



What's the Purpose?

To provide a means for an employee to receive the amount of pay the employee would have otherwise received from the State if the employee was not on military leave.

Need Additional Help?

Human Resources
Management Statutes
Inventory is available at
<http://www.hr.sao.texas.gov>.

State Auditor's Office's State
Classification Team at
(512) 936-9500.

State agency employees and
their supervisors should direct
their questions to their agency
human resources department.

The State Auditor's Office is authorized to provide uniform interpretations of certain vacation and leave provisions in Texas Government Code, Chapter 661, which governs the administration of military pay differentials. We have provided this guide on military pay differentials for informational purposes only. State agencies and higher education institutions should consult with their legal counsel to ensure compliance with all applicable federal and state laws and regulations.

Military Pay Differential Guide

Overview

Texas Government Code, Section 661.904, allows for an unpaid leave of absence to an employee called to active duty during a national emergency under Titles 10 or 32, United States Code, to serve in a reserve component of the U.S. Armed Forces.

If the employee's military pay is less than the employee's gross pay from the State, Texas Government Code, Section 661.9041, requires state agencies and higher education institutions to grant paid emergency leave to the employee who is on unpaid military leave to provide a pay differential. The combination of differential pay (emergency leave) and military pay may not exceed the employee's actual gross state pay.

As required by Texas Government Code, Section 661.9041(c), the State Auditor's Office established the guidelines below to assist state agencies and higher education institutions in determining the amount of emergency leave to grant to an employee on military leave for the purpose of differential pay.

Determining Eligibility

A state employee in a reserve component called to active duty in support of a national emergency (under Titles 10 or 32, United States Code) and whose military pay is less than his or her gross state pay is eligible for emergency leave to ensure that the employee does not lose compensation. Differential pay (emergency leave) should not be granted under Texas Government Code, Section 661.9041, for normal military training or attendance at military schools; those authorized paid absences are covered by Texas Government Code, Section 437.202.

To determine an employee's eligibility for differential pay (emergency leave), the agency or higher education institution should request a copy of the employee's military Leave and Earnings Statement (LES) and determine the total military pay that the employee is entitled to receive. The LES contains information on the total paid salary with supplements that the service member receives. State agencies and higher education institutions should exclude pay that the employee receives for time spent in a combat zone, hardship duty pay, and family separation pay.

State agencies and higher education institutions should request copies of a service member's LES each month for which emergency leave is going to be granted. The employee's military pay may change during his or her period of active duty because of a promotion or change in entitlements, potentially ending the need for state military differential pay (emergency leave).

Information regarding the LES is available on the U.S. Department of Defense's Finance and Accounting Service Web site at:

<http://www.dfas.mil/militarymembers/payentitlements/aboutpay.html>

Determining the Amount of the Military Pay Differential

A state agency or higher education institution should compute the number of emergency leave hours to be granted for the military pay differential by:

1. Dividing the employee's total monthly pay (excluding pay received while assigned to a combat zone, hardship duty pay, and family separation pay) earned during **active duty** by the number of standard work hours in the month to determine the military hourly pay rate for the month. That will need to be calculated each month, because the number of standard work hours may change from month to month.
2. Dividing the employee's monthly gross pay (including longevity pay, benefit replacement pay, and other forms of state pay) earned from **state employment** by the number of standard work hours in the month to determine the state hourly pay rate for the month. That will need to be calculated each month, because the number of standard work hours may change from month to month.
3. Calculating the difference between the employee's total **military pay** and the employee's total gross **state pay** for the month.
4. Dividing the difference between the employee's total military pay and the employee's total gross state pay for the month by the employee's state hourly rate to determine how many emergency leave hours need to be granted.

Example

- An employee earns \$2,000 per month in **military pay on active duty** (excluding pay provided while serving in a combat zone, hardship duty pay, and family separation pay).
- The employee's gross **state pay** is \$2,723 per month.
- In the month of February 2017, there were 160 work hours (20 workdays multiplied by 8 work hours).

