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## Question of the Week

APRIL 26, 2023

### Question

How do we handle pay for an employee out on military leave?

### ANSWER

Employees on military leave are due the same rights and benefits (when not determined by seniority) as nonmilitary employees who take any comparable form of leave. **Comparable** is not well defined, but generally, you should look to other leaves of a similar duration. For instance, if you'd generally pay someone for one to five days of jury service leave, or up to a week of bereavement leave, you'd want to also pay for a military leave of that approximate duration. If you provide longer paid leaves, e.g., a four- to eight-week family wellness leave, then you should consider paying for a military leave of that approximate duration as well. If you aren't sure whether the other leaves you offer are comparable and you are considering not paying for a military leave, we recommend speaking with an attorney.

If there are no comparable paid leaves, then nonexempt employees would not need to be paid for military leave. Exempt employee pay requirements will depend on the duration of the leave and when it falls in the workweek (see below).

Under the Uniformed Services Employment and Reemployment Rights Act (USERRA), employers cannot require employees on military leave to use their paid time off benefits during absences. However,

employees can voluntarily elect to use paid time off to cover absences.

### **Exempt Employees**

Employers may not reduce an exempt employee's salary for partial week absences for military leave per the Fair Labor Standards Act (FLSA). If they work *any part* of the workweek in which they are absent for military leave, then they must be paid for the *entire* week. If an exempt employee does *no work at all* during the week, then they would not need to be paid, unless you would pay for a comparable leave. However, you can reduce an exempt employee's salary by any payment they receive for their military service during the workweek when they are absent.

*This Q&A does not constitute legal advice and does not address state or local law.*