

**MILITARY LEAVE**

Any employee who is a member of the State Military Reserve is entitled to a temporary military leave of absence without pay while engaged in military training, drills, unit training assemblies or similar inactive duty, not to exceed 15 calendar days each year. ([Military and Veterans Code 395.9](#))

Military leave with pay for the first 30 calendar days of the absence shall be granted to the following employees:

1. Members of the reserves, National Guard or Naval Militia on temporary leave of absence for active military training, encampment, naval cruises, special exercises, or like activity, provided that: ([Military and Veterans Code 395, 395.01](#))
  - a. The ordered duty does not exceed 180 calendar days, including time involved in going to and returning from such duty and that paid military leave is not required for periods of inactive military duty.
  - b. The employee has been an employee of the district for at least one year immediately prior to the day the military leave begins. All military service shall count toward the period of time that the employee has been employed by the district.
2. An employee who has served with the district for at least one year who is ordered, on other than a temporary basis, into active military duty as a member of the reserves, National Guard or Naval Militia or who otherwise is inducted, enlisted, entered, ordered or are called into active duty as a member of the armed forces of the United States ([Military and Veterans Code 395.02](#))
3. Members of the National Guard, however long employed by the district, who are engaged in military or naval duty during states of extreme emergency as declared by the Governor or during such time as the National Guard may be on active duty in situations described in Military and Veterans Code 146, provided that the leave does not exceed the duration of the emergency ([Military and Veterans Code 395.03](#))

The 30-day pay entitlement is the maximum allowance which shall be paid for any one military leave or during any one fiscal year for employees on military leave as provided in items #1-2 above. ([Military and Veterans Code 395.03](#))

For classified employees, 30 days' compensation shall be one month's salary. ([Education Code 45059](#))

For certificated employees, 30 days' compensation shall be one-tenth of the employee's annual salary. ([Education Code 45059](#))

Teachers shall not be entitled to compensation during non-teaching, non-paying months of the year.

Employees on temporary military leave or on leave in states of extreme emergency shall receive the same vacation, sick leave and holiday privileges to which they would be entitled if they had not been on military leave. ([Military and Veterans Code 395, 395.05](#))

Whenever the United States is engaged in war or whenever the Governor proclaims that an emergency exists in preparing for the national defense, employees may take a military leave of absence for the duration of the war or until the Governor proclaims that the emergency no longer exists, and 90 days thereafter, or for 90 days after the termination of such service. ([Military and Veterans Code 395.4](#))

Absence on military leave shall not affect the classification of any certificated employee. In the case of a probationary employee, the period of such absence shall not count as part of the service required to obtain permanent status, but shall not be construed as a break in the continuity of service for any purpose. ([Education Code 44800](#))

Within six months after an employee honorably leaves military service or has been placed on inactive duty, the employee shall be entitled to return to his/her position at the salary to which he/she would otherwise have been entitled. If a probationary employee was employed by the district under a lawful contract for at least one year, he/she shall be entitled to return to such position for the remainder of the period provided in the contract. ([Education Code 44800](#))

If the employee's previous position has been abolished, he/she shall be reinstated in a position of like seniority, status and pay if such a position exists or to a comparable vacant position for which he/she is qualified. ([Military and Veterans Code 395.1](#))

**LEGAL REFERENCE****EDUCATION CODE**

- 44800 Effect of active military service on status of employees
- 45059 Employee ordered to military/naval duty – computation of salary

**GOVERNMENT CODE**

- 18540 Definition of armed forces
- 18540.3 Recognized military service

**MILITARY AND VETERANS CODE**

146	Events justifying calling of militia into active service
389	Definition of temporary military leave
395	Temporary military leave; public employees
395.01	Compensation of public employees on temporary military leave
395.02	Salary while absent on military leave other than temporary
395.03	Return to employment after termination of active military service
395.04	Military duty during state of extreme emergency
395.1	Public employees; return to position after active service
395.2	Noncertificated employees; return to position after active service
395.3	Resignation to enter military service, return to employment
395.4	Length of leave in case of war or national emergency
395.9	Unpaid leave for inactive duty

**COURT DECISIONS**

Wright v. City of Santa Clara (1989)213 Cal. App. 3d 1503

Bowers v. San Buenaventura (1997) 75 Cal. App. 3d 65

**ATTORNEY GENERAL OPINIONS**

77 Ops.Cal.Atty.Gen. 209 (1994)

69 Ops.Cal.Atty.Gen. 185 (1986)

63 Ops.Cal.Atty.Gen. 924 (1978)

19 Ops.Cal.Atty.Gen. 132 (1952)

18 Ops.Cal.Atty.Gen. 178 (1951)