Calculations

- The average hourly rate for the employee's military pay is \$12.50 (\$2,000 divided by 160 hours).
- The average hourly rate for the employee's gross state pay is \$17.02 (\$2,723 divided by 160 hours).
- The pay difference per month is \$723 (the employee's total military pay minus the employee's total gross state pay).
- The employee would be granted 42.48 hours of emergency leave to make up for the difference in pay (\$723 divided by the state hourly rate of \$17.02).

Questions and Answers

1. Question: Should any other military pay or allowances be included as military pay in determining the pay differential?

Answer: For purposes of determining military differential pay, Texas Government Code, Section 661.9041, specifically excludes only pay received while serving in a combat zone, hardship duty pay, and family separation pay from the calculation used to determine the pay differential. All other military pay should be included.

2. Question: What geographic areas are currently considered combat zones?

Answer: A full list of the current combat zones is available on the Internal Revenue Service's Web site at <http://www.irs.gov/uac/Combat-Zones>.

3. Question: Is hostile fire pay/imminent danger pay considered combat zone pay?

Answer: Yes, if the employee serves in a combat zone, then hostile fire pay/imminent danger pay is considered combat zone pay and would be excluded when computing military pay for the purpose of calculating the pay differential in accordance with Texas Government Code, Section 661.9041.

4. Question: The language in statute that discusses pay differential refers only to state agencies; does that mean that higher education institutions are excluded?

Answer: Higher education institutions are not excluded. However, Texas Government Code, Section 661.901 (c), states that to be eligible for military pay differential the employee must meet the following criteria:

- (1) Is employed to work at least 20 hours per week for a period of at least four and one-half months; and
- (2) Is not employed in a position for which the employee is required to be a student as a condition of the employment.

5. Question: Can an agency require employees to use their other leave accruals before granting them differential pay (emergency leave) to make up the difference in state and military pay?

Answer: No, an agency cannot require employees to use their vacation and sick leave accruals before going on an unpaid leave of absence for military leave and, therefore, being eligible for differential pay (emergency leave). However, employees may choose to use all or some portion of their vacation leave or state compensatory leave prior to going on leave without pay while on military leave.

Definitions

Combat zone (CZ) - Any area in which the U.S. Armed Forces are engaging or have engaged in combat. An individual serving in a designated combat zone area could receive hostile fire pay or imminent danger pay. Those pays should be considered combat zone pay for the purpose of determining military pay differentials.

Family separation allowance (FSA) - Extra compensation paid during extended periods of family separation. The allowance amount is determined by the U.S. Department of Defense.

Hardship duty pay (HDP) - Extra compensation paid to service members located where living conditions are substantially below those conditions in the continental United States. The amount of extra compensation is based on the location as determined by the U.S. Department of Defense.

Hostile fire pay/imminent danger pay (HFP/IDP) - Paid to service members serving within an officially declared hostile fire/imminent danger zone. This pay is determined by the U.S. Department of Defense.

Military leave - Leave granted to state employees to attend authorized training or duty of Texas military forces or any reserve component of the U.S. Armed Forces. Other situations in which military leave are authorized include the activation of the State's National Guard by the governor and a national emergency activation for members of a reserve branch of the U.S. Armed Forces. Military leave is provided by the State in accordance with Texas Government Code, Sections 437.202 and 661.904.

Military pay - The pay and allowances received by military personnel, including base pay, special pay, and other allowances.

Military pay differential - Pay that the State uses to supplement employees' military pay through the use of emergency leave. This differential allows employees to receive pay that is comparable to the state gross pay received prior to military activation.

Helpful Related Resources

Title 10, United States Code:

<http://uscode.house.gov/view.xhtml?path=/prelim@title10&edition=prelim>

Title 32, United States Code:

<http://uscode.house.gov/view.xhtml?path=/prelim@title32&edition=prelim>

Military Compensation Background Papers, Compensation Elements and Related Manpower Cost Items, Seventh Edition, November 2011, U.S. Department of Defense:
http://militarypay.defense.gov/Portals/3/Documents/Reports/MC_All-Combined.pdf

Military Pay and Allowances Policy, Army Regulation 37-104-4, June 8, 2005, U.S. Department of the Army:

http://www.apd.army.mil/epubs/DR_pubs/DR_a/pdf/web/r37_104_4.pdf