**MILITARY SERVICE LEAVE POLICY**

**PURPOSE**

[EMPLOYER'S NAME] acknowledges that employees may require time away from work to fulfill military obligations. Military service leave is available to all regular full-time, part-time, and probationary employees, in accordance with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and any applicable state laws.

This policy has been developed to comply fully with all applicable laws and regulations in the state of South Dakota, including those governing specific topics, such as military leave, employment rights, or nondiscrimination. Where state laws offer additional rights or benefits beyond federal requirements, [EMPLOYER'S NAME] will apply those state provisions to ensure compliance and fairness.

**PROCEDURES FOR REQUESTING MILITARY SERVICE LEAVE**

If you need to take military service leave, you or an authorized military representative should notify your supervisor or the [DEPARTMENT NAME] Department as soon as possible. When feasible, provide at least 30 days’ advance notice. If 30 days’ notice is not possible due to military necessity or other circumstances, give as much advance notice as reasonably possible.

While written notice is preferred, it is not required. When available, submit a copy of your military orders, training notice, or activation orders[, along with a request for leave of absence form,] to your supervisor or the [DEPARTMENT NAME] Department.

**ELIGIBILITY REQUIREMENTS**

Eligible employees

All regular full-time, part-time, and probationary employees qualify for military service leave if they are absent from work due to eligible military service.

[Independent contractors and employees hired for a brief, non-recurrent (one-time only) period before military service are not eligible under this policy.]

Eligible military service

For the purposes of this policy, eligible military service includes the following:

* Armed Forces: Service in the Army, Navy, Air Force, Marine Corps, Coast Guard, and their respective Reserves.
* National Guard: Duty in the Army National Guard or Air National Guard under federal authority, including active duty for training, inactive duty training, or full-time National Guard duty.
* Public Health Service: Service in the commissioned corps of the Public Health Service.
* National Oceanic and Atmospheric Administration (NOAA): Service in its commissioned officer corps.
* National Urban Search and Rescue Response System: Service as a member appointed under section 327 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.
* Federal Emergency Management Agency (FEMA): Service as intermittent personnel appointed under 42 U.S.C. § 5149(b)(1) or for training for such service.
* Other designations: Any other category of service designated by the President during a time of war or national emergency.

Qualifying types of service

Eligible employees may take leave for the following military service activities:

* Active duty or active duty for training.
* Initial active duty for training.
* Inactive duty training.
* Full-time National Guard duty.
* Fitness examinations for military service.
* State active duty for a period of 14 days or more.
* State active duty in response to:
	+ A national emergency declared by the President under the National Emergencies Act (50 U.S.C. § 1601).
	+ A major disaster declared by the President (42 U.S.C. § 5170).
* Funeral honors duty performed by National Guard or Reserve members.
* Service as intermittent disaster response appointees of the National Disaster Medical System when:
	+ Activated under federal authority.
	+ Attending authorized training in support of a federal mission.

 **COMPENSATION**

Unpaid leave

[Military service leave is unpaid. However, employees may choose to use any accrued but unused vacation or other paid time off during their military service leave.]

OR

Differential pay

[During military service leave, employees will receive the difference (if any) between their [EMPLOYER'S NAME] base pay and their military pay for the first [LENGTH OF TIME] of active military duty. To receive this differential pay, employees must submit military pay stubs to the [DEPARTMENT NAME] Department for calculation. Employees may also use any accrued but unused vacation or other paid time off during their military service leave.]

OR

Full pay

[During military service leave, employees will continue to receive their [EMPLOYER'S NAME] base pay for up to [LENGTH OF TIME] of active military duty. Additionally, employees may use any accrued but unused vacation or other paid time off during their military service leave.]

**BENEFITS DURING LEAVE**

During military service leave, employee benefits will be governed by the terms and conditions of the applicable employee benefit plan documents, in compliance with applicable laws.

For non-seniority benefits [excluding the pay differential provided under this policy], employees on military service leave will receive the same rights and benefits as those on [a paid/an unpaid] leave of absence.

**REEMPLOYMENT**

Employees on military service leave may be eligible for reemployment, provided they meet the requirements under applicable laws. To return to work, employees must report to work or submit a reemployment application to the [DEPARTMENT NAME] Department, along with their military discharge documentation (if available), within the following timeframes:

* Service less than 31 days: Employees must report to work on the first regularly scheduled workday that is at least eight hours after returning home from military service.
* Service between 31 and 180 days: Employees must apply for reemployment within 14 days following the completion of military service.
* Service over 180 days: Employees must apply for reemployment within 90 days following the completion of military service.
* Service-connected injury or illness: Employees who are hospitalized or convalescing have up to two years following the completion of military service to return to work or apply for reemployment, depending on the recovery period required.

If an employee is unable to meet these timelines due to circumstances beyond their control, such as injury or recovery, they should contact the [DEPARTMENT NAME] Department as soon as possible to discuss reasonable accommodations or additional time for reemployment.

Employees who fail to report to work or apply for reemployment within the applicable timeframe will be subject to [EMPLOYER'S NAME]’s policies on unexcused absences.

Nothing in this policy obligates [EMPLOYER'S NAME] to reemploy individuals who are not eligible for reemployment rights under applicable laws.

**SENIORITY RIGHTS AFTER REEMPLOYMENT**

Employees eligible for reemployment will be reinstated with the same seniority, as well as all rights and benefits tied to that seniority, that they would have earned if they had not taken military leave. Seniority rights include pay and benefits that accrue or are determined based on length of service.

**DISCRIMINATION AND RETALIATION PROHIBITED**

[EMPLOYER'S NAME] strictly prohibits discrimination or retaliation against any employee or applicant due to their membership in or obligation to serve in any branch of the US military. This includes denial of employment, reemployment, promotion, or any other benefit of employment, as well as any adverse employment action based on military service or obligations.

Additionally, no employee will be disciplined, intimidated, or otherwise retaliated against for exercising their rights under this policy or applicable laws.

[EMPLOYER'S NAME] is committed to enforcing this policy and ensuring a workplace free of discrimination and retaliation. However, this effort depends on employees reporting inappropriate conduct. If you or someone else has been subjected to behavior that violates this policy, report it immediately. Failure to report such conduct may prevent [EMPLOYER'S NAME] from addressing potential violations and taking corrective action.

**POLICY ADMINISTRATION**

The [DEPARTMENT NAME] Department oversees the implementation and management of this policy. For any questions regarding military service leave or aspects of this policy not addressed here, please contact the [DEPARTMENT NAME] Department.

**APPLICABILITY TO COLLECTIVE BARGAINING AGREEMENTS**

The provisions of this policy work alongside, but do not replace, modify, or supplement, any terms or conditions outlined in a collective bargaining agreement (CBA) between a union and [EMPLOYER'S NAME].

Employees should consult their collective bargaining agreement for clarification. In cases where this policy conflicts with the terms in the CBA, the terms of the CBA will take precedence.

**ACKNOWLEDGEMENT OF RECEIPT AND REVIEW**

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (employee name), acknowledge that on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (date), I received and reviewed a copy of [EMPLOYER'S NAME]’s [NAME OF POLICY]. I understand that it is my responsibility to familiarize myself with the policy and adhere to its terms.

I also acknowledge that this policy is not intended to create an employment contract or alter my at-will employment status, unless otherwise specified in a written agreement signed by an authorized representative of [EMPLOYER'S NAME]. Any delay or failure by [EMPLOYER'S NAME] to enforce the provisions of this policy does not constitute a waiver of its rights to enforce them in the future.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date