

## **MILITARY LEAVE POLICY**

The Spearfish School District Board of Education recognizes the need to provide for a process and procedure for active military leave of absence for our employees that is constant with state and federal law.

Uniformed Services Employment Rights Act (USERRA) forbids employers from denying employment or any benefit of employment (including retention or advancement) based on past or present military service or membership, application for military membership or service, or eligibility to be ordered to military service.

Reservist employees must satisfy five (5) prerequisites to trigger USERRA rights to military leave and reemployment protection.

1. Must hold a position of employment.
2. Must give notice to employer of impending military duty where possible.
3. Cumulative length of service on military leave cannot exceed five years total, unless a USERRA exception applies.
4. Must report back to work or complete a non-competitive application for reemployment in a timely manner.
5. Character of military service must qualify as at least “under honorable conditions”.

If employees meet the five (5) prerequisites discussed above, USERRA provides them with seven (7) basic categories of protection:

1. Prompt reinstatement.
2. Same or like status, pay and seniority as if the absence had not occurred.
3. Restoration of health insurance coverage and optional continuation during absence.
4. Maintenance of years of service for retirement eligibility and benefit calculation purposes.
5. Training, retraining, or other accommodations necessary to catch up.
6. Other non-seniority benefits to the extent available to others on unpaid leave.
7. Special protection from discharge following return.

### **Covered Employees**

All employees-but not independent contractors are covered in some manner.

1. Regular, full-time employees are protected from discrimination and retaliation and receive reemployment rights, subject to meeting certain eligibility and procedural requirements.
2. Reemployment rights do not apply for brief, non-recurrent positions when the employer does not have a reasonable expectation that the employment position will continue indefinitely or for a significant period.

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3. Employees who are on layoff, strike or leave of absence immediately prior to beginning a period of uniformed service also are entitled to protection from discrimination and retaliation. Reemployment rights are contingent on whether the employer would have otherwise reemployed the employee but for the employee's absence for the uniformed services.

#### **Qualified Uniformed Services Includes:**

1. Active duty.
2. Inactive duty for training.
3. Military fitness examinations.
4. Funeral honors duty.
5. Service as an intermittent disaster-response appointee upon activation of the National Disaster Medical System (NDMS) or participation in an authorized training program.
6. Federal National Guard Service.
7. Service in the commissioned corps of the Public Health Service.
8. Attendance at a military service academy.
9. Reserve Officer Training Corps (ROTC) under certain conditions.
10. Any category of persons designated by the President in a time of war or national emergency as a "uniformed service".
11. South Dakota National Guard members ordered to active duty under SDCL 33A-2-9.

#### **Employee Requests**

The employee's notice may be written or oral; and in advance as reasonably possible unless military necessity makes it impossible. Notice can be given by the employee or an "appropriate officer" as defined by USERRA.

#### **Reinstatement**

The service member must return to work or complete a non-competitive application for reemployment in a timely manner after the conclusion of military service.

The timing depends on the length of the employee's military service:

1. Service of less than 31 days (or any length of the absence that was for an examination to determine fitness to perform military service) – The employee must report back to work not later than the beginning of the first full regularly scheduled work period on the first full calendar day following the completion of the military service, and the expiration of eight hours after a period allowing for safe transportation from the place of military service to the employee's residence.
2. Service for more than 30 but less than 181 days – The employee must submit an application for reemployment (written or oral) not later than fourteen (14) days after completing service. If

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this is impossible or unreasonable through no fault of the employee, the employee must submit the application no later than the next full calendar day after it becomes possible to do so.

3. Service for more than 180 days – The employee must submit an application for reemployment (written or oral) no later than ninety (90) days after completing service. A returning employee loses his or her reemployment rights if he or she is discharged from military service for dishonorable or bad conduct, or other conditions as determined under USERRA.

**Health Care Coverage**

USERRA entitles service members to continue their existing health plan coverage for a maximum of twenty-four (24) months during military service. Employees who serve for fewer than thirty-one (31) days will maintain the same premium rate, while employees who serve thirty-one (31) days or more may be charged up to 102% of the full premium. An employee cannot be excluded from electing continued health coverage because the election was untimely or impossible. An employer may cancel an employee’s health insurance if the employee departs for service without electing coverage, but retroactive reinstatement may be required under certain circumstances. Upon return from service, the employee and his or her dependents must be reinstated in the health plan without any waiting period. Reinstatement does not require an employee to have chosen continued health coverage while in military service.

**Pension Plans**

For employees who are enrolled in contributory plans and elect to make up missed contributions or elective deferrals, repayment must be made during the time period starting with the date of reemployment and continuing for up to three (3) times the length of the employee’s uniformed service. The employee must remain employed with the post-service employer during repayment and the repayment period cannot exceed five (5) years. Employees are not required to make up the full amount of their contributions or elective deferrals. Even if an employee fails to make up the missed contributions, the period of military absence would still count toward vesting and years of service for retirement eligibility and benefit calculation purposes.

**Payment For Leave During Military Service**

An employee taking leave under this policy may at his or her discretion, but is not required to, use vacation leave or general leave during time of military service.

**References:**

Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA 38 U.S.C. 4301-4335)

South Dakota Codified Law 33A-2-9

Adopted June 12, 2017  
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