INTERPRETIVE MEMO NO.: 5-98
REGULATION REFERENCE NO.: 6.1.1
INDEX REFERENCE: Military Leave

DATE: March 2, 1998

ISSUE

A clarification of the nature and type of statutory and university benefits granted to CUNY employees while performing ordered military service and upon return to active employment from the U.S. military, reserves, and national and state guard.

BACKGROUND

The New York Military Law, Article XI, Sections 242 and 243, and the United States Veterans Reemployment and Rehabilitation Act provide various job protection measures for persons performing ordered military duty and returning to civilian employment.

For reference purposes, CUNY practices and procedures are summarized below:

A. CUNY PRACTICES

1. **Military Leave - Full Pay:** Employees are entitled under the law to a maximum allotment of 30 calendar days, or 22 work days, whichever is greater, in any one continuous period of such absence. This allotment is with full pay, and is on a calendar year basis. While on Military Leave - Full Pay, employees continue to accrue Annual Leave and Sick Leave. Travel to and from such ordered duty is also included.

2. **Use of Annual Leave, Unscheduled Holidays, and Compensatory Time:** After having exhausted the Military Leave - Full Pay allotment, employees may, upon request, utilize any or all Annual Leave, Unscheduled Holidays, and/or Compensatory Time from their leave balances. Unused Annual Leave, Unscheduled Holidays, and/or Compensatory Time remain in the employees' leave balances, pending return to employment.

**Note:** Temporary Disability (Sick) Leave may be used only in instances of documented illness, injury, or hospitalization.
3. **Military Leave - No Pay:** Employees who exhaust, or who have already exhausted, the full pay calendar-year allotment for the same continuous period of such absence are entitled to Military Leave - No Pay for a period of time not to exceed, in general, four years.

4. **Benefits Coverage:** Employees otherwise eligible will receive benefits coverage while on Military Leave - Full Pay, Annual Leave, Unscheduled Holidays, and Compensatory Time. While on Military Leave - No Pay, employees otherwise eligible will receive health insurance benefits coverage up to a current maximum of four months per calendar year (SLOAC).

Upon expiration of SLOAC coverage or any Board of Trustees granted extensions, benefits coverage will be through the prevailing provisions of COBRA.

Employees who receive military orders should be encouraged to apply for and sign applications for a special leave of absence coverage as soon as possible.

5. **Position and Salary:** Upon release from military service and for a period of two months thereafter, employees upon application to the College Personnel Director will be restored to their previous position if still existing or to a comparable position if available. Employees are restored at the salary they would have been receiving had they remained in CUNY employment; such employees also receive all applicable seniority and service longevity credit, pension credit, and vacation accrual rates.

6. **CUPS Codes:** CUPS Reference Table 24 deals with Leave of Absence Codes. Code 20 is for Military Reserve Duty - Full Pay; code 21 is for Military Reserve Duty - No Pay.

7. **Report Entries:** Leaves of absence for military duty are recorded on the "X" report. The applicable action code is YV: Military Duty.

**Note:**

The City University of New York Board of Trustees Resolutions Number 5.A. of October 22, 1990, and Number 5.A. of April 29, 1991, extended specific health, welfare, and military stipend benefits to all employees summoned to active military duty for Operations Desert Shield and Desert Storm. Moreover, University policy provided an annual leave grant to certain classified staff employees returning to employment from Operations Desert Shield and Desert Storm.

As of the issue date of this Interpretive Memo, the U.S. Government has not yet declared Operations Desert Shield and Desert Storm concluded.
B. CUNY PROCEDURES

1. **Enlistment Contract:** The College Personnel Director must obtain a copy of each employee-reservist's Enlistment Contract, or Service Agreement (the equivalent in the case of a Commissioned Officer). This contract, or agreement, specifies the number of drills the employee is obligated to participate in, and the duration of the contract or agreement.

2. **Quarterly Drill Schedule:** The College Personnel Director must also obtain from the employee-reservist a copy of his/her quarterly drill schedule. Quarterly drill schedules are usually prepared two months in advance. If the employee fails to provide quarterly drill schedules, an Enlistment Contract or Service Agreement, then the College Personnel Director should inform the employee that payment of his/her salary for periods of ordered military duty will not be granted until all relevant required documents have been submitted.

   Employee-reservists who apply for leave to perform military duty that occurs on a date different from the date(s) set forth in the quarterly drill schedule must submit a copy of the order issued by the state or federal authority requiring such service.

3. The College Personnel Director must obtain a Certificate of Attendance and/or Pay Voucher from each reserve member upon the employee's return from reserve duty. This document must be signed by the Unit Commander, or his/her designated representative, in order for payment of salary to be authorized by the agency.

4. The College Personnel Director should notify employee-reservists that, except where it is unreasonable to do so, military leave must be applied for as far in advance as possible.

