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Office of the Chancellor
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Code: HR 2001-25

Date: September 25, 2001

To: CSU Presidents

Supersedes FSR 90-35

From: Jackie R. McClain
Vice Chancellor
Human Resources

Subject: **CSU Military Leave Policy**

Recently, Sections 395, 395.01, and 395.03 of the Military and Veterans (M & V) Code (copy attached) were amended to extend paid leave to public employees who are members of the reserve corps of the Armed Forces of the United States or of the National Guard or the Naval Militia who participate in inactive duty training. This law was enacted to conform to changes in federal law. After consulting with the Office of General Counsel, it has been determined that this state law covers CSU employees, and as a result, the CSU Military Leave Policy is revised as stated below.

- I. Eligibility for Military Leave: CSU employees are entitled to a military leave pursuant to the provisions below.
 - A. Emergency Leave: A National Guard member ordered to active duty during a proclaimed state or national emergency is entitled to military leave for the duration of the emergency including going to and returning from such duty (M & V §395.05).
 - B. Temporary Leave: A reservist or National Guard member or member of the Naval Militia ordered to temporary active military training, inactive duty training, encampment, naval cruises, special exercises or like activity, is entitled to military leave for the duration of ordered duty up to 180 calendar days, including time involved in going to and returning from that duty (M & V §395(a)).

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- C. Indefinite Leave: Indefinite military leave may be granted whenever the United States is engaged in war or whenever the Governor finds and proclaims that an emergency exists in preparing for the national defense. Leave is granted to any who enter the armed forces of the United States for the duration of the war or until the emergency no longer exists, in addition to 90 days thereafter (M & V §395.4).
- II. Eligibility for CSU Pay: Employees ordered to the following types of military leave are eligible for CSU pay.
- A. Emergency Leave: An employee who is a member of the National Guard ordered to active duty during a proclaimed state or national emergency is entitled to receive normal salary for up to 30 calendar days for each proclamation of emergency that may be issued. There is no state service requirement in order to receive CSU pay while on emergency military leave, but the leave may not exceed the duration of the emergency (M & V §395.05). An employee is entitled to payment for each emergency regardless of the number of emergencies declared (83 Ops. Cal. Atty. Gen. 148 (2000)).
- B. Temporary Leave: If an employee ordered for active military training, inactive duty training, encampment, naval exercises, special exercises, or the like, has at least one year of state service immediately prior to the date on which the leave begins, he/she is entitled to receive normal salary for up to 30 calendar days. Pay for temporary military leave may not exceed a total of 30 calendar days in any one fiscal year (M & V §395.01(a)).
- Special note:** The effective date for the inactive duty training leave is January 1, 2001. If an employee took this type of leave after January 1, the campus should restore the employee's leave credits, as appropriate, and pay the employee his/her normal salary under the terms of the above policy.
- C. Indefinite Leave: If an employee who is inducted, enlists, or is ordered into active military duty has at least one year of state service immediately prior to the date on which the leave begins, he/she is entitled to receive normal salary for up to 30 calendar days. Pay for indefinite military leave may not exceed a total of 30 calendar days in any one fiscal year (M & V §395.02).
- III. Eligibility for Reinstatement Rights:
- A. Emergency Military Leave: Following this type of leave, the employee has the right to return to the position held at the time the leave began without loss or diminution of vacation or holiday privilege or promotion (M & V §395.05).

- B. Temporary Military Leave: Following this type of leave, the employee has the right to return to the position held at the time the leave was granted. If the position no longer exists, the employee must be reinstated to a position of comparable seniority, status and pay. If such a position does not exist, the employee shall have the same rights and privileges that he/she would have had if he/she occupied the position when it ceased to exist (M & V §395(c)).
- C. Indefinite Military Leave: Following this type of leave, the employee has the right to return to his/her position within six months of termination (under conditions other than dishonorable) of active service with the armed forces. However, the employee is not entitled to sick leave or vacation during the period of the leave. Termination of active service must not be later than six months following the end of the war or national emergency. Further, the right to return expires if the employee fails to return within 12 months after the first date upon which he/she could terminate his or her active military service. If drafted, however, the employee may voluntarily complete the period of duty without penalty. The employee also may return during terminal leave from the armed forces and prior to discharge, separation, or release therefrom. An employee whose position has ceased to exist during the leave must be reinstated in a comparable position if one exists, or in a comparable vacancy for which the employee is qualified (M & V §395.1).
- D. Resignation: Following resignation to serve in the armed forces, employees have the right to return to employment prior to the date their CSU employment would have ended had they not resigned. They must notify the campus President in writing of their intention to return within six months of the termination of active service, and they must return within 12 months after the first date they could have terminated their active service (M & V §395.3).

It is CSU policy that the employee shall use his/her best efforts to arrange military leave at a time that is mutually agreeable to the employee and his/her department. For the purposes of meeting the one-year state service requirement for temporary or indefinite military leave, prior recognized military service is counted as state service.

If an academic year employee is employed for the 2001-02 academic year and is scheduled to return in fall 2002, he/she is to receive the 30 calendar days CSU pay even if separated from the campus during the nonwork summer months. In such a case, if the employee is called to active duty prior to commencement of the fall appointment, the campus should process the scheduled appointment, allow up to 30 calendar days pay, then process the military leave without pay transaction (S44). Leaves for temporary employees may not extend beyond the originally scheduled duration of appointment.

