

National Guard and Reserves: Differential Pay Program Upon Activation

This information brief describes the Differential Pay Program enacted in 2003, which was intended to minimize the financial impacts for state and local government employees who, as members of the Minnesota National Guard or other military reserve units, have been ordered into active military service.

Pay Differential Legislation

Pay differential laws were initially enacted by the 1991 Legislature immediately following the first Gulf War, partially repealed in 1997, and then re-enacted with some changes by the 2003 Legislature. There are two separate statutes governing salary differential payments to activated reservists and National Guard members: one dealing with state employees, and the other with local government (including school district) employees. Both Minnesota Statutes, sections [43A.183](#) and [471.975](#), are described below.¹ For background information on the activation of the National Guard and reserves, see [page 3](#).

State Government

[Minnesota Statutes, section 43A.183](#), pertains to state government employees, and is mandatory.² It directs state agencies to pay a *salary differential* (without actually using that term) to each state employee who is a member of the Minnesota National Guard or other military reserve unit, and

who is ordered to active military service and incurs some loss of income as a result of that activation. The amount to be paid is calculated as the difference between the person's *basic active duty military salary* and the salary the person would be paid as an active state employee, including any adjustments the person would have received if not on military leave of absence.

Basic Military Pay

The legislature intended the term *basic active duty military salary* to mean the person's *basic military pay* only, without consideration of any allowances, stipends, and other benefits the person might receive during active military service (e.g., travel, food, housing, separation, and other allowances, as well as hostile fire pay, combat pay, etc.). The stated rationale for considering only the soldier's basic military pay is that any additional allowances and special duty pay a soldier receives is clearly intended to offset some of the actual additional expenses and risks that a person incurs when actively serving in the military, which should thus not be regarded as normal compensation, particularly during wartime.

Payments must be made at the regular intervals that the person was previously paid by the state (usually bi-weekly, or monthly). The person must have been an employee of the state at the time of reporting for active military service.

Active Military Service

Active military service is defined inclusively as:

- *state active service* as ordered by the governor (e.g., for natural emergency responses, missing person searches, state worker strikes, etc.);
- *federally funded state active service* under U.S.C. Title 32 (e.g., for airport security duty or other national service within Minnesota); and
- *federal active service* under U.S.C. Title 10 (e.g., for foreign wars and peacekeeping missions, or service in the United States or elsewhere abroad for these or other national missions).

Excluded, however, is service exclusively for training purposes (e.g., summer camp, special courses, etc.).

Other Benefits

In addition, the state agency must continue the employee's enrollment in health and dental coverage and the employer contribution toward that coverage, until the employee is covered by health and dental coverage provided by the Armed Forces (which typically occurs immediately upon reporting for active military service; hence, this benefit continuation is typically only for the few days between the person's last day of state work and the first day of military service). In addition, if the employee had elected dependent health or dental coverage as of the time that the employee reported for active service, the

agency must offer the employee the option to continue that dependent coverage at the employee's own expense. The agency must also permit the employee to continue participating in any pre-tax account at the employee's expense.

The effective date of this statute was May 29, 2003, and it applies *prospectively* to any state employee ordered to active military service. Thus, a state employee activated into the military prior to that date would be eligible, but only for salary differential incurred on or after the effective date of the bill. Generally, payment may not extend beyond four years of military duty, plus any additional time that the person's military service has been involuntarily extended.

To reiterate, [Minnesota Statutes, section 43A.183](#), pertains only to state government agencies, and it requires payment of the salary differential to eligible state employees. In contrast, the following discussion relates to local government agencies, which are authorized, but not required, to pay a salary differential.

Local Units of Government

[Minnesota Statutes, section 471.975](#), was enacted in 1991 during the first Gulf War.³ This statute *authorizes, but does not require*, local units of government (i.e., "a statutory or home rule charter city, county, town, school district, or other political subdivision") to pay a salary differential to their citizen-soldier employees who are ordered to active military service. The qualifying criteria for an employee are identical to those of the program for state government employees described above. The concept of salary differential is also similarly defined with reference to the member's *basic active duty military salary* (excluding any adjustments and special duty pay). Finally, the maximum term of any payment to qualified local government employees is the same as under the state government program.

Beyond those considerations, however, the statute provides any participating local unit of government complete discretion in structuring and administering its own pay differential and/or benefit continuation program.

