

**STATE AUDITOR'S OFFICE**  
**LEAVE INTERPRETATION 98-06<sup>1</sup>**

TO: Human Resources Directors  
DATE: August 1, 1998  
SUBJECT: Whether an employee may receive paid leave for duty with the National Guard if the leave exceeds 15 days.

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**Question:**

May an employee receive paid leave for duty with the National Guard, as called by the Governor, if the leave exceeds 15 days?

**Answer:**

An employee who is in the National Guard and is called to active duty by the Governor is entitled to paid emergency leave for the time that the employee is on active duty. This time is not limited and does not count against military leave or annual leave.

Texas Government Code, Section 661.903, states that a state employee is called to state active duty as a member of the state military forces by the Governor because of an emergency is entitled to a leave of absence without a deduction in salary in accordance with Section 431.0825.

Texas Government Code, Section 431.0825, identifies National Guard active duty service as emergency leave:

A state employee called to state active duty as a member of the state military forces by the governor is entitled to receive paid emergency leave without loss of military leave under Section 431.005 (a) or annual leave.

Texas Government Code, Section 431.005 (a), states:

(a) A person who is an employee and who is a member of the state military forces, a reserve component of the armed forces, or a member of a state or federally authorized Urban Search and Rescue Team is entitled to a paid leave of

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<sup>1</sup> This is an updated version of this State Auditor's Office Leave Interpretation. It was updated in 2011 to primarily reflect statutory changes. The previous version can be found at [http://www.hr.sao.state.tx.us/Statutes/LI98-06\\_old.html](http://www.hr.sao.state.tx.us/Statutes/LI98-06_old.html).

absence from the person's duties on a day on which the person is engaged in authorized training or duty ordered or authorized by proper authority for not more than 15 workdays in a federal fiscal year. During a leave of absence, the person may not be subjected to loss of time, efficiency rating, personal time, sick leave, or vacation time.

All military leave, other than active duty in the National Guard as called by the Governor, is subject to a maximum of 15 days leave per federal fiscal year. Therefore, a state employee who is called by the Governor to state active duty in the National Guard is entitled to unlimited emergency leave as long as the employee is on active duty.