

August 3, 2004

**PERSL #1383**

TO: Human Resource Directors/Designees

FROM: Cal R. Ludeman  
Commissioner 

RE: **Military Pay Differential and Annual Paid Military Leave**

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**Background:**

Due to the continued high number of State of Minnesota employees actively serving in the military, DOER has received many questions and inquiries about the use of military leave, and more specifically, the use of paid military leave. In this memo, we attempt to provide responses to two of the most frequently asked questions regarding military leave and compensation. *Please note that these questions relate to employees who are out on an extended military leave that crosses over calendar years.*

**Question: Is the State of Minnesota required to pay employees who are on an “unpaid” military leave of absence?**

**Answer:** Unfortunately the courts have not yet offered guidance on the interplay between the 15 days of paid leave granted under Minnesota Statute §192.26 (discussed below) versus the pay differential in Minnesota Statute §43A.183. For assistance with the military pay differential, please contact your DOER SEMA4 representative. Minnesota Statutes §§192.26 and 192.261 state that a military leave of absence that is longer than 15 calendar days is unpaid. However, effective May 29, 2003, the Legislature revised this provision to require that employees of the State of Minnesota who are on a military leave of absence must be paid the difference between the employee’s salary and his/her military pay, if the former exceeds the latter.

**Question: Is an employee who is on an “unpaid” military leave of absence that crosses over calendar years entitled to 15 days of paid military leave every calendar year the employee remains in a continuous military leave status?**

**Answer:** There is no clear guidance from Minnesota Courts in this area. However, as referenced above, Minnesota Statute §192.26 states that State employees shall be entitled to a leave of absence without the loss of pay for a maximum of 15 days per calendar year. Accordingly, DOER’s position is that employees who are on extended and continuous unpaid military leave of absence shall be entitled to a maximum of 15 days of paid leave for each calendar year they are on an unpaid military leave of absence. For example:

Employee A leaves for an extended and continuous unpaid military leave of absence effective May 1, 2004. Upon commencement of the leave, Employee A receives the first 15 days of the leave with pay, at his/her full state salary. For the balance of 2004, Employee A receives the difference between

his/her state salary and his/her military pay. Employee A remains on an extended and continuous unpaid military leave of absence through 2005 and returns to his/her State position in February 2006. Because the military leave crosses over calendar years, Employee A is entitled to receive 15 days of his/her full state salary in both 2005 and 2006. For the balance of 2005, and the remainder of the leave period in 2006, Employee A receives the difference between his/her state salary and his/her military pay. If Employee A were to be activated for a second military service in 2006, regardless of the length of the leave period, Employee A would not be entitled to any additional paid military leave in 2006 as s/he has already used his/her 15 days of paid leave, however the employee would remain eligible for the military pay differential provided the relevant statute is still in affect. If that second activation were to be continuous and extend into 2007, Employee A would again be entitled to 15 days of paid leave for 2007 and the employee would remain eligible for the military pay differential provided the relevant statute is still in affect.

If you have any questions or concerns about this PERSL please contact your agency's DOER Labor Relations Representative. If you do not know who is assigned as your agency's Labor Relations Representative, please call (651) 296-2516 for assistance.

Additional Information: PERSL #1375, Military Leave and Insurance Continuation Issues

CC: Labor Relations Representatives  
Exclusive Representatives  
DOER SEMA4 Services  
DOER Insurance Division