

N.D.A.G. Letter to Sagsveen (Nov. 5, 1990)

November 5, 1990

Murray G. Sagsveen
COL, JAGC, NDARNG
Staff Judge Advocate
Office of the Adjutant General
P.O. Box 5511
Bismarck, ND 58502-5511

Dear Colonel Sagsveen:

Thank you for your October 22, 1990, letter concerning paid military leave for members of the North Dakota National Guard.

Your request for an opinion raises two issues under the provisions of N.D.C.C. § 37-01-25 granting to public service employees certain leave advantages when ordered by appropriate authority to active noncivilian employment. You first ask whether an individual who has been called to active military service by the President of the United States pursuant to 10 U.S.C. § 673(b), would be entitled to 30 days paid military leave although he does not have 90 days of continuous service with a specific political subdivision.

N.D.C.C. § 37-01-25 provides, in relevant part:

All officers and employees of this state or of a political subdivision thereof who:

1. Are members of the national guard;
2. Are members of the armed forces reserve of the United States of America;
3. Shall be subject to call in the federal service by the president of the United States; or
4. Shall volunteer for such service,

when ordered by proper authority to active noncivilian employment, are entitled to a leave of absence from such civil service for the period of such active service without loss of status or efficiency rating. If such persons have been in the continuous employ of the state or political subdivision for ninety days immediately preceding the leave of absence, they shall receive twenty workdays each calendar year without loss of pay. In addition, any leave of absence necessitated by a full or partial mobilization of the reserve and national guard forces of the United States of America, or emergency state active duty, must be without loss of pay for the first thirty days thereof less any other paid leave of absence which may have been granted during

the calendar year pursuant to this section.

The benefits allowed to an employee of a political subdivision ordered to active noncivilian employment under N.D.C.C. § 37-01-25 are essentially threefold. First, an employee ordered to active noncivilian employment is "entitled to a leave of absence from such civil service for the period of such active service without loss of status or efficiency rating." The employee would be entitled to such a leave of absence regardless of whether that person has 90 days of continuous employment with the political subdivision preceding the leave of absence.

Second, if an employee has 90 days of continuous employment with the political subdivision and is ordered by proper authority to active noncivilian employment, that employee is to "receive twenty workdays each calendar year without loss of pay." An employee who does not have 90 days of continuous employment with the political subdivision is not entitled to receive the 20 workdays each calendar year during that person's leave of absence. This provision appropriately refers to an employee who is called upon to perform active military service for training purposes which may be required under N.D.C.C. § 37-01-29.

Third, an employee is entitled to receive paid military leave for the first thirty days during "any leave of absence necessitated by a full or partial mobilization of the reserve and national guard forces of the United States of America." Thus, if an employee, who does or does not have 90 days of continuous service, was ordered to active military service necessitated by a full or partial mobilization, or emergency state active duty, that employee would be entitled to paid military leave for the first 30 days of the person's leave of absence less any other paid leave of absence which may have been granted pursuant to N.D.C.C. § 37-01-25. This provision appropriately refers to an employee who is called by the President of the United States to perform active military service based upon a partial or full mobilization of the reserves and National Guard forces to respond to an emergency situation or when called by the Governor of our state to perform active military service as provided under N.D.C.C. § 37-01-04.

This interpretation is consistent with the principle of liberal construction espoused by the North Dakota Supreme Court in Snell v. Mapleton Public School Dist. No. 7, 222 N.W.2d 852, 853 (N.D. 1974). Consistent with this interpretation, the school district for which the individual last worked would be obligated to compensate that individual pursuant to N.D.C.C. § 37-01-25.

I hope that this information will be helpful.

Sincerely,

Nicholas J. Spaeth

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