CHAPTER 7

Absences in Military Service

**SECTION 8‑7‑10.** Definitions.

 For the purpose of Sections 8‑7‑10 to 8‑7‑80, the following terms shall have the meanings ascribed to them by this section, unless the context clearly requires otherwise:

 (1) “Officer” means any officer or employee of the State or any political subdivision thereof who is elected or appointed for a definite term which is fixed by law;

 (2) “Military service” means service in the Army, Navy or Marine Corps of the United States or any compulsory service in any capacity to the Federal Government for the purpose of national defense; and

 (3) “Appointive authority” means (a) the person, board, commission or other authority originally electing or appointing the officer, (b) if the officer was elected to his office in a general election or nominated in a primary, the Governor of the State, with the advice and consent of the Senate, if the officer is a State official or employee, (c) the Governor, upon the recommendation of the county legislative delegation, if the officer is an official or employee of a county or any of its political subdivisions and (d) the Governor, upon the recommendation of the mayor and city council or other governing body of a city or town if the officer is an official or employee of a municipality.

HISTORY: 1962 Code Section 50‑151; 1952 Code Section 50‑151; 1942 Code Section 3075‑1; 1941 (42) 313.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Governor Section 10, Filling Vacancies.

S.C. Jur. Public Officers and Public Employees Section 37, Leave.

NOTES OF DECISIONS

In general 1

1. In general

Stated in Newman v. McCullough (S.C. 1948) 212 S.C. 17, 46 S.E.2d 252.

**SECTION 8‑7‑20.** Leaves of absence authorized for public employees serving in armed forces.

 Every employee of the State or any political subdivision thereof who, on or after June 25, 1950 has been, or shall be, commissioned, enlisted or selected for service in the armed forces of the United States shall, so long as the requirements and regulations of the armed forces shall prevent his return to his civil employment and for a period of ninety days thereafter, but in no event for a period longer than five years from the date of his entry into the armed forces of the United States, be entitled to leave of absence from his duties as an employee of the State or any political subdivision thereof, without loss of seniority or efficiency or register rating.

 The word “employee” as used herein shall not be construed to mean an officer or official elected or appointed to a term pursuant to a statute or the Constitution of this State.

HISTORY: 1962 Code Section 50‑151.1; 1952 Code Section 50‑151.1; 1951 (47) 195; 1972 (57) 2404.

CROSS REFERENCES

State human resources regulations, see S.C. Code of Regulations R. 19‑700 et seq.

NOTES OF DECISIONS

Legislative intent 1

1. Legislative intent

State and federal public policy supports the performance of military service by citizens. Sloan v. Sanford (S.C. 2004) 357 S.C. 431, 593 S.E.2d 470, rehearing denied. Armed Services 4

**SECTION 8‑7‑30.** Absence of public officer in military service creates temporary vacancy; “forfeiture of office” and “vacancy in office” defined.

 The absence of any officer from his office or position caused by his being in the military service shall not create a forfeiture of or vacancy in the office or position to which such officer was elected or appointed but shall be construed merely to create a temporary vacancy. Wherever the terms “forfeiture of office” or “vacancy in office” or other words of similar import are used in any law of this State in relation to an officer they shall be construed in accordance with the provisions of Sections 8‑7‑10 to 8‑7‑80 and shall not be construed to apply to any absence of such officer who is absent from his office or position by reason of his being in the military service. An officer who is present at and able to perform the duties of his office shall not be considered absent within the meaning of this section.

HISTORY: 1962 Code Section 50‑152; 1952 Code Section 50‑152; 1942 Code Section 3075‑1; 1941 (42) 313.

LIBRARY REFERENCES

67 C.J.S., Officers Sections 74‑79.

Attorney General’s Opinions

Discussion of residency and military deployment with respect to members of municipal councils. S.C. Op.Atty.Gen. (July 11, 2016) 2016 WL 3946156.

