

## WEST VIRGINIA CODE: §15-2-28

### **§15-2-28. Credit toward retirement for member's prior military service; credit toward retirement when employee has joined Armed Forces in time of armed conflict; qualified military service.**

(a) For purposes of this section, the term "active military duty" means full-time active duty with the Armed Forces of the United States, namely the United States Air Force, Army, Coast Guard, Marines or Navy; and service with the National Guard or reserve military forces of any of the Armed Forces when the employee has been called to active full-time duty and has received no compensation during the period of the duty from any person other than the Armed Forces.

(b) Any member of the fund who has previously served on active military duty is entitled to and shall receive credit on the minimum period of service required by law for retirement pay from the service of the West Virginia State Police under the provisions of this article for a period equal to the active military duty not to exceed five years, subject to the following:

(1) That he or she has been honorably discharged from the Armed Forces;

(2) That he or she substantiates by appropriate documentation or evidence his or her period of active military duty;

(3) That he or she is not receiving credit from any other retirement system administered by the board for his or her active military duty; and

(4) That, except with respect to disability retirement pay awarded under section thirty of this article, he or she has actually served with the fund for twenty years exclusive of his or her active military duty.

(c) The amount of retirement pay to which any member is entitled shall be calculated and determined as if he or she had been receiving for the period of his or her active military duty a monthly salary from the agency equal to the average monthly salary which he or she actually received from the agency for his or her total service with the agency exclusive of the active military duty. The superintendent shall transfer and pay into the fund from moneys appropriated for the agency, a sum equal to eighteen percent of the aggregate of the salaries on which the retirement pay of all members has been calculated and determined for their periods of active military duty. In addition, any person who, while an employee of the agency was commissioned, enlisted or inducted into the Armed Forces of the United States or, being a member of the reserve officers' corps, was called to active duty in the Armed Forces between September 1, 1940, and the close of hostilities in World War II, or between June 27, 1950, and the close of the armed conflict in Korea on July 27, 1953, between August 1, 1964, and the close of the armed conflict in Vietnam, or during any other period of armed conflict by the United States whether sanctioned by a declaration of war by the Congress or

by executive or other order of the President, is entitled to and shall receive credit on the minimum period of service required by law for retirement pay from the service of the West Virginia State Police for a period equal to the full time he or she has or shall, pursuant to the commission, enlistment, induction or call, have served with the Armed Forces subject to the following:

- (1) That he or she has been honorably discharged from the Armed Forces;
- (2) That within ninety days after honorable discharge from the Armed Forces he or she has presented himself or herself to the superintendent and offered to resume service as an active employee of the agency; and
- (3) That he or she has made no voluntary act, whether by reenlistment, waiver of discharge, acceptance of commission or otherwise, to extend or participate in extension of the period of service with the Armed Forces beyond the period of service for which he or she was originally commissioned, enlisted, inducted or called.
- (d) That amount of retirement pay to which any employee is entitled shall be calculated and determined as if the employee has continued in the active service of the agency at the rank or grade to him or her appertaining at the time of the commission, induction, enlistment or call, during a period coextensive with the time the employee served with the Armed Forces pursuant to the commission, induction, enlistment or call. The superintendent of the agency shall transfer and pay each month into the fund from moneys appropriated for the agency a sum equal to eighteen percent of the aggregate of salary which all employees would have been entitled to receive had they continued in the active service of the agency during a period coextensive with the time the employee served with the Armed Forces pursuant to the commission, induction, enlistment or call: Provided, That the total amount of military service credit allowable under this section shall not exceed five years.
- (e) Notwithstanding any of the preceding provisions of this section, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code. For purposes of this section, "qualified military service" has the same meaning as in Section 414(u) of the Internal Revenue Code. The board may determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the board in section one, article ten-d, chapter five of this code, may promulgate rules relating to contributions, benefits and service credit to comply with Section 414(u) of the Internal Revenue Code.