§ 242. Rights of public officers and employees absent on military duty as members of the organized militia or of reserve forces or reserve components of the armed forces of the United States. 1. Definitions. (a) Public officer or employee. The term "public officer or employee", as used in this section, shall include every person, by whatsoever title, description or designation known, who receives any pay, salary or compensation of any kind from the state or a municipal corporation or any other political subdivision thereof, or who is in any department of the state or in the service of any public authority, but shall not include a person holding a position in the exempt class of the civil service whose appointment is terminated or whose position is filled by other than a substitute appointee.

(b) Ordered military duty. The term "ordered military duty", as used in this section, shall mean:

Any military duty performed in the service of the state or of the United States, including but not limited to attendance at any service school or schools conducted by the armed forces of the United States, by a public officer or employee as a member of any force of the organized militia or of any reserve force or reserve component of the armed forces of the United States, pursuant to orders issued by competent state or federal authority, with or without the consent of such public officer or employee. Participation in routine reserve officer training corps training is not considered to be military duty except when performing advanced training duty as a member of a reserve component of the armed forces.

2. Leave of absence while engaged in performance of ordered military duty. Every public officer or employee shall be entitled to absent himself and shall be deemed to have a leave of absence from his duties or service as such public officer or employee while engaged in the performance of ordered military duty and while going to and returning from such duty.

3. Leave of absence while attending service schools. Every public officer or employee who is or becomes a voluntary member of any force of the organized militia or of any reserve force or reserve component of

the armed forces of the United States shall be entitled to absent himself and shall be deemed to have a leave of absence from his duties or service as such public officer or employee while in attendance, as a member of such force or reserve components, at any service school or schools conducted by the armed forces of the United States, and while going to and returning from such school or schools, notwithstanding that orders for such attendance are or may be issued with the consent of such public officer or employee.

3-a. Leave of absence while performing full-time training duty or active duty for training with or in an armed force of the United States. Every public officer or employee who is or becomes a member of any force of the organized militia or of any reserve force or reserve component of the armed forces of the United States shall be entitled to absent himself and shall be deemed to have a leave of absence from his duties or service as such public officer or employee while performing, as a member of such force or reserve component, initial full-time training duty or initial active duty for training with or in an armed force of the United States under the provisions of this chapter or the laws of the United States or both, and while going to and returning from such full-time training duty or active duty for training, notwithstanding that orders for such duty are or may be issued with the consent of such public officer or employee.

4. Employment rights. Time during which a public officer or employee is absent pursuant to the provisions of subdivisions two, three and three-a of this section shall not constitute an interruption of continuous employment and, notwithstanding the provisions of any general, special or local law or the provisions of any city charter, no such officer or employee shall be subjected, directly or indirectly, to any loss or diminution of time service, increment, vacation or holiday privileges, or any other right or privilege, by reason of such absence, or be prejudiced, by reason of such absence, with reference to continuance in office or employment, reappointment to office, re-employment, reinstatement, transfer or promotion.

5. Pay for military duty. (a) Every public officer or employee shall

be paid his or her salary or other compensation as such public officer or employee for any 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.

(b) Every public officer or employee employed by the state of New York who served in a combat theater or combat zone of operations as documented by a copy of his or her DD214, certificate of release or discharge from active duty, or other applicable department of defense documentation, shall be paid his or her salary or other compensation as such public officer or employee for any and all periods of absence while utilizing any healthcare related services related to such duty, not exceeding five working days, in any one calendar year.

(c) Public officers or employees, as defined by paragraph (a) of subdivision one of this section, who are not employees of the state of New York and therefore not entitled to the benefits contained in paragraph (b) of this subdivision, who have served in a combat theater or combat zone of operations as documented by a copy of his or her DD214, certificate of release or discharge from active duty, or other applicable department of defense documentation, may be entitled to additional paid leave for health related services related to duty in a combat theater or combat zone of operations. The governing body of a municipal corporation may, in its sole discretion, adopt a resolution or local law providing for the payment of the salary or other compensation of such public officers or employees for any and all periods of absence while utilizing healthcare related services related to duty in a combat theater or combat zone of operations, not exceeding five working days, in any one calendar year. Any such local law or resolution adopted must apply to both combat theater veterans and combat zone of operations veterans employed by such public employer. Nothing in this paragraph shall be construed to diminish the rights, privileges, or remedies of any employee under any collective bargaining agreement.

