

## **IC 36-8-5**

### **Chapter 5. Police and Fire Leaves of Absence**

#### **IC 36-8-5-1**

##### **Application of chapter**

Sec. 1. (a) This chapter applies to the following:

- (1) All municipalities.
- (2) A county having a consolidated city that establishes a consolidated law enforcement department under IC 36-3-1-5.1.

(b) Section 2 of this chapter applies to any other political subdivision that employs full-time, fully paid firefighters.

*As added by Acts 1981, P.L.309, SEC.54. Amended by P.L.227-2005, SEC.38; P.L.1-2006, SEC.574.*

#### **IC 36-8-5-2**

##### **Leaves of absence; authorization; duration; renewal; compensation**

Sec. 2. (a) The police chief or fire chief may be granted a leave of absence by the authority who appointed the police chief or fire chief. This appointing authority may also grant a leave of absence to any other full-time, fully paid police officer or firefighter.

(b) A leave of absence under subsection (a) shall be granted for service in the Indiana general assembly. A leave of absence under subsection (a) may also be granted for service in any other elected office or for one (1) of the following reasons:

- (1) Sickness.
- (2) Disability.
- (3) Sabbatical purposes.

However, a leave of absence because of disability may not be granted to a member of the 1977 fund under this subsection unless a leave granted under subsection (g) has expired without disability benefits having been paid from the 1977 fund. In the case of such an expiration, a leave for purposes of disability may be granted under this subsection but only until the member's eligibility for disability benefits is finally determined.

(c) Before a leave of absence may be granted for sabbatical purposes, the member must submit a written request explaining and justifying the leave to the appointing authority. Sabbatical purposes must be related to the improvement of the member's professional performance and skills, such as education, special training, work related experience, and exchange programs.

(d) This subsection applies to leaves of absence granted under subsection (b)(1), (b)(2), or (b)(3). A leave of absence may extend for a period of not more than one (1) year, determined by the appointing authority, and may be renewed upon written request of the member.

(e) This subsection applies to leaves of absence granted for service in an elected office. A police officer or firefighter who serves in the general assembly shall be granted a leave for the time spent in this service, including the time spent for committee or legislative council meetings. Except as provided in IC 3-5-9, a police officer or firefighter who serves in any other elected office may be granted a

leave for the time spent in this service. Leave for service in an elected office does not diminish a police officer's or firefighter's rights under the police officer's or firefighter's retirement or pension fund, except as provided in section 10 of this chapter, or advancement on the police officer's or firefighter's department salary schedule. For these purposes, the police officer or firefighter is, despite the leave, considered to be a member of the department during that time.

(f) This subsection applies to leaves of absence granted under subsection (b)(1), (b)(2), or (b)(3). A member on leave may receive compensation in an amount determined by the appointing authority, up to a maximum amount that equals the member's salary before the leave began.

(g) This subsection applies only to members of the 1977 fund. The local board may grant a leave of absence for purposes of disability to full-time, fully paid police officers or firefighters (including the police chief or fire chief). The leave is subject to the following conditions:

(1) The police chief or fire chief must make a written determination that there is no suitable and available work on the appropriate department for which the fund member is or may be capable of becoming qualified.

(2) The leave must be approved by the local board after a hearing conducted under IC 36-8-8-12.7.

(3) The leave may not begin until the police officer or firefighter has exhausted all paid leave for sickness.

(4) The leave shall continue until disability benefits are paid from the 1977 fund. However, the leave may not continue for more than six (6) months.

(5) During the leave, the police officer or firefighter is entitled to receive compensation in an amount equal to fifty percent (50%) of the salary of a first class patrolman or first class firefighter on the date the leave begins.

Payments of compensation under this subsection may not be made from the 1925 fund, the 1937 fund, the 1953 fund, or the 1977 fund.

(h) Determinations under subsection (g) are not reviewable by the board of trustees of the Indiana public retirement system.

(i) This subsection applies to leaves of absence granted under subsection (a) or (b). An appointing authority shall establish a policy in writing that specifies whether a police officer or firefighter is entitled, during a leave of absence, to participate in any promotional process or earn seniority. A policy established under this subsection is subject to a department's existing disciplinary procedures. An appointing authority shall reinstate a police officer or firefighter returning from a leave at the merit or permanent rank determined under the policy established under this subsection. However, except as otherwise provided by federal law, an appointing authority is not required to reinstate a police officer or firefighter in the job that the police officer or firefighter held at the time the police officer's or firefighter's leave began.

*As added by Acts 1981, P.L.309, SEC.54. Amended by P.L.362-1983,*

*SEC.1; P.L.311-1989, SEC.1; P.L.130-2008, SEC.2; P.L.35-2012, SEC.109; P.L.135-2012, SEC.11.*

### **IC 36-8-5-3**

#### **Military service; temporary leave of absence**

Sec. 3. (a) An active member of a regularly organized police or fire department who is:

(1) taken into military service by induction, enlistment, or commission or assigned by the government for war work during a national emergency declared by the president of the United States or during armed hostilities in which the United States is engaged; and

(2) temporarily absent from the department;

is considered to be a continuing member of the department on a temporary leave of absence. The records of the department must show the member in this status.

