

Florida National Guard/Public Employees & Officials

Number: AGO 92-64

Date: January 04, 1996

Subject:

Florida National Guard/Public Employees & Officials

The Honorable Lawton Chiles
Governor of Florida

RE: MILITARY LEAVE–NATIONAL GUARD–PUBLIC OFFICERS AND EMPLOYEES–PUBLIC EMPLOYMENT–public employees and officials called to active state duty in the Florida National Guard limited to seventeen days of paid leave of absence during any one continuous period of time; this does not preclude recalling the Florida National Guard for an additional separate period of time during an annual period. s. 250.48, F.S.

QUESTION:

Are public employees and officials who are members of the Florida National Guard entitled to leaves of absence with pay for more than seventeen days in an annual period when called to state duty pursuant to Ch. 250, F.S.?

SUMMARY:

Section 250.48, F.S., limits the number of days of absence without a loss of pay for active state duty by a public employee or official in the Florida National Guard to seventeen during any one continuous period of time. This does not, however, appear to preclude recalling the Florida National Guard for an additional separate period of time during an annual period.

This question arises due to a perceived disparity in leave provisions for public employees and officials in the National Guard and the reserves of the armed forces called to active military service pursuant to ss. 115.09 and 115.14, F.S., and those public employees and officials in the Florida National Guard called to active state duty pursuant to Ch. 250, F.S.

Section 250.48, F.S., provides:

"Any officer or employee of the state, of any county of the state, or of any municipality or political subdivision of the state who is a member of the Florida National Guard is entitled to leave of absence from his respective duties, without loss of pay, time, or efficiency rating, on all days during which he is engaged in *active state duty, field exercises, or other training ordered under the provisions of this chapter*. However, a leave of absence without loss of pay, granted under the provisions of this section, *may not exceed 17 days at any one time.*" (e.s.)

Thus, the provisions in s. 250.48, F.S., pertain only to state-ordered duty under Ch. 250, F.S.[1] For purposes of Ch. 250, F.S., "[t]he troops ordered into the service of the state for the

enforcement of the law, the preservation of the peace, or for the security of the rights or lives of citizens, protection of property, or ceremonies shall be deemed to be in active service." [2]

Chapter 115, F.S., however, governs both armed forces reserves and the National Guard called to active military service of the United States during war between the United States and a foreign government. [3] The term "active military service," as used in Ch. 115, F.S., signifies "active duty in the Florida defense force or federal service in training or on active duty with any branch of the Army of the United States, the United States Navy, the Marine Corps of the United States, the Coast Guard of the United States" [4]

Section 115.09, F.S., controls leaves of absence for active military service by all officials of the state, the several counties of the state and the municipalities or political subdivisions of the state, including district school and community college officers. It provides that "the first 30 days of any such leave of absence to be with full pay." The same rights and privileges are extended to employees of the specified entities. Employing authorities may "supplement the military pay of its officials and employees who are reservists called to active military service for the first 30 days with full pay and, thereafter, in an amount necessary to bring their total salary, inclusive of their base military pay, to the level earned at the time they were called to active military duty." [5]

These statutes have separate areas of operation. Sections 115.09 and 115.14, F.S., apply only to active military leave as specified above and may not be used to extend the leave benefits of public officials and employees who have been called to active state duty in the Florida National Guard.

When public employees or officials are ordered to active duty pursuant to Ch. 250, F.S., such persons are entitled under s. 250.48, F.S., to leave with pay for a period not to exceed seventeen calendar days at any one time. The limitation is placed on the number of continuous days of leave and is not confined to an annual period. [6] Thus, employees and officials ordered to active state duty are not limited to a maximum number of days which may be taken intermittently during an annual period. [7] It would appear, therefore, that such persons would be entitled to leave with pay for additional days of service, as long as such service does not exceed seventeen continuous days at any one time.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/t

[1] See AGO's 86-22 and 74-26.

[2] Section 250.27, F.S.

[3] See s. 115.01, F.S.

[4] Section 115.08, F.S.

[5] Section 115.14, F.S.

[6] *Cf.* AGO 86-22 (grant of paid leave of absence for National Guard training ordered pursuant to federal military regulations, contained in s. 115.07, F.S., is limited to seventeen working days in any one annual period).

[7] See Informal Advisory Opinion to Mr. Robert L. Hamilton, January 15, 1991.