

BURLINGTON SCHOOL DISTRICT

MILITARY LEAVE INFORMATION – SHORT FORM

December 29, 2003

Military Leave is governed by federal law, Vermont State law, District policy and bargaining unit agreements. This is intended to be a brief overview of the Burlington School District (BSD) procedure and requirements for employees on military leave.

- 1) **Notice to BSD:**
 - a. Leave shall be granted to an employee who **notifies the employer of the date of departure and date of return 30 days prior to the date of departure**, or as soon as practical. (21 V.S.A. §§491 – 493).
 - b. **In order to reserve federal reemployment rights, the employee must** (38 U.S.C. §4312):
 - i. PROVIDE WRITTEN NOTICE TO BSD OF MILITARY SERVICE *PRIOR TO DEPARTURE*;
 - ii. PROVIDE WRITTEN NOTICE TO BSD OF THE EXPECTED COMPLETION DATE OF MILITARY SERVICE, IF KNOWN, *PRIOR TO DEPARTURE*;
 - iii. RECEIVE AN HONORABLE DISCHARGE OR SIMILAR DISCHARGE; AND
 - iv. APPLY OR REPORT TO WORK FOLLOWING MILITARY SERVICE ON A TIMELY BASIS. (Defined in (c.) below).
 - v. NOTE: MILITARY SERVICE TIME MUST NOT EXCEED FIVE (5) YEARS WHILE EMPLOYED WITH BSD.
 - c. **The employee must notify BSD of their intent to return:**
 - i. If the military leave was for less than 31 days, not later than the first full scheduled workday on the first full calendar week after completing service;
 - ii. If the military leave was for a period greater than 30 days but less than 181 days, not later than 14 days after the completion of service;
 - iii. If the military leave was for a period greater than 180 days, 90 days after the completion of service.
 - d. Reemployment position:
 - i. If qualified, an employee shall be placed in the position the employee would have attained after continuous employment with BSD, but for the military leave;
 - ii. or if unable to become qualified for such position after reasonable efforts by BSD, the position the employee held at the commencement of the military leave;
 - iii. or, for employees who serve more than 90 days, a position of like seniority, status and pay.
 - iv. If an employee is not qualified to be employed in the position of employment per (i), above, or in the position of employment per (ii), above, for any reason (other than disability incurred in, or aggravated during, service in the uniformed services), *and* cannot become qualified with reasonable efforts by the BSD, the employee shall be reemployed in any other position which is the nearest approximation to a position referred to first in clause (i), and then in clause (ii) which such employee is qualified to perform, with full seniority. (38 U.S.C. §4313(a)(4)).

- 2) **Pay while on military leave:**
 - a. Paid leave is not offered unless required by bargaining unit contract.
 - b. **AFSCME Property Services employees:** the District will pay the difference between the employee's gross military pay and the employee's regular gross pay which would have been received for the first six (6) months following the beginning of the absence. Extensions may be granted by the Board.

- 3) **Rights and benefits upon returning from military leave** (38 U.S.C. §4316(a)):
 - a. BSD employees are entitled to the pay rate, vacation accrual rate, and sick leave accrual rate they would have attained by means of seniority and contractual increases had the person been continuously employed by BSD during the time on military leave.
 - b. Such benefits *do not* accrue while on military leave.

- 4) **Health Care Benefits while on leave** (38 U.S.C. §4317):
 - a. District contribution to an employee's health coverage ends on the last day of the month following the beginning of the employee's absence unless required by bargaining unit contract.
 - b. **AFSCME Property Services employees:** District contribution is continued for the first six (6) months following the beginning of the employee's absence. Extensions may be granted by the Board.
 - c. An employee on military leave who elects to continue health coverage after BSD contribution has ended, shall be required to pay 102% of the full health coverage premium. This payment must be received prior to the first of each month during which coverage will be expected to continue. Coverage shall be terminated upon failure to make the required payment within the required time period. *BSD will not pay the health coverage premium on behalf of the employee.*
 - d. The continued coverage, at the employee's expense, shall be available to the employee or the employee's dependents, for a maximum period of the lesser of:
 - i. 18 months from the person's beginning date of the absence; or
 - ii. the day after the person fails to apply for reemployment as outlined in (1)(c), above, and (7)(a), below.
 - e. Reinstated coverage shall begin on the first of the month following the reemployment after military leave. A reemployed person will be eligible for the same level of coverage they would have attained by means of seniority and contractual agreement had the person been continuously employed by BSD during the time on military leave.
 - f. Should an employee's health coverage be terminated due to military leave, upon reinstatement, the employee shall not be subject to exclusions or waiting periods if the employee would not be subject to the exclusions or waiting periods had the termination not been due to military leave.

- 5) **Pension Benefits** (38 U.S.C. § 4318):
 - a. **City of Burlington Retirement System:** if the employee is in fulltime active duty, the employee continues to earn service in the City Retirement System. The City Retirement Office must be notified of the departure date and the date of return, if known, prior to departure.
 - b. **State Teacher's Retirement System:** (1) Payroll indicates on the quarterly report that the teacher is on military leave; (2) Upon return, to receive credit for time served, the teacher must be reemployed by BSD; (3) The teacher must send a

copy of form DD214 to State Teacher's Retirement System; (4) The teacher will be credited for the time served; (5) Teacher contributions are waived during time served in the uniformed services.

- 6) **Federal Family Medical Leave Eligibility** (FMLA, 29 U.S.C §§2601 – 2654) [Memorandum from the Solicitor of Labor dated July 22, 2002]:
- a. Upon reemployment, should an employee request FMLA leave, the employee's eligibility for such leave shall be determined by including the time that the employee would have worked for BSD in the 12 months prior to the request for FMLA leave had the employee been continuously employed by BSD during the time served in the uniformed services.
- 7) **Illness or Injury incurred or aggravated during the performance of service in the military service** (38 U.S.C. §§ 4312(e)(2) & 4313(a)(4)):
- a. At the end of the period that is necessary for the employee to recover from such illness or injury:
 - i. Employees on military leave for less than 31 days shall report to BSD not later than the first full scheduled workday on the first full calendar week after completing recovery;
 - ii. Employees on leave for more than 30 days but less than 181 days shall submit an application for reemployment with BSD not later than 14 days after the completion of recovery;
 - iii. Employees on leave for more than 180 days, shall submit an application for reemployment with BSD not later than 90 days after the completion of recovery.
 - iv. The period of recovery may not exceed two years. However, the two-year period shall be extended by the minimum time required to accommodate the circumstances beyond such person's control which make reporting within the period specified above, impossible or unreasonable.
 - b. If an employee has a disability that incurred in, or was aggravated during, military leave, BSD shall expend reasonable efforts to accommodate the disability. If the employee, after the efforts to accommodate, is not qualified due to the disability to be employed in the position of employment in which the employee would have been employed if the continuous employment of such person with BSD had not been interrupted by such service,
 - i. the employee shall be employed in any other position which is equal in seniority, status, and pay, for which the employee is qualified to perform the duties or would become qualified to perform with reasonable efforts by the BSD; or
 - ii. if not employed as such, then shall be employed in a position which is the nearest approximation to a position referred to in the previous paragraph (i) in terms of seniority, status, and pay consistent with circumstances of such employee's case.

For complete information, please refer to the Military Leave Information Form, #1 and/or to the applicable statutes, District policies and bargaining unit agreements.

Discrimination or adverse employment action is prohibited if such action is motivated by membership, application for membership, performance of service, application for service or obligation to the uniformed services.