Activation of National Guard and Military Reserves

Ever since the terrorist attacks on the World Trade Center in New York City and the Pentagon on September 11, 2001, the U.S. military has been stretched thin in the nation's worldwide war on terrorism. Following the sustained U.S. military troop reductions throughout the 1990s, the present war on terrorism comes at a time of relatively low personnel strength for the nation's standing military forces.⁴

Consequently, the nation has had to rely on state National Guard and other military reserve forces more than at any time since the Korean War of the early 1950s. Though the vast majority of U.S. troops involved in the invasion of Afghanistan in 2002 and of Iraq in 2003 were regular (full-time) military forces, many of the occupation and replacement forces have been activated

citizen-soldiers.⁵ Guard and reserve forces are even more represented among U.S. peacekeeping troops serving in the Balkans following the breakup of Yugoslavia during the mid-to-late 1990s.

Minnesota has approximately 12,000 National Guard members (roughly 10,000 Army Guard, and 2,000 Air Guard), as well as nearly 6,000 members of other military reserve units (i.e., Army, Navy, Marines, and Air Force).⁶ Roughly 3,000 to 4,000 of those citizen-soldiers have been ordered into active military service over the past few years, some more than once, and more than 1,000 of them are already slated to be activated early in 2004.

Currently, about 1,100 Minnesota National Guard members are serving as peacekeepers in Bosnia,⁷ while another 1,100 will soon be performing a similar role in Kosovo.⁸ Hundreds more members of the Minnesota National Guard have already been activated for deployment to Iraq,⁹ where hostilities continue and where American soldiers are still being killed or injured. Other Minnesota Guard and reserve personnel face serious danger, albeit generally on a lower scale, while providing security for reconstruction efforts in Afghanistan.

Minnesota's citizen-soldiers come from all walks of life. However, the National Guard and other reserves are not entirely representative of Minnesota's population. The recent requirements for a high school diploma and excellent health status have excluded many of the very poorest Americans from serving in the military (which was previously a major institutional avenue for racial integration and upward mobility).¹⁰

Nevertheless, studies have shown that working class youth, in particular, are disproportionately represented among all of the nation's military forces. According to the Minnesota Department of Military Affairs (DMA), most of their recruits join with both a sense of patriotism and an interest in the college tuition reimbursement program funding currently offered by the state. Others are merely interested in supplementing their income while beginning to raise their young families or starting small businesses. These, then, are the citizen-soldiers that the legislature intended to assist through the state's pay differential program when they are ordered to active military service.

Salary Differential Programs in Practice

The state of Minnesota has no centralized database indicating how many state employees are currently receiving salary differential pay or the amounts being received. The fiscal note prepared for the 2003 legislation suggests that there are currently approximately 500 citizen-soldiers in the state workforce,¹¹ and that as many as 100 or so of them per year may be currently serving in active military duty. That note predicts that most, but not all, of those employees would likely be experiencing some salary loss while on active duty.

With regard to local units of government, participation data is even more sketchy. Various news reports over the past year have noted that several counties and many large and medium sized cities throughout the state have some form of pay differential program for their citizen-soldiers.

However, due perhaps to misinformation until recently being provided by the Minnesota School Boards Association, very few school districts have had pay differential programs.¹² Perhaps more school districts are creating such programs now that information is being disseminated indicating that under state statutes since 1991, school districts indeed are legally authorized to provide differential pay to their activated citizen-soldiers, just as is every other political subdivision in the state.

Private Employers

During the discussion of the 2003 legislation re-enacting the pay differential program for state employees, the authors noted that one intended result of the legislation was to provide an example and a model that would hopefully encourage local governments and private industries to follow suit. It would appear that this goal is rapidly being achieved.

In addition to the growing number of local government programs supporting activated citizen-soldier employees, numerous private employers throughout the state and nation have also implemented or expanded pay differential programs for their own activated citizen-soldier employees. The National Committee for Employer Support of the Guard and Reserves (ESGR), notes on its web page that many employers have recently expanded their pay differential and medical coverage policies for reserve and National Guard members called to active duty. The ESGR web page posts a list of hundreds of participating employers, noting that all of them are going beyond minimum legal requirements in providing such pay and benefits to their activated citizen-soldier employees (see: <http://www.esgr.org/employers2/default.asp>).

*For more information about military affairs, visit our web site,
www.house.mn/hrd/issinfo/vetmil.htm.*

Endnotes

¹ For the actual text of Minnesota Statutes, see: www.revisor.leg.state.mn.us/stats/43A/183.html and www.revisor.leg.state.mn.us/stats/471/975.html.