Court would most probably find temporary appointment by Governor to fill vacancy created by legislator called to active duty military service, to be valid; however it would remain matter for each house to determine whether particular member is seated. 1990 Op Atty Gen No. 90‑71.

NOTES OF DECISIONS

In general 1

Legislative intent 2

1. In general

This section [Code 1962 Section 50‑152] relates to officers having definite terms of office fixed by law. Newman v. McCullough (S.C. 1948) 212 S.C. 17, 46 S.E.2d 252.

But section is not applicable to city employee appointed by a city council to serve at the will of the council. Newman v. McCullough (S.C. 1948) 212 S.C. 17, 46 S.E.2d 252.

2. Legislative intent

State and federal public policy supports the performance of military service by citizens. Sloan v. Sanford (S.C. 2004) 357 S.C. 431, 593 S.E.2d 470, rehearing denied. Armed Services 4

**SECTION 8‑7‑40.** Appointment of person to fill temporary vacancy; terms.

 In case a temporary vacancy is created in any office or position by reason of the absence of the officer in the military service the appointive authority shall appoint some person to fill temporarily the office or position to which such officer was elected or appointed. All such appointees shall hold the office or position which they are temporarily to fill during the absence of the officer in the military service or until the expiration of the term for which such officer in the military service was elected or appointed, whichever period of time is the shorter.

HISTORY: 1962 Code Section 50‑153; 1952 Code Section 50‑153; 1942 Code Section 3075‑1; 1941 (42) 313.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Governor Section 10, Filling Vacancies.

Attorney General’s Opinions

Discussion of residency and military deployment with respect to members of municipal councils. S.C. Op.Atty.Gen. (July 11, 2016) 2016 WL 3946156.

Court would most probably find temporary appointment by Governor to fill vacancy created by legislator called to active duty military service, to be valid; however it would remain matter for each house to determine whether particular member is seated. 1990 Op Atty Gen No. 90‑71.

Payment of taxes on motor vehicle may be stayed under 50 USCA Section 560 for persons who are members of armed forces. However, tax collector may have need for stay judicially determined. No penalties are due by reason of stay; however interest at rate of 5 percent is due. 1990 Op Atty Gen No. 90‑72.

No authority exists for installment payments of property taxes due on motor vehicles. 1990 Op Atty Gen No. 90‑72.

As general rule, property of person in armed forces should not be sold for nonpayment of taxes in absence of judicial order authorizing sale. 1990 Op Atty Gen No. 90‑72.

**SECTION 8‑7‑50.** Duties, powers and pay of temporary appointee.

 The person appointed in accordance with the provisions of Sections 8‑7‑10 to 8‑7‑80 to fill temporarily any office or position shall have and may exercise all the rights, powers, authority and jurisdiction and shall perform the duties vested in or required by law of the officer whose office or position such person is so appointed to fill temporarily and shall receive the same salary, fees, expenses or other compensation as such officer would be entitled to receive.

HISTORY: 1962 Code Section 50‑154; 1952 Code Section 50‑154; 1942 Code Section 3075‑1; 1941 (42) 313.

**SECTION 8‑7‑60.** Qualifications and bond of temporary appointee.

 Every person who shall be appointed to fill temporarily any office or position shall possess the qualifications prescribed by law, if any, for the regular holder of such office or position. If a bond be required by law of the regular holder of such office or position then such person so appointed shall give bond in the manner and in the amount so prescribed by law and shall be liable thereon in like manner as the regular holder of the office.

HISTORY: 1962 Code Section 50‑155; 1952 Code Section 50‑155; 1942 Code Section 3075‑1; 1941 (42) 313.

**SECTION 8‑7‑70.** Bond requirement shall be waived during military absence.

 Any officer temporarily in the military service shall not be required to be under bond during the period of such absence.

HISTORY: 1962 Code Section 50‑156; 1952 Code Section 50‑156; 1943 (43) 250.

