

COUNSEL'S CORNER

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Annual training time for many military reservists is just around the corner. The laws and rules regarding military leave can be fairly complicated although the basic rule is that reservists must be allowed leave for military duty and cannot be discriminated against because of their military status and leave time.

Part of the complication for supervisors of state and political subdivision employees in North Dakota is that there are two laws that apply. The first is state law, N.D.C.C. § 37-01-25, which applies to state and political subdivision employees and which authorizes paid military leave in many situations. The second is federal law known as the Uniformed Services Employment and Reemployment Rights Act (USERRA). Some of the general rules are also set out in NDSU Policy § 146.

State law provides for twenty days of paid leave for "active noncivilian employment" and thirty calendar days upon mobilization or state active duty (for example, flood emergency). USERRA applies to all employers, public and private, and provides that employees must be given time off for military duty, have certain reemployment rights upon return, and cannot be discriminated against because of their military service. State law has some of these provisions as well.

One of the areas that has caused some complications is that some supervisors might think that there is a difference under the law when an employee "volunteers" for duty or is ordered to duty involuntarily. There is no real difference under the law whether someone voluntarily asks to be put on orders or is ordered to duty involuntarily. Employees must be allowed time off in either case.

USERRA does provide, however, that the employer has a right to advance written or verbal notice unless there is a military emergency. Thus, supervisors can expect employees to provide them advance notice. Soldiers are generally counseled to provide their supervisors with an annual schedule but, for various military reasons, these schedules are subject to change. Reservists in many cases have some flexibility on when they need to perform military duty but this often varies depending upon the reservist's rank and job in the military.

The weekend drill is governed by a special set of rules for public employees. If a NDSU employee is scheduled to work when she/he has drill, the employee has a right to make up the work day at another time or take it without pay at the employee's discretion. The typical annual training (for example, the fifteen day summer camp) is covered under the twenty day pay rule, however, and the employee does not have to make up this time or risk losing pay. Employees cannot be forced to take annual vacation when the employee is on military duty although, in some cases, employees might voluntarily do so to receive extra pay if they have already used the twenty day allotment.

The rules for military leave can become complicated due to the various types of duty and duty status that reservists have. Both employers and employees need to remain flexible in these situations. If there is a problem, it can usually be worked out between the supervisor, the employee, and Human Resources. A soldier's company commander can be contacted to help resolve problems.