

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 8A.104(5), the Department of Administrative Services hereby amends Chapter 63, "Leave," Iowa Administrative Code.

The amendment is intended to create more equality among employees whose shifts are greater than 16 hours with employees whose shifts are 16 hours or less. The amendment accomplishes this by limiting military leave for employees whose shifts are more than 16 hours to 30 calendar days in accordance with Iowa Code section 29A.28(1)"a" for military duty of 30 days or more, while providing 30 work days of leave for employees whose shifts are 16 hours or less.

Pursuant to Iowa Code section 17A.4(3), the Department of Administrative Services finds that notice and public participation are unnecessary because of projected fiscal impacts related to an anticipated deployment as early as October 1, 2017, within the Iowa Department of Public Defense.

In compliance with Iowa Code section 17A.4(3)"a," the Administrative Rules Review Committee at its May 3, 2017, meeting reviewed the Department's determination and this rule making and approved the emergency adoption.

Pursuant to Iowa Code section 17A.5(2)"b"(1)(b), the Department of Administrative Services also finds that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment made effective May 17, 2017, because the amendment confers a benefit to the public.

This amendment is also published herein under Notice of Intended Action as **ARC 3111C** to allow for public comment.

A mobilization of 16, 24-hour shift employees in six-month rotations is anticipated within the Iowa Department of Public Defense in October 2017 and ending in November 2018. The impact on the Iowa Department of Defense budget will exceed \$510,795, or more than 8 percent of the Department's budget. This amendment will prevent that fiscal impact.

The Department of Administrative Services will not grant waivers under the provisions of these rules, other than as may be allowed under Chapter 9 of the Department's rules concerning waivers.

The Department of Administrative Services adopted this amendment on May 4, 2017.

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code sections 8A.413 and 29A.28.

This amendment became effective May 17, 2017.

The following amendment is adopted.

Amend rule 11—63.9(8A) as follows:

11—63.9(8A) Military leave. For purposes of subrules 63.9(1) and 63.9(3) and as applied to nontemporary employees whose regularly scheduled work shift is 16 hours or less, "30 days" means 30 work days. For nontemporary employees whose regularly scheduled work shift is more than 16 hours, "30 days" in subrules 63.9(1) and 63.9(3) shall be defined in accordance with the provisions of Iowa Code section 29A.28.

63.9(1) A nontemporary employee who is a member of the uniformed services, when ordered by proper authority to serve in the uniformed services, shall be granted leave without loss of pay for 30 days each calendar year. Absences required for military service shall be in accordance with the rules on vacation, compensatory leave, or leave without pay, 38 U.S.C. Sections 4301-4333, and 20 CFR Part 1002. Military leave may be utilized for up to 30 days in each calendar year. Any amount of military leave taken during any part of an employee's scheduled workday, regardless of the number of hours actually taken, shall count as one day toward the 30 paid day maximum. If the employee's work shift crosses two calendar days, only one day shall count toward the 30 paid day maximum. Work schedule changes shall not be made for the purpose of avoiding payment for military leave.

63.9(2) A nontemporary employee who is ordered by proper authority to military duty as defined in Iowa Code section 29A.28 may elect to be placed on leave without pay or be separated and removed from the payroll.

63.9(3) Nontemporary employees who elect to separate from employment when ordered by proper authority to military duty shall be given 30 days of regular pay in a lump sum with their last paycheck. Any previous paid leave days granted for military service in the current calendar year shall be deducted from this 30 days.

Employees who elect to be placed on leave without pay when ordered by proper authority to military duty shall continue to receive regular pay and benefits for 30 days. Any previous paid leave days granted for military service in the current calendar year shall be deducted from this 30 days.

63.9(4) At the conclusion of military service, the employee must notify the employee's appointing authority of the intent to exercise return rights pursuant to 38 U.S.C. Sections 4301-4344.

63.9(5) An employee taking military leave may use any vacation or compensatory leave that was accrued prior to service. Employees who elect to use vacation or compensatory leave shall continue to receive benefits in accordance with the state of Iowa's benefits program policies and procedures. Upon return to employment, the employee's accrual rate for vacation shall be at the same rate as if the employee had not taken military leave.

63.9(6) An employee may maintain health and dental insurance coverage while on military leave for up to 24 months. The employee is responsible for paying the employee's share of the health and dental insurance premiums if the period of military service is less than 31 days. If more than 30 days, the employee shall be required to pay 102 percent of the full premium under the plan to maintain coverage. Upon return to employment, the employee may elect to have health and dental insurance coverage become effective either on the first day of the month the employee returns to employment or the first day of the month following the month in which the employee returned to employment. Coverage under the plans will not have an exclusion or waiting period upon return to employment. An exclusion or waiting period may be imposed, however, in connection with any illness or injury determined by the Secretary of the U.S. Department of Veterans Affairs to have been incurred in, or aggravated during, performance of service in the uniformed services.

63.9(7) A person reemployed under this rule shall be treated as not having incurred a break in service with the employer by reason of such person's period of service in the uniformed services.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/7/17.