

DRAFT

MEMORANDUM

TO: _____

FROM: Hinman Straub P.C.

RE: Military Leave Calculation 30/22

DATE: _____

NYSCOPBA's Veterans and Military Affairs Committee asked us to review dozens of grievances regarding DOCS' calculation of military leave. A majority of the grievances allege that DOCS should not count a member's regular days off ("RDOs") or pass days against the total allotment of leave provided for under the law. Based on this review, there seems to be some confusion regarding the benefit provided for under the law.

Under Military Law § 242:

Every public officer or employee shall be paid his salary or other compensation as such public officer or employee for any period and all periods of absence while engaged in the performance of ordered military duty, and while going to and returning from such duty, *not exceeding a total of thirty days or twenty-two working days, whichever is greater*, in any one calendar year and not exceeding thirty days or twenty-two working days, whichever is greater, in any one continuous period of such absence. (Emphasis added)

"Calendar days" under this provision includes both RDOs and work days. As such, under Military Law § 242, DOCS is able to count RDOs against the "calendar day" calculation while also maintaining a "work day" calculation. This is done simultaneously until the member receives the better benefit of the two calculations.¹ Additionally, the calculation does not begin until the first

¹Directive 2212(VI)(D) explains this calculation. Specifically, it states, "Paid military leave is chargeable on either a calendar day or work day basis, depending on which results in a greater benefit to the employee . . . absences for ordered military duty shall be charged as paid military leave until the employee has reached *both* 22 work days and 30 calendar days."

DRAFT

day the military orders coincide with the employee's scheduled work day. For example, if a member turns in military orders for a two week period, he could be charged 14 *calendar* days and 10 *work* days of military leave depending on how the days fall during that period. Regardless of the number of calendar days charged, however, members are guaranteed a minimum of 22 *work* days of military leave per year.

Here, members have filed grievances under Articles 3 and 27 of the Agreement, claiming that pass days cannot be charged against military leave under Military Law § 242. Since Section 242 clearly allows calendar days, i.e., RDOs, to be counted as military leave, grievances alleging a violation of this statute do not have merit.

Understandably, the amount of time made available by DOCS for military leave continues to be a major concern for NYSCOPBA members who are enlisted in the reserves or national guard. Currently, our Legislative Department in conjunction with NYSCOPBA's Legislative Department and the Veterans and Military Affairs Committee are pursuing an amendment to the statute to increase the number of days to 52 work days and 60 calendar days (from 22 work days and 30 calendar days).

During the 2002 legislative session, legislation (A.1489) passed the Assembly (132-0) but remained in the Senate Committee on Rules (S.370). Because 2002 is the second year of a two year elective term for members of the legislature, all bills not signed into law during 2002 must be re-introduced in 2003 in order to be acted upon. According to Chris Leo of NYSCOPBA's Legislative Department, this will be one of the key pieces of legislation that NYSCOPBA, together with Hinman Straub's Legislative Department, will be pursuing in the next legislative session. Chris Leo also reminds each interested member to contact his/her local Senator to express support for the bill.

Again, under Military Law § 242, DOCS has the right to calculate RDOs as "calendar days" in a member's allotted military leave. Since this is clearly permitted under the statute, any grievance challenging such practice is without merit. The only way to obtain a better benefit for members who are enlisted in the reserves or national guard is to amend Military Law § 242. Currently, NYSCOPBA is pursuing a bill in the New York State Legislature that will increase the number of days allotted for approved military leave. This would increase the benefit from 22 work days and 30 calendar days to 52 work days and 60 calendar days. This bill is presently with the Senate's Committee on Rules and will remain a priority for the legislative departments of both NYSCOPBA and Hinman Straub as well as NYSCOPBA's Veterans and Military Affairs Committee.

Finally, NYSCOPBA's Veterans and Military Affairs Committee, together with attorneys from our office, continue to pursue other important issues for members who are veterans and who are enlisted in the reserves or national guard. These include issues such as negotiating a

DRAFT

possible extension of the Memorandum of Understanding ("MOU") on supplemental military leave, training leave at reduced pay and continued health coverage. The Committee will keep affected members posted on any new developments.

If you have questions regarding any topic mentioned in this memo, please feel free to contact NYSCOPBA's Veterans and Military Affairs Committee, Chris Leo of NYSCOPBA's Legislative Department, Bill Sheehan, Keith Jacques or Natalie Carraway at Hinman Straub.