

CHAPTER 2**LEAVES OF ABSENCE FOR MILITARY DUTY
FOR AND BY MEMBERS OF THE
NATIONAL GUARD****Authority**

N.J.S.A. 38A:3-6(o) and 38A:4-4.

Source and Effective Date

R.1997 d.288, effective July 21, 1997.
See: 29 N.J.R. 969(a), 29 N.J.R. 3250(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 2, Leaves of Absence for Military Duty for and by Members of the National Guard, expires on January 17, 2003. See: 34 N.J.R. 2890(a).

Chapter Historical Note

Chapter 2, Leaves of Absence for Military Duty for and by Members of the National Guard, was originally adopted as R.1985 d.242, effective May 20, 1985. See: 17 N.J.R. 646(a), 17 N.J.R. 1267(a). Pursuant to Executive Order No. 66(1978), Chapter 2 was readopted as R.1990 d.309, effective May 17, 1990. See: 22 N.J.R. 1185(b), 22 N.J.R. 1935(a). Pursuant to Executive Order No. 66 (1978), Chapter 2 expired on May 17, 1995.

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SUBCHAPTER 1. GENERAL PROVISIONS**5A:2-1.1 Scope**

(a) This chapter is applicable to members of the New Jersey Army and Air National Guard (hereinafter "National Guard") and their employers who are the State of New Jersey, a county, school district, municipality, board, commission or authority within the State of New Jersey except as otherwise noted. Other members of other Reserve Components of the Armed Forces to include Army, Navy, Air Force, Coast Guard, Marines and National Guard members of other states and their employers who are the State of New Jersey, a county, school district, municipality, board, commission, or authority should refer to New Jersey Department of Personnel rule N.J.A.C. 4A:6-1.11 for guidance.

This chapter does not apply to Reserve Components of the Armed Forces other than the New Jersey National Guard.

(b) In addition to the obligations set forth in this chapter, both public and private employers have additional, concurrent obligations under Federal law regarding military leave (38 U.S.C. §§ 4301 et seq.).

5A:2-1.2 Purpose

(a) The State of New Jersey is committed to the accomplishment of the State and Federal mission of furnishing trained National Guard units and individuals as an integral part of the first line of defense of this State and Nation in accordance with State and Federal law.

(b) The purpose of this chapter is to establish policies and procedures to supplement the provisions of N.J.S.A. 38A:1-1 et seq. governing the granting of leaves of absence for military duty for employees of the private sector and public officials and employees, including those of the State of New Jersey, and of any county, school district, municipality, board, commission or authority, who are members of the New Jersey National Guard.

(c) The President of the United States, through the respective military service Secretaries, and the Governor, through the Adjutant General, New Jersey Department of Military and Veterans Affairs, as defined in N.J.S.A. 38A:1-1 et seq., are the proponents for the issuance of military orders for the New Jersey National Guard (NJNG) and its members who enlist, are mobilized, attend military schools, conferences, training exercises, or perform any other duty ordered by the President or the Governor.

(d) The New Jersey Department of Military and Veterans Affairs must, by law, adhere and conform to State and Federal law and the regulations, forms, precedence, and usages of the United States Department of Defense, the Departments of the Army and Air Force, and the National Guard Bureau, concerning training requirements and other military duty.

5A:2-1.3 Effect of Federal law

(a) Under Federal law, every public and private employer is obligated to release a member of the New Jersey National Guard who has been ordered to military duty by the President of the United States, through the respective military service Secretaries and by the Governor, through the Adjutant General, New Jersey Department of Military and Veterans Affairs or their designees. All employers must grant excused absences from work for military duty without regard to shift or weekend work policies. Failure to release an employee who has been so ordered may subject the employer to criminal prosecution or other penalties. Under Federal law, an employee on military leave cannot be compelled to use sick leave, vacation leave or similar accrued leave.

(b) The rules in N.J.A.C. 5A:2-2 clarify when under State law a public employer must grant paid military leave to a member of the New Jersey National Guard.

SUBCHAPTER 2. MILITARY LEAVE

5A:2-2.1 General policy

(a) Employers who are the State of New Jersey, a county, school district, municipality, board, commission or authority within the State of New Jersey are required to grant leaves of absence to members of the New Jersey National Guard in accordance with N.J.S.A. 38A:4-4, which provides:

1. All officials and employees of this State or of any board or commission of the State or of any county, school district or municipality who are members of the organized militia shall be entitled to leave of absence from their respective duties without loss of pay or time on all days during which they shall be engaged in active duty, active duty for training or other duty ordered by the Governor; provided, however, that the leaves of absence for active duty or active duty for training shall not exceed 90 days in the aggregate in any one year.

2. Leave of absence for such military duty shall be in addition to the regular vacation allowed such officers and employees by the State, county or municipal law, ordinance, resolution or regulation.

(b) The 90-day leave of absence specified in N.J.S.A. 38A:4-4 shall be calculated by calendar year (that is, New Jersey National Guard members are entitled to 90 days leave without loss of pay between January 1 and December 31 of any given year). Furthermore, employers are responsible to pay employees only for the days the employee would actually have worked during any period of military leave. By way of example, if an employee is on military leave for 90 consecutive days, but would have only worked for 70 of those days if he was not on military leave, the employer is only obligated to pay for 70 days. Hence, the employee would have 20 days paid leave remaining for the calendar year.

1. Employers for the purpose of N.J.S.A. 38A:4-4 are the State of New Jersey, a county, school district, municipality, board, commission or authority within the State of New Jersey. This does not include private employers.

(c) Military leaves of absence with pay are not authorized for officials and employees of the State of New Jersey, a county, school district, municipality, board, commission or authority within the State of New Jersey for periods of Inactive Duty Training. Inactive Duty Training (IDT) is defined by Army, Air Force, and National Guard Regulation and includes, but is not limited to:

1. Unit Training Assemblies (UTA): This training is commonly known as weekend drill;
2. Rescheduled Unit Training Assemblies (RUTA): This training is a makeup period for a UTA;
3. Split Unit Training Assemblies (SUTA): This training is a makeup period for a UTA;
4. Additional Flight Training Period (AFTP): Additional time authorized for flight training/validation;
5. Readiness Management Assemblies (RMA): Used to plan/prepare training;
6. Additional Training Assemblies (ATA): Used to accomplish administrative actions in support of training;
7. M-COFT AUTA: Authorized additional training time authorized for instruction of operation of M-COFT training device;
8. Proficiency Training (PT); and
9. Training Period Preparation Assembly (TPPA).

(d) Military leaves of absence with pay are required for all types of military training with the exception of inactive duty training as identified in (c) above.