5-a. Pay for employees of a city with a population of one million or more. This subdivision shall govern the calculation of compensation and,

where applicable, repayment of same by public officers or employees of a city with a population of one million or more who are engaged in the performance of ordered military duty, including time spent traveling to and returning from such duty. In any conflict between this subdivision and any other provision of law with respect to such public servant soldiers, this subdivision shall be controlling.

(a) Definitions. As used in this subdivision:

(i) "Base pay of city salary" means the base pay received by a public officer or employee from employment by a city. For public officers and employees who, prior to the effective date of this subdivision, elected to participate in a "full pay/repayment plan", have returned to city employment from ordered military duty as of the effective date of this subdivision and are, on the effective date of this subdivision, public officers or employees, the base pay of city salary shall be calculated by the implementing agency as the salary received by the public servant soldier as of the effective date of this subdivision or the date of return to city service, whichever is later.

For public officers and employees who, prior to the effective date of this subdivision, elected to participate in a "full pay/repayment plan" and who return to city employment from ordered military duty after the effective date of this subdivision, the base pay of city salary shall be calculated on the date of return to city employment.

For public officers and employees who, prior to the effective date of this subdivision, elected to participate in a "full pay/repayment plan" and who have, by the effective date of this subdivision, already separated from city employment in a manner other than by retirement, and except where the implementing agency shall determine the existence of hardship, the base pay of city salary shall be calculated as the salary received by the public servant soldier as of the date of separation from city service.

For public officers and employees who, prior to the effective date of this subdivision, elected to participate in a "full pay/repayment plan" and who separate from city employment in a manner other than retirement after the effective date of this subdivision, and except where the

implementing agency shall determine the existence of hardship, the base pay of city salary shall be calculated as the salary received by the public servant soldier as of the date of return to city service.

(ii) "Balloon payment" means the payment required for full satisfaction of any remaining outstanding repayment obligation after ten years from the date of return from ordered military duty pursuant to paragraph (e) of this subdivision.

(iii) "City" means a city with a population of one million or more.

(iv) "City salary" means the gross salary received by a public officer or employee from employment by a city, before taxes, deductions, or court-ordered payments, required or voluntary; but excluding payments by a city as employer for health, pension, and other benefits.

(v) "Covered operation" means those military operations designated by the federal government of the United States, in support of "Operation Enduring Freedom", "Operation Iraqi Freedom", "Operation Noble Eagle", or successors thereto, or operations specifically connected by federal designation, action or implication with homeland security. The implementing agency may make such additional designations on a case-by-case basis as it shall deem, in its discretion, to be in keeping with the spirit and intent of this subdivision.

(vi) "Differential pay" means the pay calculated as the difference between a public servant soldier's military salary and city salary, where the military salary is less than the city salary.

(vii) "Full pay/repayment plan" means a salary and benefits plan in effect in a city prior to the effective date of this subdivision whereby a public servant soldier elected to receive city salary while on military duty, but is required to repay the lesser of such city salary or military salary to a city upon return from military duty.

(viii) "Implementing agency" means an agency of a city, as designated by the mayor of such city in writing, that is authorized to implement the provisions of this subdivision.

(ix) "Military salary" means the gross salary paid by the government of the United States to a public servant soldier for ordered military duty in the armed forces of the United States in a covered operation, as further defined by the implementing agency, provided that such military pay shall be calculated without regard to such extra or additional stipends as hazard pay, housing or food allowances, or other similar

additions.

(x) "Public officer" or "employee" means a public officer or an employee of a city.

(xi) "Public servant soldier" means a public officer or employee of a city performing ordered military duty in connection with a covered operation.

(b) The mayor of a city shall designate an agency of such city to be the implementing agency that will administer and implement this subdivision. The implementing agency is hereby authorized to and shall:

(i) provide for the continuation of health insurance benefits, to the public servant soldier and to such public servant soldier's family, if the family had been included in such coverage prior to the public servant soldier beginning ordered military duty, under the same terms and conditions as applied to such public servant soldier prior to leaving city employment for ordered military duty; and

(ii) provide for hardship under certain conditions determined by the implementing agency for public servant soldiers who elected to participate in a "full pay/repayment plan". Such conditions shall include, but shall not be limited to, any material unforeseen or compelling changes in circumstances affecting a public servant soldier's ability to repay that occurred since such public servant soldier elected to participate in the "full pay/repayment plan," including but not limited to injuries sustained while on ordered military duty, or a determination by the implementing agency that the public servant soldier is or will be experiencing severe economic hardship due to a change in circumstances. Relief may include an extension of the repayment term or a reduction in the percentage of salary dedicated to repayment, or a modification to the requirement for a balloon payment. Such determinations of economic hardship may be made on a case-by-case basis, and the implementing agency may require the provision of such information by the public servant soldier as it deems necessary to make such determination.

