stephen C. Osborne  
Division of Human Resource Management  
1201 Main Street  
Columbia, South Carolina 29211

Dear Mr. Osborne:

I understand you have requested legal advice from this Office concerning whether State employees called to active duty concerning the current Mid-East situation are eligible for the thirty additional days of leave for service during an emergency pursuant to S.C. Code Ann. §8-7-90 (1976 & 1989 Cum. Supp.). In response to your inquiry, those State employees would most probably be eligible for that additional thirty days of leave.

Of course, the cardinal rule of statutory construction is that a court is to ascertain and effectuate the actual intent of the legislature. Burns v. State Farm Mut. Auto. Ins. Co., 297 S.C. 520, 372 S.E.2d 569 (1989). In interpreting a statute, the language of the statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose. Multi-Cinema, Ltd. v. South Carolina Tax Comm'n, 292 S.C. 411, 357 S.E.2d 6 (1987). In construing a statute, its words must be given their plain and ordinary meaning without resort to a subtle or forced construction to limit or expand the statute's operation. Bryant v. City of Charleston, 295 S.C. 408, 368 S.E.2d 899 (1988). If a statute's language is plain and unambiguous and conveys clear and definite meaning, there is no occasion for employing rules of statutory interpretation and a court has no right either to look for or impose another meaning. Chestnut v. South Carolina Farm Bureau Mut. Ins. Co., 298 S.C. 151, 378 S.E.2d 613 (Ct. App. 1989).

By 1990 S.C. Acts 587, the South Carolina General Assembly amended §8-7-90 to provide:

All officers and employees of the State or a political subdivision of this State, 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 regularly scheduled work days in any one year during which they may engage 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 fifteen-day aggregate unless the particular Saturday, Sunday, or holiday to be included is a regularly scheduled work day for the officer or employee involved. In the event any such person is called upon to serve during an emergency he is entitled to such leave of absence for not exceeding thirty additional days.

As used in this section, "in any one year" means either a calendar year" or, in the case of members required to perform active duty for training or other duties within or on a fiscal year basis, the fiscal year of the National Guard or reserve component issuing the orders.

The provisions of this section must be construed liberally to encourage and allow full participation in all aspects of the National Guard and reserve programs of the armed forces of the United States, and to allow state officers and employees who are enlisted or commissioned members of the National Guard or reserve components to excel in

military and emergency preparedness and service by taking full advantage of all career enhancing assignments and training opportunities." [Emphasis added.]

In addition to the payment of regular wages for training up to fifteen (15) regularly scheduled work days per year during military duty, State employees are eligible for thirty (30) additional days when called upon to serve during an emergency according to §8-7-90.

If the President calls up Guardsmen or Reservists to the Mid-East using his emergency powers, clearly §8-7-90 would apply. If he uses his non-emergency powers, State law would control. The South Carolina Supreme Court has used Webster's New International Dictionary to define "emergency" as "an unforeseen occurrence or combination of circumstances which calls for immediate action or remedy; pressing necessity; exigency." Hice v. Dobson Lumber Co., 180 S.C. 259, 185 S.E. 742 (1936). In addition, this Office has cited that language in an Opinion to define an emergency under South Carolina law. Op. S.C. Att'y Gen. #83-92 (Dec. 5, 1983). Moreover, §8-7-90 mandates a liberal construction of its provisions. In that light, a South Carolina court would most probably find that §8-7-90 applies to State employees called up by the President during the current Mid-East situation to entitle them to a leave of absence for not exceeding thirty (30) days.

If I can answer any additional questions, please advise me.

Sincerely,

  
T. Travis Medlock  
Attorney General

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