June 3, 2011

Dear City Recorder,

In my opinion, his length of employment with the City has no impact on his eligibility for the military pay, so the City should pay him.

This is the language found at T.C.A. 8-33-109:

All officers and employees of this state, or any department or agency thereof, or of any county, municipality, school district, or other political subdivision, and all other public employees of this state who are, or may become, members of any reserve component of the armed forces of the United States, including members of the Tennessee army and air national guard, shall be entitled to leave of absence from their respective duties, without loss of time, pay, regular leave or vacation, impairment of efficiency rating, or any other rights or benefits to which otherwise entitled, for all periods of military service during which they are engaged in the performance of duty or training in the service of this state, or of the United States, under competent orders; provided, that an officer or employee while on such leave shall be paid salary or compensation for a period, or periods, not exceeding twenty (20) working days in any one (1) calendar year, plus such additional days as may result from any call to active state duty pursuant to § 58-1-106. *The military leave herein provided shall be unaffected by date of employment or length of service* and shall have no effect on other leaves provided by law, regulation, policy or practice. After the twenty (20) working days of full compensation, any public employer may provide partial compensation to its employees while under competent orders.

Tenn. Code Ann. § 8-33-109 (emphasis added)

Due to the italicized language “*leave herein provided shall be unaffected by date of employment or length of service,”* I think the statute clearly states that it does not matter if the person has not completed their probationary period.

There is no AG Opinion or case on this, but the language is pretty clear.

I would advise the City to pay the officer for work he missed while attending National Guard training.

Let me know if you need more,

Melissa A. Ashburn

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