(b) Subsection (a) does not apply to a member who enlists or reenlists when no emergency or war has been declared.

*As added by Acts 1981, P.L.309, SEC.54.*

### **IC 36-8-5-4**

#### **Military leaves; overtime to cover vacancies**

Sec. 4. The safety board and the police and fire chiefs may require members of the police and fire departments to work overtime to cover the vacancies created by members on temporary leave of absence under section 3 of this chapter. For overtime work the police officers and firefighters shall be compensated at a rate of pay not exceeding the amount that would have been paid the regular members had they not left for military service or been assigned to government war work.

*As added by Acts 1981, P.L.309, SEC.54.*

### **IC 36-8-5-5**

#### **Military leaves; use of temporary employees to cover vacancies**

Sec. 5. (a) If, in the judgment of the executive, overtime work by the regular police officers or firefighters under section 4 of this chapter does not meet the requirements for public safety in the municipality, the safety board and the police and fire chiefs may employ persons temporarily. However, if there is an established merit system, eligibility lists for appointment or promotion in effect must be used in the selection of personnel before other temporary or permanent appointments. These persons shall be employed as temporary employees and are not members or beneficiaries of any pension fund under this article. All temporary employees' service terminates at the expiration of the emergency.

(b) Temporary employees and overtime work shall be paid out of the unexpended appropriations for salaries of those on temporary leave of absence under section 3 of this chapter.

*As added by Acts 1981, P.L.309, SEC.54.*

### **IC 36-8-5-6**

#### **Military leaves; salary appropriations for absent employees**

Sec. 6. A municipality shall make a sufficient appropriation in its salary personnel budget appropriations for the police and fire departments for all members on temporary leave of absence under section 3 of this chapter. The personnel budget may not be reduced so as to make it impossible to absorb members who have returned from temporary leave.

*As added by Acts 1981, P.L.309, SEC.54.*

### **IC 36-8-5-7**

#### **Military leaves; pension considerations**

Sec. 7. (a) The monthly assessments against the salary of a member of a 1925, 1937, 1953, or 1977 fund shall be waived while the member is on temporary leave of absence under section 3 of this chapter or on a leave of absence that qualifies for the protections afforded by the Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. 4301 et seq.).

(b) A member of a 1925, 1937, 1953, or 1977 fund does not lose his benefits from the fund because he fails to pay assessments that are assessed against him while on temporary leave or on a leave of absence that qualifies for the protections afforded by the Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. 4301 et seq.).

(c) Notwithstanding any provision of this chapter, a member of the 1925, 1937, 1953, or 1977 fund is entitled to service credit and benefits in the amount and to the extent required by the Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. 4301 et seq.).

*As added by Acts 1981, P.L.309, SEC.54. Amended by P.L.5-1997, SEC.14.*

### **IC 36-8-5-8**

#### **Reinstatement after termination of military service**

Sec. 8. (a) A police officer or firefighter desiring to return to service in the police or fire department shall report to the person responsible for regulating and employing members of the department. This action must be taken within sixty (60) days after honorable discharge from military service or government war work.

(b) Within fifteen (15) days after the police officer or firefighter reports to the department, the police officer or firefighter shall be placed on duty at the rank held at the time of entering military service or government war work.

(c) If a member of the police or fire department is refused a proper assignment under subsection (b), he may file an action in the circuit court of the county in the manner prescribed by IC 36-8-3-4.

*As added by Acts 1981, P.L.309, SEC.54.*

### **IC 36-8-5-9**

#### **Evidence of member's death**

Sec. 9. Death notices from the department of defense or other satisfactory proof of death are bona fide evidence of a member's death. This evidence constitutes full authority for the local board of a fund to carry out the law regarding deceased police officers and firefighters and their beneficiaries.

*As added by Acts 1981, P.L.309, SEC.54.*

### **IC 36-8-5-10**

#### **Credit for time spent on leave**

Sec. 10. (a) Except as provided in subsection (b) or (c), a member on leave under either section 2 or section 3 of this chapter is entitled to be credited with time spent in full-time employment for all purposes, including retirement and pension benefits.

(b) A member of the 1925 fund, the 1937 fund, the 1953 fund, or the 1977 fund who is granted an unpaid leave of absence under the Family Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.) shall be credited with time spent on leave for the purposes of benefit eligibility and vesting to the extent required by the Family Medical Leave Act. The member shall not receive credit for purposes of accruing additional benefits, except to the extent required by the Family Medical Leave Act.

(c) This subsection applies to a member of the 1925 fund, the 1937 fund, the 1953 fund, or the 1977 fund who is granted a leave of absence for service in an elected office under section 2 of this chapter. In order to receive service credit in the 1925 fund, the 1937 fund, the 1953 fund, or the 1977 fund for the period of the leave of absence, the member must pay to the applicable fund for or during the leave the assessment or contribution that the member would have paid during the period of the leave had the member not been on the leave during that time. The member's employer may pay all or a part of the assessment or contribution for the member.

*As added by Acts 1981, P.L.309, SEC.54. Amended by P.L.213-1995, SEC.5; P.L.130-2008, SEC.3.*