

Colorado Revised Statutes

Title 28. Military and Veterans

Article 3. National Guard

Part 6. Public and Private Employees—Duties

(Current as of April 21, 2023)

28-3-601. Public employees - annual military leave. (1) Subject to the conditions prescribed in sections 28-3-601 to 28-3-607, any officer or employee of the state or of any political subdivision, municipal corporation, or other public agency of the state who is a member of the National Guard or any other component of the military forces of the state organized or constituted under state or federal law or who is a member of the reserve forces of the United States, organized or constituted under federal law, is entitled to leave of absence from the officer's or employee's public office or employment without loss of pay, seniority, status, efficiency rating, vacation, sick leave, or other benefits for the entire time the officer or employee is engaged with such organization or component in training or active service ordered or authorized by proper authority pursuant to law, whether for state or federal purposes, but not exceeding the equivalent of three weeks of work on the officer's or employee's regular work schedule in the leave year established by the employer. The employer shall allow the leave if the required military service is satisfactorily performed, which is presumed unless the contrary is established.

(2) Such leave shall not be allowed unless the officer or employee returns to his or her public position immediately on being relieved from such military service and not later than the expiration of the time limited in subsection (1) of this section for such leave, or is prevented from so returning by physical or mental disability or other cause not due to his or her own fault, or is required by proper authority to continue in such military service beyond the time limited in subsection (1) of this section for such leave.

28-3-602. Public employees - extended military leave. An officer or employee who is taking a leave of absence described in section 28-3-601(1) is entitled to use any paid leave available to the officer or employee or to use unpaid leave. If an officer or employee uses paid leave and is required by proper authority to continue in military service beyond the time for which the officer or employee has available paid leave, the officer or employee is entitled to leave of absence from the officer's or employee's public office or employment without pay for all additional service with right of reinstatement thereafter upon the same conditions as provided in section 28-3-604 for reinstatement after active service in time of war or other emergency.

28-3-603. Public employees - emergency military leave. Subject to the conditions prescribed in this section, any officer or employee of the state or of any political subdivision, municipal corporation, or other public agency of the state who engages in active military service in time of war or other emergency declared by proper authority of the state or the United States, for which leave is not otherwise allowed by law or permitted by the officer's or employee's employer, is entitled to leave of absence from the officer's or employee's public office or employment without pay during the service with right of reinstatement as provided in section 28-3-604.

28-3-604. Reinstatement. (1) Except as otherwise provided in sections 28-3-601 to 28-3-607, upon the completion of such service, an officer or employee must be reinstated in the public position that the officer or employee held at the time of entry into such service or a public position of like seniority,

status, and pay if such a position is available at the same salary that the officer or employee would have received if the officer or employee had not taken the leave upon the following conditions:

(a) That the position has not been abolished or that the term thereof, if limited, has not expired;

(b) Repealed by Laws 2023, Ch. 17 (H.B. 23-1045), § 4, eff. March 10, 2023.

(c) That he or she makes written application for reinstatement to the appointing authority within ninety days after discharge from hospitalization or medical treatment which immediately follows the termination of and results from such service, but such application shall be made within one year and ninety days after termination of such service, notwithstanding such hospitalization or medical treatment;

(d) That he or she submits an honorable discharge or other form of release by proper authority indicating that his or her military service was satisfactory.

(2) Upon such reinstatement, the officer or employee shall have the same rights with respect to accrued and future seniority status, efficiency rating, vacation, sick leave, and other benefits as if he or she had been actually employed during the time of such leave. No officer or employee so reinstated shall be removed or discharged within one year thereafter, except for cause and after notice and hearing; but this shall not operate to extend a term of service or office limited by law.

28-3-605. Public officer - certificate for reinstatement. Any public officer elected or appointed for a definite term who, before the expiration of such term, returns from military service under leave of absence without pay, in lieu of making written application for reinstatement as provided in section 28-3-604, shall file in the same office where his or her official oath is filed, within forty-five days after termination of such military service, a verified certificate that he or she has complied with the conditions for reinstatement prescribed in section 28-3-604, and he or she shall thereupon be deemed to have resumed his or her office.

28-3-606. Public pension rights retained. Any public officer or employee receiving leave of absence under the preceding sections and having rights in any state, municipal, or other public pension, retirement, or relief system shall retain all such rights accrued up to the time of taking such leave and shall have all rights subsequently accruing under such system as if he or she had been actually employed during the time of such leave. Any increase in the amount of money benefits accruing with respect to the time of such leave is dependent upon the payment of any contributions or assessments, and the right to such increase is dependent upon the payment of such contributions or assessments within such reasonable time after the termination of such leave and upon such terms as the authorities in charge of the system may prescribe.

28-3-607. Public employees - substitute during service. If a public officer or employee is absent with leave under the provisions of the preceding sections and if it is necessary in the public interest to provide for the performance of the duties of his or her position during such absence, the authority having power to fill a vacancy in the position may appoint a substitute, to be known as acting incumbent, who shall qualify as required for the regular incumbent, shall receive the same compensation as fixed by law or otherwise such compensation as may be fixed by proper authority, and shall have all the power and perform all the duties of the position until the return of the regular incumbent; except that this shall not preclude the making of any other provision for the discharge of the duties of the position which may be otherwise authorized by law.

28-3-608. Sections supplemental. The rights and privileges granted by sections 28-3-601 to 28-3-607 are supplementary to and not exclusive of any other rights or privileges conferred by law on public officers

or employees but shall not obtain in any case where the military services are constitutionally or legally incompatible with the public office or employment.

28-3-609. Private employees - annual military leave. Any person who is a duly qualified member of the Colorado National Guard or the reserve forces of the United States who, in order to receive military training with the armed forces of the United States, not to exceed the equivalent of three weeks of work on the person's regular work schedule in any one calendar year, leaves a position other than a temporary position in the employ of an employer, and who gives evidence of the satisfactory completion of the training, and who is still qualified to perform the duties of the person's position, is entitled to be restored to the person's previous or a similar position in the same status, pay, and seniority. The person is entitled to use any paid leave available to the person or to use unpaid leave for the person's period of absence for military training.

28-3-610. Private employees - benefits retained. Such absence for military training will in no way affect the employee's right to receive normal vacation, sick leave, bonus, advancement, and other advantages of his or her employment normally to be anticipated in his or her particular position.

28-3-610.5. Private employees - state service - reemployment rights - benefits retained. (1) A private employee who is a duly qualified member of the Colorado National Guard who leaves or who is absent from the employee's employment, regardless of the length of the absence, in order to engage in active service for state purposes pursuant to section 28-3-104:

- (a) Is entitled to the reemployment rights for members described in section 28-3-609, so long as the employee otherwise meets the requirements of section 28-3-609;
- (b) Retains the right to the employee benefits described in section 28-3-610; and
- (c) Is entitled to use any paid leave available to the employee or to use unpaid leave.

28-3-611. Employer's noncompliance - actions. Any employer violating any of the provisions of this part 6 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five thousand dollars. In addition, the employee may bring an action at law for damages and reasonable attorney fees for such noncompliance or apply to the district court for such equitable relief and reasonable attorney fees as are just and proper under the circumstances.

28-3-612. Federal law – rights - applicability. Nothing in this article shall be construed as restricting or abrogating any right available to any officer or enlisted person of the military forces of the state under the federal "Uniformed Services Employment and Reemployment Rights Act", 38 U.S.C. sec. 4301 et seq.