**SECTION 8‑7‑80.** Compensation and resumption of office by officer in military service.

 An officer who shall be absent from his office or position in the military service shall not be entitled to any compensation as such officer during such absence, but upon his return, if he return before the expiration of the term for which he was elected or appointed, after thirty days’ notice, in writing, he shall be entitled to possession of the office or position from which he was absent and upon reassuming the duties of the office to receive the compensation for the remainder of the term to which the holder thereof is entitled.

HISTORY: 1962 Code Section 50‑157; 1952 Code Section 50‑157; 1942 Code Section 3075‑1; 1941 (42) 313.

**SECTION 8‑7‑90.** Leaves of absence for public officers and employees in National Guard or reserve military forces; service in combat zone.

 All officers and employees of this State or a political subdivision of this State who are either enlisted or commissioned members of the South Carolina National Guard, the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, or the United States Coast Guard Reserve are entitled to leaves of absence from their respective duties without loss of pay, time, or efficiency rating for one or more periods not exceeding an aggregate of fifteen regularly scheduled work days in any one year during which they may engage in training or any other duties ordered by the Governor, the Department of Defense, the Department of the Army, the Department of the Air Force, the Department of the Navy, the Department of the Treasury, or any other department or agency of the government of the United States having authority to issue lawful orders requiring military service. Saturdays, Sundays, and state holidays may not be included in the fifteen‑day aggregate unless the particular Saturday, Sunday, or holiday to be included is a regularly scheduled work day for the officer or employee involved. In the event any such person is called upon to serve during an emergency he is entitled to such leave of absence for not exceeding thirty additional days.

 A state employee in a full time position who serves on active duty in a combat zone and who has exhausted all available leave for military purposes is entitled to receive up to thirty additional days of military leave in any one year.

 As used in this section, “in any one year” means either a calendar year or, in the case of members required to perform active duty for training or other duties within or on a fiscal year basis, the fiscal year of the National Guard or reserve component issuing the orders. The provisions of this section must be construed liberally to encourage and allow full participation in all aspects of the National Guard and reserve programs of the Armed Forces of the United States and to allow state officers and employees who are enlisted or commissioned members of the National Guard or reserve components to excel in military and emergency preparedness and service by taking full advantage of all career‑enhancing assignments and training opportunities.

HISTORY: 1962 Code Section 44‑861; 1952 Code Section 44‑861; 1950 (46) 2549; 1954 (48) 1566; 1961 (52) 104; 1968 (55) 2855; 1986 Act No. 540, Part II, Section 36, eff June 18, 1986 (became law without the Governor’s signature); 1990 Act No. 587, Section 1, eff June 11, 1990; 2008 Act No. 353, Section 2, Pt 20C, eff July 1, 2009.

Effect of Amendment

The 1986 amendment added the provisions defining the phrase “in any one year” for purposes of this section.

The 1990 amendment provided new terms and conditions of authorized leaves of absence, revised the types of service or training for which these leaves of absence are authorized, and provided for the manner in which these provisions must be construed.

The 2008 amendment added the second undesignated paragraph relating to service in a combat zone.

CROSS REFERENCES

As to leaves of absence for public employees attending National Guard encampments or when on active duty, see Section 25‑1‑2250.

State human resources regulations, see S.C. Code of Regulations R. 19‑700 et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 37, Leave.

Treatises and Practice Aids

Employment Coordinator Employment Practices Section 40:64, South Carolina.

Attorney General’s Opinions

(1) It is mandatory that a guardsman attend drill; a public employee is entitled to military leave from his employment for fifteen days each year; (2) Guardsmen normally must attend drill when it is scheduled for their unit; however, the National Guard provides some flexibility in unusual situations; (3) If a public employee has been ordered fifteen consecutive days of military duty, (e.g., summer camp), he would not be entitled to military leave with pay when his weekend drill conflicts with his regular employment. 1976‑77 Op Atty Gen, No 77‑354, p 280.

