

Subject: Adoption of State Police Commission Rules 8.12; 11.26 (a) through (f); 13.27(a), (b), and (c) and 13.28

Pursuant to the provisions of State Police Commission Rule 2.10(a), the State Police Commission will hold a public hearing on May 16, 2002, to consider adoption and/or repeal and reenactment of State Police Commission Rules 8.12 (a) and (b); 11.26 (a) through (f); 13.27(a), (b), and (c) and 13.28. The hearing will begin at 9:00 a.m. in the Conference Room, Eleventh Floor, Wooddale Towers Building, 1885 Wooddale Boulevard, Baton Rouge, Louisiana.

Chapter 8

Certification and Appointment

8.12 Restoration of Duty Upon Return from Military Service.

Any employee, who subsequent to June 24, 1948, has left or leaves a classified position in which he was or is serving with provisional, probationary or permanent status, for active duty in the armed forces of the United States for not more than six years of voluntary service or an indefinite period of involuntary service and who upon separation from the armed forces of the United States by honorable discharge or under honorable conditions makes application for re-employment within ninety days thereof or within ninety days after he is released from hospitalization continuing after discharge for a period of not more than one year shall:

(a) If still qualified to perform the duties of such position, be restored by the department to such position or to a position of like seniority, status and pay; or

(b) If not qualified to perform the duties of such position by reason of disability sustained during such service but qualified to perform duties of any other position in the department where he formerly worked be restored to such other position the duties of which he is qualified to perform as will provide him like seniority, status and pay or the nearest approximation thereof consistent with the circumstances in his case.

Chapter 11

Hours of Work, Annual, Sick and Other Forms of Leave

11.26 Military Leave.

The provisions of this rule shall apply to members of a Reserve Component of the Armed Forces of the United States who are called to duty for military purposes, and to members of National Guard Units which are called to active duty as a result of a non-local or non-state emergency.

(a) Military Leave With Pay.

1. Provided they give advance notice, employees serving on a job appointment, provisional, probationary or permanent status, shall be entitled to military leave with pay.

2. No advance notice is required when such notice is either precluded by military necessity, or otherwise impossible or unreasonable.

3. Maximum military leave with pay for military purposes is fifteen (15) working days per calendar year.

(b) Use of Annual and Compensatory Leave for Military Purposes.

1. Employees serving on job appointment, provisional, probationary or permanent status, who give advance notice of military obligations and apply for annual or compensatory leave for military purposes, shall be granted such leave.

2. No advance notice is required when such notice is either precluded by military necessity, or otherwise impossible or unreasonable.

(c) Use of Leave Without Pay for Military Purposes.

Employees serving on job appointment, provisional, probationary or permanent status, who have either exhausted annual leave and compensatory time or choose not to use their paid leave for military purposes, shall be placed on leave without pay. This period of leave without pay for military purposes shall not exceed six years. After six years, he/she shall be separated from the classified service. This rule does not extend the term of temporary appointments which were made for less than six years; if the original term of the appointment was less than six years, the agency may end the appointment as originally scheduled and the employee may be separated.

(d) Rights Upon Return.

Provisional, probational and permanent employees and employees serving on job appointments returning to their classified positions under the provisions of this Rule or Rule 8.12, which governs time frame requirements for restoration to state employment, shall return with such seniority, status, pay, and annual and sick leave accrual rates as they would have had if they had not been absent for military training or military active duty; however, both provisional and probational status shall be governed by the provisions of Rule 9.4.

(e) The provisions of this section of the rule apply to employees serving on job appointment, provisional, probationary or permanent status, who are called to active duty, and who are on Leave Without Pay by choice or because all annual and/or compensatory leave has been exhausted. The provisions of this rule shall apply retroactively to September 11, 2001. The provisions of this subsection shall NOT apply to employees on "inactive duty for training" (i.e., week-end drills.)

1. When Military Leave with Pay, as provided in Rule 11.26(a) has been exhausted, an employee whose military base pay is less than his state base pay, shall be paid the difference between his military base pay and his state base pay in his regular position. Such payment shall be made on the same frequency and manner as the employee's regular state pay, unless other voluntary arrangements are made. Employees receiving the pay differential shall provide to the appointing authority any documentation appropriate to ensure the payment amount is calculated correctly. Employees who choose to use their annual leave during their period of military absence shall not be eligible for receipt of the pay differential. Unless the leave was used between September 11, 2001, and the date of the adoption of this rule, in which case sub-paragraph (4) shall apply.

2. Employees shall continue to accrue sick and annual leave for the entire period of service, beginning the date of the service. Leave shall be accrued on the same basis as though the employee had not been activated. Leave earned shall be credited to the employee upon his return from active duty.