(c) Subdivision five of this section or any other law to the contrary notwithstanding, until August first, two thousand ten, unless the mayor of a city, in his or her discretion, extends such date, a public officer or employee shall be paid city salary as such public officer or employee for any 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 thirty working days in any one calendar year and not exceeding thirty working days in any one continuous period of such absence.

(d) Subdivision five of this section or any other law to the contrary notwithstanding, until August first, two thousand ten, unless the mayor of a city, in his or her discretion, extends such date, a public servant soldier shall, after having received the city salary to which he or she is entitled pursuant to paragraph (c) of this subdivision, be paid differential pay thereafter on his or her regularly scheduled pay period for the duration of such ordered military duty, if such ordered military duty is in connection with a covered operation. No repayment shall be required to the city for such differential pay received by a public servant soldier, provided that this prohibition on repayment shall not apply in the case of a material error in calculation that results in an unwarranted increase to the public servant soldier. Repayment of any such overage shall be governed by the terms of paragraph (e) of this subdivision.

(e) A public officer or employee who, prior to the effective date of this subdivision, elected to participate in a "full pay/repayment plan" and, in having done so, incurred a repayment obligation, shall make repayments in accordance with terms adopted by the implementing agency, except that, with respect to such repayment obligations, such officer or employee shall have satisfied the obligation to repay when he or she has repaid eighty-five percent of the amount of city salary or military salary, whichever is less, less other such discounts implemented by the implementing agency as of the effective date of this subdivision and such incentives as may be implemented by the implementing agency to encourage payment, and no such term shall:

(i) require a public officer or employee, while employed by such city, to pay in any pay period more than seven and one-half percent of his or her base pay of city salary toward satisfying his or her repayment obligation, except that a term may provide for full satisfaction of any remaining outstanding repayment obligation after ten years from the date of return from ordered military duty; or

(ii) require a retired public officer or employee to pay, in any month, an amount more than seven and one-half percent of his or her

monthly pension payment, except that a term may provide for full satisfaction of any remaining outstanding repayment obligation after ten years from the date of return from ordered military duty; or

(iii) require a public officer or employee separated from employment by such city in a manner other than by retirement, to pay, in any year, an amount more than seven and one-half percent of the base pay of city salary, except that a term may provide for full satisfaction of any remaining outstanding repayment obligation after ten years from the date of return from ordered military duty.

(f) Notwithstanding paragraph (e) of this subdivision, a city shall not require the satisfaction of any repayment obligation in the event that a public servant soldier is killed in the performance of ordered military duty.

6. Rights and contributions under retirement systems. (a) The amount of required contributions to any pension or retirement system of which a public officer or employee absent while engaged in the performance of ordered military duty is a member shall be deducted from the salary or other compensation paid to him as such public officer or employee as provided in this section. If such required contributions exceed the amount of such salary or other compensation to which a public officer or employee is entitled while engaged in the performance of military duty, the amount of such salary or other compensation shall be applied upon such required contributions and such public officer or employee shall have the right to pay to such pension or retirement system the amount by which such contributions exceed such salary or other compensation. Such public officer or employee shall also have the right to pay to such system, for any period of such absence during which he shall receive no salary or other compensation as such public officer or employee, the amount that he would have contributed to such system if he had been present and continuously engaged in the performance of the duties of his position during such period.

(b) Such payments, other than those deducted from his salary or other compensation as such officer or employee, may be paid from time to time at any time while engaged in such ordered military duty or within five years after the date of termination of such ordered military duty, or, in the event of the death of such public officer or employee while

engaged in ordered military duty, such payments, or any part thereof, may be made by the named beneficiary or the legal representative of such public officer's or employee's estate within one year following proof of such death.

(c) To the extent that such contributions are paid, absence while engaged in the performance of military duty shall be counted in determining the length of total service under such pension or retirement system.

(d) Any such public officer or employee, while engaged in the performance of ordered military duty, or his beneficiary, as the case may be, shall be entitled to all the benefits of the pension or retirement system of which he is a member except accidental disability retirement and accidental death benefit.