

GUIDE TO VERIFICATION OF MILITARY ORDERS

The *Administrative Rule*, 143 CSR 1, in Subsection 14.9. Military Leave specifies that an employee is entitled to paid military leave “when ordered or authorized by proper authority” or when “ordered or called to active duty by properly designated federal authority.” However, the federal Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. 4301 et seq., and the USERRA Final Rule, 20 C.F.R. Part 1002, effective December 19, 2005, sets forth the various standards regarding reemployment rights of veterans, including employer notice of the call to duty.

§ 4303 (8) The term ‘notice’ means any written or verbal notification of an obligation or intention to perform service in the uniformed services provided to an employer by the employee who will perform such service or by the uniformed service in which such service is to be performed.

In Section 1002.85 of the USERRA Rule, Requirement of Notice, stipulates that, “The employee’s notice to the employer may be either verbal or written. The notice may be informal and does not need to follow any particular format.”

One of the requirements to determine eligibility for reemployment under USERRA, found in § 4312 (a) (1), is that

...the person (or an appropriate officer of the uniformed service in which such service is performed) has given advance written or verbal notice of such service to such person’s employer;

Provided that (§ 4312 (b),

No notice is required if the giving of such notice is precluded by military necessity or, under all of the relevant circumstances, the giving of such notice is otherwise impossible or unreasonable. A determination of military necessity for the purposes of this subsection shall be made pursuant to regulations prescribed by the Secretary of Defense and shall not be subject to judicial review.

And further provided that (§ 4312 (f) (4)

An employer may not delay or attempt to defeat a reemployment obligation by demanding documentation that does not then exist or is not readily available.

The USERRA Rule specifies an appropriate officer is a commissioned, warrant, or non-commissioned officer authorized to give such notice by the military service concerned.

Since the *Administrative Rule* requires that paid military leave may only be afforded the soldier when the call to duty is by proper authority, verification of military orders may at times be necessary. For this purpose, the Division of Personnel is providing the attached memorandum to be used when an agency deems it necessary to confirm military duty dates in order to authorize paid military leave. This informational request should be sent certified to confirm receipt.

(Date)

MEMORANDUM TO:

SUBJECT: Verification of Military Service Dates

It is the policy of the State of West Virginia to facilitate the military activities of our employees and to comply with the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended.

_____, an employee of _____
(name) (agency)

has notified (his or her) supervisor of the need to be absent from work due to necessary military duty on the following dates:

_____ to _____,
(beginning date) (ending date)

_____ to _____,
(beginning date) (ending date)

If this information is correct, no action is required.

If this information is incorrect, please provide the correct military duty dates and return this form to:

(name)

(street address)

(city, state, zip code)

Sincerely,

NOTE: This informational request should be sent certified to confirm receipt.