5. To the extent practicable, an employee's normal work schedule should be drafted to avoid conflicting with drills scheduled during an employee's working hours.

6. If, in the judgement of the College Personnel Director, an employee-reservist is regularly volunteering to be ordered to duty at unscheduled times solely in order to maximize absence from CUNY employment to the detriment of the public interest, and a request that the employee desist from this practice is unsuccessful, the matter should be brought to the attention of the appropriate military commander in an attempt to obtain a more satisfactory and mutually acceptable schedule of "ordered military duty" for the employee.
C. COMPUTATION OF LEAVE ENTITLEMENT

1. The 30-calendar day entitlement is computed and charged against the annual balance on a
day for day basis. However, due to differences in normally scheduled work days, the 22-
work day entitlement for normally scheduled work days will be converted into an hourly
bank against which charges will be made on an hour-for-hour basis.

2. Every day of ordered military duty in a calendar year, whether or not there was absence from
any part of the work day's scheduled duties, is to be charged against the employee's 30-
calendar day annual balance. However, only those hours the employee is actually absent
during the normal work day are to be charged against the hourly bank for purposes of
computing the 22-work day entitlement.

3. Ordered military duty will be charged against the annual balances on both a calendar day and
work day basis until the 30-calendar day entitlement and the 22-work day entitlement have
both been exhausted.

4. In order to make charges against the 22-work day entitlement, an hourly bank must be
established by multiplying the 22-work days by the number of hours in the normally
scheduled work day of each employee-reservist.

D. SAMPLE COMPUTATIONS

The following is an example of the method of computation to be used to charge paid military
leave under Section 242 of the New York Military Law. The example is based on a
normally scheduled seven-hour work day with Saturday and Sunday as days off. Other
work schedules should be dealt with in an analogous manner.

1. An employee-reservist's charge to his/her military leave in June is 12 calendar days. Four
of the calendar days are work days. When subtracting from the 30-calendar day and 22-work
day balances (which have been converted to an hourly bank), the resulting balance is
recorded as follows:

<table>
<thead>
<tr>
<th></th>
<th>Calendar Days</th>
<th>Hourly Bank</th>
</tr>
</thead>
<tbody>
<tr>
<td>Starting Balances:</td>
<td>30</td>
<td>154</td>
</tr>
<tr>
<td>Used to Date:</td>
<td>-12</td>
<td>-28</td>
</tr>
<tr>
<td>Resulting Balances:</td>
<td>18</td>
<td>126</td>
</tr>
</tbody>
</table>
2. The same employee-reservist is ordered to two continuous weeks of training in July. Ten of the calendar days are work days. Paid military leave is charged as follows:

<table>
<thead>
<tr>
<th>Starting Balances</th>
<th>Calendar Days</th>
<th>Hourly Bank</th>
</tr>
</thead>
<tbody>
<tr>
<td>Used to Date:</td>
<td>18</td>
<td>126</td>
</tr>
<tr>
<td>Resulting Balances</td>
<td>-14</td>
<td>-70</td>
</tr>
</tbody>
</table>

3. The same employee-reservist is ordered to a three-day drill (Friday through Sunday) in August. Paid military leave is charged as follows:

<table>
<thead>
<tr>
<th>Starting Balances</th>
<th>Calendar Days</th>
<th>Hourly Bank</th>
</tr>
</thead>
<tbody>
<tr>
<td>Used to Date:</td>
<td>4</td>
<td>56</td>
</tr>
<tr>
<td>Resulting Balances</td>
<td>-3</td>
<td>-7</td>
</tr>
</tbody>
</table>

4. The same employee-reservist is ordered to a three-hour meeting during a work day in September. Paid military leave is charged as follows:

<table>
<thead>
<tr>
<th>Starting Balances</th>
<th>Calendar Days</th>
<th>Hourly Bank</th>
</tr>
</thead>
<tbody>
<tr>
<td>Used to Date:</td>
<td>1</td>
<td>49</td>
</tr>
<tr>
<td>Resulting Balances</td>
<td>-1</td>
<td>-3</td>
</tr>
</tbody>
</table>

This employee-reservist should now be charged for paid military leave only against the remaining work day balance of 46 hours, which has now become the greater balance. When balances calculated by both methods reach zero, the employee-reservist is no longer entitled to paid military leave. Any further leave granted should be without pay or may be charged against the employee's accrued annual leave balances at the employees' written request.

If the employee-reservist returns to work from ordered military duty before the end of the calendar year with either a calendar day or work day balance and is not ordered to military duty until the next calendar year, neither balance remains to the employee-reservist's credit. At the beginning of the new calendar year paid military leave entitlement once again becomes 30 calendar days or 22 normally scheduled work days, converted to the appropriate hourly bank, to be charged against these balances in accordance with the policy set forth above.

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