A permanent State employee who is a member of a Reserve Component of the United States Armed Forces may be entitled to the same job he previously held upon return from military leave or service, or to a position of “like seniority, status and pay”, as though the employee had not been absent, depending upon the type and duration of active duty for training or inactive duty training; S.C. Code Ann. Section 8‑7‑90 (1976) which provides leave with pay for military duty for a maximum of 15 working days applies only to those work days of leave needed for military duty to fulfil the minimum requirements imposed by Federal law for annual training, and would not apply to “supplemental” military duty. 1978 Op Atty Gen, No 78‑41, p 66.

State employees who are National Guard members or reservists would most probably be eligible for up to 30 additional days of leave if called by president to active duty in Middle East. 1990 Op Atty Gen No. 90‑49.

The phrase “without loss of pay” as used in Sections 8‑7‑90 and 25‑1‑2250 of the 1976 Code of Laws of South Carolina means that the public employee or officer is entitled to receive his full, normal civilian pay, without taking into account any military compensation that he may receive. 1980 Op Atty Gen, No 80‑52, p 100.

The phrase “without loss of pay” as used in Sections 8‑7‑90 and 25‑1‑2250 means an employee or officer of the State or its subdivisions is entitled to his or her full pay while on military leave, as provided for in Sections 8‑7‑90 and 25‑1‑2250, regardless of the fact that he or she may receive additional compensation from his or her respective military unit. 1976‑77 Op Atty Gen, No 77‑285, p 218.

South Carolina public employees are limited to a maximum of fifteen (15) calendar days of military leave during each year, but only as necessary to meet the minimum requirements as imposed by Federal law for annual training. 1975‑76 Op Atty Gen, No 4479, p 338.

Employer is required to provide reservist time for weekend drill when employee is scheduled to work on that weekend provided that weekend drill constitutes “training or any other duties ordered.” 1993 Op Atty Gen No. 93‑25.

NOTES OF DECISIONS

In general 1

1. In general

Term “days,” as used in emergency leave provision of South Carolina military leave statute to provide that public employees who were members of military reserve, in addition to regular leaves of absence “for one or more periods not exceeding an aggregate of fifteen regularly scheduled work days,” would be entitled, in event of military emergency, to emergency leave for a period “not exceeding thirty additional days,” had to be interpreted, in accordance with preceding provision to which it referred back, as meaning work days and not calendar days. Blackburn v. Daufuskie Island Fire Dist. (S.C. 2009) 382 S.C. 626, 677 S.E.2d 606, rehearing denied. Armed Services 115(7)

An employee’s claim for military leave payments was time barred where the employee alleged that his employer failed to make military leave payments in 1980 and 1981, the employee had the legal right to sue on these claims in 1980 and 1981, and the employee did not bring his action until January 22, 1988; Section 15‑3‑530 provides a 6‑year statute of limitations for a liability created by statute, and the right to military leave payments arises under Section 8‑7‑90. Matthews v. City of Greenwood (S.C.App. 1991) 305 S.C. 267, 407 S.E.2d 668.

An employee was not entitled to treble damages, pursuant to Section 41‑10‑50, on his claims of failure to be paid military leave in 1982, 1983, 1984, and 1986 since the right to be paid military leave is an entitlement created by statute rather than a contractual right arising by agreement with his employer, and Section 41‑10‑50 applies only to “wages,” which are amounts at which labor rendered is recompensed. Matthews v. City of Greenwood (S.C.App. 1991) 305 S.C. 267, 407 S.E.2d 668. Labor And Employment 2181; Labor And Employment 2182

Under Section 8‑7‑90 and Section 25‑1‑2250, the State and its political subdivisions, including a county school board, are required to pay their employees full salary during absences for military training, without regard to any compensation received from military sources, and thus, in an action for a declaratory judgment on the question of whether members of the National Guard who were also employees of a county school board were entitled to their full civilian pay while undergoing military training, the trial court properly ruled against the position of the school board, which maintained that it was only obligated to pay the amount of civilian pay exceeding the military pay received by its employees. Marchant v. Hamilton (S.C.App. 1983) 279 S.C. 497, 309 S.E.2d 781.