


Date: December 13, 2007 Code: HR 2007-19
To: CSU Presidents Reference: HR 2004-21, HR 2002-10,
HR 2001-25 and Supplement #1,
HR 2007-07, HR 2006-14,
HR 2006-04
From: Gail Brooks 
Interim Vice Chancellor
Human Resources
Subject: New California Military Spouse/Domestic Partner Leave

Overview

Audience: Benefits Officers, Payroll Officers or campus designee(s) responsible for CSU leave administration
Action Item: Grant unpaid Military Spouse/Domestic Partner Leave in accordance with AB 392 upon request of eligible employee(s)
Affected Employee Groups/Units: Employees who are spouses/domestic partners of qualified members of the military on leave from deployment

Summary:

Recently, Governor Schwarzenegger signed Assembly Bill (AB) 392 (Chapter 361), requiring employers to grant an unpaid leave of absence of up to ten (10) days to an employee who works at least an average of twenty (20) hours per week and also is the spouse or registered domestic partner of a qualified member of the military on leave from deployment. AB 392 is effective immediately, and is applicable to the California State University (CSU). The purpose of this HR memorandum is to inform campuses of its provisions, including eligibility and certification requirements.

Campus designees responsible for CSU leave Administration should review the remaining portions of this HR memorandum for additional details regarding this leave, including eligibility, certification requirements and documentation of the leave.

General Information

AB 392 allows families to spend time together when qualified military personnel are on leave from deployment during periods of military conflict. This law adds Section 395.10 to the California Military and Veterans Code and grants up to ten (10) days unpaid leave to a qualified employee who is the spouse or registered domestic partner of a member of the Armed Forces of the United States, National Guard, or Reserves serving in a designated combat zone or combat theater, and is on leave from deployment.

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Eligibility

In order for a CSU employee to qualify for this type of leave, he/she must be assigned to work for the CSU for an average of at least twenty (20) hours or more on a weekly basis (including student employees). The employee's spouse or registered domestic partner must be either:

- An active member of the Armed Forces of the United States who has been deployed during a period of military conflict to an area designated as a combat theater or combat zone (e.g., "Iraqi Freedom (Iraq)" or "Enduring Freedom (Afghanistan)") by the President of the United States; or
- A member of the National Guard, or Reserves who has been deployed during a period of military conflict.

A period of military conflict is described as either a period of war declared by the United States Congress, or a period of deployment for which a member of a military reserve component is ordered to active duty.

If the above eligibility requirements have been met and the employee chooses to take such a leave, then:

- Written documentation must be provided to certify that the spouse or domestic partner will be on leave from deployment during the time that the employee has requested such leave; and
- Certification must be provided **no later than two (2) business days** upon receiving official notification that his/her spouse or domestic partner will be on leave from deployment.

The leave provisions of AB 392 shall not affect or prevent the CSU from allowing a qualified employee to take a leave to which the employee is otherwise entitled. Therefore, an employee who qualifies for such leave is eligible to utilize his/her available vacation leave credits, CTO or personal holiday at his/her request. However, if the employee chooses not to access his/her available leave credits, the leave should be documented via the 634 absence form with a note stating "Spouse/DP Military Leave."

A copy of AB 392 is provided as Attachment A.

CMS Processing Instructions

As a result of the CSU implementing a new California Military Spouse/Domestic Partner Leave, there is impact to CMS Baseline. Additional information regarding how this leave will be implemented in CMS baseline will be provided in a future CMS communication.

Questions regarding this HR memorandum may be directed to Human Resources Administration at (562) 951-4411. This HR Letter is also available on the Human Resources Administration's Web site at: <http://www.calstate.edu/HRAdm/memos.shtml>.

GB/mh

Assembly Bill No. 392

CHAPTER 361

An act to add Section 395.10 to the Military and Veterans Code, relating to military benefits, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 9, 2007. Filed with
Secretary of State October 9, 2007.]

LEGISLATIVE COUNSEL'S DIGEST

AB 392, Lieu. Military service: benefits.

Existing law provides certain benefits for qualifying members of the Armed Forces of the United States, National Guard, and Reserves.

This bill would require a qualified employer to allow a qualified employee who is a spouse of a qualified member of the Armed Forces, National Guard, or Reserves to take up to 10 days of unpaid leave during a qualified leave period, as provided.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 395.10 is added to the Military and Veterans Code, to read:

395.10. (a) Notwithstanding any other provision of law, a qualified employer shall allow a qualified employee to take up to 10 days of unpaid leave during a qualified leave period.

(b) For purposes of this section:

(1) "Period of military conflict" means either of the following:

(A) A period of war declared by the United States Congress.

(B) A period of deployment for which a member of a reserve component is ordered to active duty pursuant to either of the following:

(i) Sections 12301 and 12302 of Title 10 of the United States Code.

(ii) Title 32 of the United States Code.

(2) "Qualified employee" means a person who satisfies all of the following:

(A) Is the spouse of a qualified member.

(B) Performs service for hire for an employer for an average of 20 or more hours per week, but does not include an independent contractor.

(C) Provides the qualified employer with notice, within two business days of receiving official notice that the qualified member will be on leave

from deployment, of his or her intention to take the leave provided for in subdivision (a).

(D) Submits written documentation to the qualified employer certifying that the qualified member will be on leave from deployment during the time the leave provided for in subdivision (a) is requested.

(3) "Qualified employer" includes any individual, corporation, company, firm, state, city, county, city and county, municipal corporation, district, public authority, or any other governmental subdivision, that employs 25 or more employees.

(4) "Qualified member" means a person who is any of the following:

(A) A member of the Armed Forces of the United States who has been deployed during a period of military conflict to an area designated as a combat theater or combat zone by the President of the United States.

(B) A member of the National Guard who has been deployed during a period of military conflict.

(C) A member of the Reserves who has been deployed during a period of military conflict.

(5) "Qualified leave period" means the period during which the qualified member is on leave from deployment during a period of military conflict.

(c) A qualified employer shall not retaliate against a qualified employee for requesting or taking the leave provided for in this section.

(d) The leave provided for in this section shall not affect or prevent a qualified employer from allowing a qualified employee to take a leave that the qualified employee is otherwise entitled to take.

(e) This section shall not affect a qualified employee's rights with respect to any other employee benefit provided for in other laws.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to serve the families of those troops currently serving in military conflicts in Iraq and Afghanistan, and to assure that these families are able to spend time together during the qualified member's leave from deployment, it is necessary that this act take effect immediately.