The Chancellor's Office will apprise the campuses of any further related legislation impacting CSU employees.

It should be noted that CSU policy is intended to provide military leave provisions consistent with applicable state and federal statutes. If there is a conflict between CSU policy and applicable state and/or federal law, CSU policy is superseded.

If you have questions, please contact Pamela Chapin in Human Resources Administration at (562) 951-4411. This HR Letter is available on Human Resources Administration's web page at: <http://www.calstate.edu/HRAdm/memos.shtml>.

JRMcc/pc

Attachment

**Attachment
HR 2001-25**BILL NUMBER: SB 1950 CHAPTERED
BILL TEXTCHAPTER 928
FILED WITH SECRETARY OF STATE SEPTEMBER 29, 2000
APPROVED BY GOVERNOR SEPTEMBER 29, 2000
PASSED THE SENATE AUGUST 30, 2000
PASSED THE ASSEMBLY AUGUST 28, 2000
AMENDED IN ASSEMBLY AUGUST 25, 2000
AMENDED IN SENATE APRIL 10, 2000

INTRODUCED BY Senator Lewis

FEBRUARY 24, 2000

An act to amend Sections 395 , 395.01, and 395.03 of the Military and Veterans Code, relating to veterans.

LEGISLATIVE COUNSEL'S DIGEST

SB 1950, Lewis. Military leave.

Under existing law, a public employee who is a member of the reserve corps of the Armed Forces of the United States or of the National Guard or the Naval Militia is entitled to a temporary military leave of absence for active military training, if certain requirements are met. The employee is entitled to receive his or her pay as a public employee for the first 30 days of the leave period, not to exceed 30 days in one fiscal year. Inactive duty training does not qualify for paid leave.

This bill would revise these provisions in conformity with recent changes in federal law to provide that inactive duty training also qualifies for paid leave.

This bill would authorize, but not require, a local public agency to provide paid leave for inactive duty training.

This bill would authorize a public agency to provide pay for a period of more than 30 calendar days for active duty training.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 395 of the Military and Veterans Code is amended to read:

395. (a) Any public employee who is a member of the reserve corps of the Armed Forces of the United States or of the National Guard or the Naval Militia is entitled to a temporary military leave of absence as provided by federal law while engaged in military duty ordered for purposes of active military training, inactive duty training, encampment, naval cruises, special exercises or like activity, providing that the period of ordered duty does not exceed 180 calendar days, including time involved in going to and returning from that duty.

(b) Notwithstanding subdivision (a), a local public agency may, but is not required to, provide paid military leave of absence for periods of inactive duty training.

(c) The employee has an absolute right to be restored to the former office or position and status formerly had by him or her in the same locality and in the same office, board, commission, agency, or institution of the public agency upon the termination of temporary military duty. If the office or position has been abolished or otherwise has ceased to exist during his or her absence, he or she shall be reinstated to a position of like seniority, status, and pay if a position exists, or if no position exists the employee shall have the same rights and privileges that he or she would have had if

**Attachment
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he or she had occupied the position when it ceased to exist and had not taken temporary military leave of absence.

(d) Any public employee who has been in the service of the public agency from which the leave is taken for a period of not less than one year immediately prior to the date upon which a temporary military leave of absence begins, shall receive the same vacation, sick leave, and holiday privileges and the same rights and privileges to promotion, continuance in office, employment, reappointment to office, or reemployment that the employee would have enjoyed had he or she not been absent therefrom; excepting that an uncompleted probationary period, if any, in the public agency, must be completed upon reinstatement as provided by law or rule of the agency. For the purposes of this section, in determining the one year of service in a public agency all service of the employee in recognized military service shall be counted as public agency service.

(e) If this section is in conflict with a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action, except that if the memorandum of understanding requires the expenditure of funds, it shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 2. Section 395.01 of the Military and Veterans Code is amended to read:

395.01. (a) Any public employee who is on temporary military leave of absence for military duty ordered for purposes of active military training, inactive duty training, encampment, naval cruises, special exercises, or like activity as such member, provided that the period of ordered duty does not exceed 180 calendar days including time involved in going to and returning from the duty, and who has been in the service of the public agency from which the leave is taken for a period of not less than one year immediately prior to the day on which the absence begins, is entitled to receive his or her salary or compensation as a public employee for the first 30 calendar days of any such absence. Pay for those purposes may not exceed 30 days in any one fiscal year. For the purposes of this section, in determining the one year of public agency service, all service of a public employee in the recognized military service shall be counted as public agency service.

(b) Notwithstanding subdivision (a), a local public agency may, but is not required to, pay an employee during a period of inactive duty training.

(c) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4, of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action, except that if those provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 3. Section 395.03 of the Military and Veterans Code is amended to read:

395.03. No more than the pay for a period of 30 calendar days shall be allowed under the provisions of Section 395.01 or 395.02 for any one military leave of absence or during any one fiscal year, except as otherwise authorized by resolution of the legislative body of a public agency or as provided in a memorandum of understanding reached with an employee organization pursuant to Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code.