3. Employees who are on Leave Without Pay shall receive, each calendar year, the full fifteen (15) days of Military Leave with Pay provided for in Rule 11.26(a). The pay differential allowed in Rule 11.26(e)1, shall be suspended until the fifteen (15) day Military Leave with Pay period is exhausted and the employee returns to Leave Without Pay status.

4. If paid leave has been used during any portion of service from September 11, 2001, through the date of adoption of this rule, an employee who chooses to use the pay differential option shall have his leave balance re-credited with a leave amount equal to the value of the pay differential the employee would have received had this rule been in effect on September 11, 2001.

(f) A probationary or permanent employee, who was called to active duty for military purposes, and who resigned from state service may, at his request, and within ninety (90) days of his release from active duty, have his resignation rescinded and become eligible for the benefits of sub-section (e) of this rule.

Chapter 13

Appeals and Hearings

13.27 Action Required Following Commission's Decision.

(a) Following the granting of an appeal of a termination, and within fifteen (15) calendar days from the date of the mailing of the decision, the appellant shall present ready for work at the time and place of their employment as it existed prior to the termination. Appellant shall be returned by the appointing authority to the regular payroll at that time. Appellant shall at that time, or as soon thereafter as possible, present to the appointing authority satisfactory proof of all wages earned and unemployment compensation received, if any, during the period of appellant's termination.

If no wages or unemployment compensation have been so received, appellant shall present a written and signed statement to that effect to the appointing authority upon their return. Within fifteen (15) days following receipt of such information, the appointing authority shall deliver to the human resources office a request for such disbursement. The human resources office shall promptly cause such disbursement. The appointing authority shall otherwise comply with the orders contained in the decision. Further, within thirty (30) days from receipt by the appellant of the back pay due, appellant, at their sole option, may repurchase all or part of the annual leave balance they held at the time of termination, the value of which was paid at the time of termination, pursuant to Rule 11.10(a). All of the above shall apply unless otherwise stayed by a court of competent jurisdiction.

(b) Following the granting of the appeal of a suspension, demotion or reduction in pay, and within fifteen (15) calendar days from the date of the mailing of the copy of the decision to all parties or as soon thereafter as possible, the appellant shall present to the appointing authority satisfactory proof of all wages earned and unemployment compensation received, if any, during the period of suspension. If no wages or unemployment compensation have been received, appellant shall present to the appointing authority a signed statement to that effect. Within fifteen (15) days from receipt of such proof of written statement, the appointing authority shall deliver to the human resources office a request for such disbursement. The human resources office shall promptly cause such disbursement. The appointing authority shall otherwise comply with the orders contained in the decision.

(c) In the event all or part of the decision granting an appeal is stayed by a court of competent jurisdiction, the time limits specified herein shall begin to run upon the date the decision of the judiciary in the case presented to it becomes final.

13.28 Mediation.

(a) The Commission, or a referee, may direct the attorneys and the parties in an appeal to participate in medication to attempt to resolve the appeal before a hearing.

(b) Any member of the Commission or the Referee may conduct the medication.

(c) The Mediator's role is to facilitate communication among the parties at the mediation. The mediator will not later influence, participate in, or make any decision on any issue in the appeal. The Mediator will not issue any orders or sanctions pertaining to the mediation of the appeal.

(d) Before the mediation, the attorneys must confer with their clients about the client's goals and expectations from settlement. The attorneys and every person whose authority is necessary for settlement must appear at the mediation (or, at the discretion of the Mediator, available by telephone), on time and prepare to negotiate.

(e) The Commission, or a referee, presiding over the appeal may order the attorneys and/or the parties to bring to, or exchange before the mediation, a witness and exhibit list, relevant documents and/or exhibits, a proposed settlement offer, and anything else that will aid in resolving the appeal.

(f) The mediation will not be open to the public and will remain confidential.

(g) If anyone fails to comply with an order pertaining to the mediation, the Commission, or a referee, presiding over the appeal may order appropriate sanctions. Those sanctions may include punishing for contempt, dismissing the appeal or portions of it, reversing the action appealed or portions of it, and assessing costs and attorney's fees against the non-complying person.

The revision to Rules 8.12 and 11.26 are necessary for compensating employees serving in the military as a result of the actions which took place on September 11, 2001. These military rules also will now include provisional employees. Rule 11.26 also allows for the payment of the difference in salary between base pay and military pay. Rule 13.27 was omitted from the previous revision of Chapter 13. Rule 13.28 provides for the more efficient management of cases on the docket of the State Police Commission.

Please review this proposal and furnish, in writing, by May 6, 2002 any comments which you consider pertinent. If you would like to appear before the Commission and present your comments orally, you are invited to do so. You must notify this office by May 6, 2002 of your intention to address the Commission, in order to be placed on the agenda.

Please post this General Circular in a prominent place, so that all employees will receive notice of these public meetings. If any special accommodations are needed, please notify us prior to the meeting date.

Sincerely,

Debra Johnson
Director