

## **SECTION 5 MILITARY LEAVE OF ABSENCE**

Employees are entitled to military leave under the Uniformed Services Employment and Reemployment Act of 1994. The Act applies to military service that began on or after December 12, 1994 or military service that began before December 12, 1994 if the employee was a reservist or National Guard member who provided notice to the employer before leaving work.

Reemployment rights extend to persons who have been absent from work because of “service in the uniformed services”. The uniformed services consist of the following military branches: Army, Navy, Marine Corps, Air Force, or Coast Guard, Army Reserve, Navy Reserve, Marine Corps Reserve, Air Force Reserve, Coast Guard Reserve, Army National Guard, Air National Guard, Commissioned Corps of the Public Health Service, or any other category of persons designated by the President in time of war or emergency.

“Service” in the uniformed services means duty on a voluntary or involuntary basis in a uniformed service, including:

- Active duty
- Active duty for training
- Initial active duty for training
- Inactive duty training
- Full-time National Guard duty
- Absence from work for an examination to determine a person’s fitness for any of the above types of duty

The employee may be absent for up to five (5) years for military duty and retain reemployment rights. There are, however, exceptions, which can exceed the five (5) year limit. Reemployment protection does not depend on the timing, frequency, duration, or nature of an individual’s service. The GARID law enhances protections for disabled veterans including a requirement to provide reasonable accommodations and up to two (2) years to return to work if convalescing from injuries received during service or training.

### Notice

Individuals must provide advance written or verbal notice to their employers for all military duty. Notice may be provided by the employee or by the branch of the military in which the individual will be serving. Notice is not required if military necessity prevents the giving of notice; or, the giving of notice is otherwise impossible or unreasonable.

Accrued vacation or annual leave may be used (but is not required) while performing military duty. The individual’s timeframe for returning to work is based upon the time spent on military duty.

### Employment Protection

The returning employee is entitled to be reemployed in the job that they would have attained had they not been absent for military service, with the same seniority, status and pay, as well as other rights and benefits determined by seniority. If necessary, the employer must provide training or retraining that enables the employee to refresh or upgrade their skills so they can qualify for reemployment. While the individual is performing military service, he or she is deemed to be on a furlough or leave of absence and is entitled to the non-seniority rights accorded other individuals on non-military leaves of absence.

### Health Benefits

Individuals performing military duty of more than 30 days may elect to continue employer sponsored health care for up to 18 months at the full premium cost plus normal increases in premium. For military service of less than 31 days, health care coverage is provided as if the individual had never left. After notification by the employee to the school district of Military activation of more than 30 days, the school district shall inform the employee of the health benefits available under “COBRA” and furnish the employee with the enrollment forms for “COBRA”.

Upon entering active military duty for more than 30 days, the individual and dependents are covered by what the military calls “Tri-Care”. There are several different plans that are offered which offer different levels of managed care. The most managed of the plans are at no cost to the service member. Not all medical costs are covered by “Tri-Care”. It is not possible to make a recommendation in this document that will be best for every individual.

If an employee leaves and enters active duty for more than 30 days and discontinues health coverage for themselves and the employee’s dependents, and the employee returns to the school district in the time frame stated in this document, they will be placed back on the health plan as if they had never left employment.

### Retirement Benefits

A participating SDRS member called to active duty will continue to earn credited service in SDRS while serving in the armed forces if he or she meets the following requirements:

- Secures authorization in advance from his/her employer for a leave of absence for military service
- Returns to the employment of an SDRS participating unit within one year of discharge from his/her initial period of military service
- Remains in the employment of that same employer for at least one year upon his/her return
- This credited service does not require a contribution from either the employer or employee.

### Survivor and Disability Benefits

The continuation of SDRS survivor and disability benefits, however, depends upon the continued classification of an employee as contributing SDRS member during his or her leave of absence. To meet this requirement, both the employee and employer contributions must be made to the system for each of the employee's pay periods. This may be accomplished in at least four ways.

1. An employer may make both employee and employer contributions to SDRS, which is allowed under SDCL 3-12-85.
2. The employer may compensate the employee for vacation, sick and other accumulated personal leave at something less than 40 hours per week. This method will extend the period of compensation allowing contributions to continue which will have the effect of continuing SDRS survivor and disability benefits until all personal leave is exhausted.
3. An employee may make the full employee and employer contributions to the system during his/her leave of absence.
4. Employers and employees may develop a method that combines Options 1, 2 and 3.

### Return to Work or Application for Reemployment

Less than 31 days: Must return at the beginning of the next regularly scheduled work period on the first full day after release from service, taking into account safe travel home plus an eight (8) hour rest period.

More than 30 but less than 181 days: Must submit an application for reemployment within 14 days of release from service.

More than 180 days: Must submit an application for reemployment within 90 days of release from service.

The individual's separation from service must be under honorable conditions in order for the person to be entitled to reemployment rights. Documentation showing eligibility for reemployment can be required. The employer has the right to request that an individual who is absent for a period of service of 31 days or more provide documentation showing:

- the application for reemployment is timely;
- the five-year service limitation has not been exceeded; and,
- separation from service was under honorable conditions.

If documentation is not readily available or it does not exist, the individual must be reemployed. However, if after reemploying the individual, documentation becomes available that shows one or more reemployment requirements were not met, the employer may terminate the individual, effective immediately. The termination does not operate retroactively.

Once the employee has made application for re-employment the employee is entitled to employment and benefits as if the employee had never left. For example a teacher makes application for re-employment on June 1 (after school is out). If you normally pay the single premium health for the other employees during the summer, you will need to reinstate the returning employee and pay the single premium. If the employee has family coverage, they are responsible for that payment.

Legal Ref.: [SDCL 3-12-47 \(54\)](#),

[Uniformed Services Employment and Reemployment Act of 1994](#)

Adopted April 14, 2003