² This concept of differential pay for activated citizen-soldiers who are governmental employees was initially enacted in 1991, immediately following the first Gulf War. However, the statute targeting state employees was repealed in 1997, before being re-enacted with modifications in 2003. The statute targeting local government employees, on the other hand, has stayed in effect continuously since 1991, with clarifying amendments enacted in 2003.

³ This statute was amended with clarifying language by [Laws 2003, ch. 123](#) (H.F. 294, Rep. Eastlund, et al.).

⁴ During the 1990s, following the collapse of the Soviet Union and end of the Cold War in 1989, the U.S. Armed Forces were reduced from approximately 2 million to 1.4 million personnel. According to “The Case for Rebuilding U.S. Armed Forces,” a January 2002 report prepared by Rep. Duncan Hunter, Chair of the House Subcommittee on Military Research and Development, between 1990 and 2002, U.S. military units declined in number as follows: Army divisions, from 18 to 10; Fighter Wings, from 24 to 13; Navy Ships, from 546 to 314. Current U.S. active duty military strength stands at approximately 1.4 million personnel, with 480,000 of these Army personnel.

With nearly 900,000 personnel, National Guard and other military reserve forces currently compose roughly 40 percent of the nation’s military forces. Since September 11, 2001, over 300,000 of those citizen-soldiers have been activated nationally, with over 200,000 currently serving in active duty.

These developments have stimulated a sharp debate within the Defense Department (DOD) and the Army over whether to increase the size of the active duty forces (particularly Army forces), with Army Deputy Chief of Staff General John Keane, for example, arguing that the service needs more infantry troops, military police, chemical-biological specialists, and other soldiers, but with DOD Secretary Donald Rumsfeld and Air Force General Richard Meyers, chairman of the Joint Chiefs of Staff, resisting any increase as unnecessary and too expensive. (“Rumsfeld Cautious on Increasing Size of U.S. Military,” Reuters News Service, Aug. 5, 2003.)

⁵ According to a spokesman for the Army’s 81st Armored Brigade, currently deploying from Ft. Lewis, Washington, by the time the brigade reaches Iraq in March 2004, it is expected that approximately 40 percent of all U.S. forces in Iraq will by then be National Guard and other reserve troops (i.e., over 40,000 of the 110,000 total, down from 130,000 currently).

⁶ Minnesota’s number of National Guard and reserve troops falls about 25 percent short of a proportionate share nationally, based on state population.

⁷ Minnesota’s 34th Infantry Division, a National Guard unit, has been the command and control unit for the 12,000-member (7,000 U.S.) NATO peacekeeping force in Bosnia, following the 1995 Dayton peace accords. The current commanding general himself is a Minnesota citizen-soldier who was ordered into active service for this role.

⁸ The 1,100 Minnesota National Guard members slated for duty in Kosovo have already been mobilized and are currently in final training at Ft. Stewart, Georgia.

⁹ Currently, approximately 100 Minnesota Army National Guard members are serving in Iraq, with another 75 Air Guard members serving elsewhere in the theatre of operations. This number will soon increase to about 450 total, with deployments underway for 150 men from D. Btry, 216th ADA Btn. (from Monticello) joining the 81st Armored Brigade at Ft. Lewis, Washington; 100 men from E. Btry, (artillery acquisition, from Anoka) deploying from Camp McCoy, Wisconsin; and another ten or so personnel soon leaving for Iraq from Appleton, as well. This does not account for any members of other reserve forces from Minnesota who may also be currently serving in Iraq or elsewhere abroad.

¹⁰ All branches of the military now require new recruits to have a high school diploma. This contrasts with the Vietnam War era, when reportedly well over half of the soldiers and marines in many combat infantry units had not graduated from high school.

¹¹ This includes those in the executive (including the Department of Military Affairs), legislative, and judicial branches, as well as MnSCU.

¹² For example, an announcement in the newsletter of the Association of Minnesota School Boards published just a few months ago erroneously stated that, according to the association's legal counsel, school districts are NOT authorized to provide, and in fact prohibited from providing, salary differential payment to their employees upon military activation. At that time, House Research contacted the association and informed them of their legal counsel's error in interpreting state statutes. A more recent association newsletter did not directly correct that earlier error, but noted that there are now two school districts with pay differential programs for employees who have been activated into military service. With that news, other school districts no doubt now realize that they indeed do have such discretionary authority under state law, and perhaps some of them might be moving to implement such programs, as well.