



Military Salary Differential Pay

Internal Controls and Compliance Audit

December 2021

Financial Audit Division

OFFICE OF THE LEGISLATIVE AUDITOR

STATE OF MINNESOTA

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OFFICE OF THE LEGISLATIVE AUDITOR

STATE OF MINNESOTA • Judy Randall, Legislative Auditor

December 9, 2021

Members
Legislative Audit Commission

James Schowalter, Commissioner
Department of Management and Budget

This report presents the results of our internal controls and compliance audit of the state's payment of salary differential for reserve forces on active duty (commonly referred to as military salary differential pay), as required by *Minnesota Statutes* 2021, 43A.183, for the period July 1, 2015, through March 31, 2020. The objectives of this audit were to determine if the state had adequate internal controls over military salary differential payments and complied with significant finance-related legal requirements.

While this report encompasses many state entities as shown on page 6, we requested that the Department of Management and Budget (MMB) respond to this report. MMB did not agree with our second recommendation in Finding 1, as stated in their response on page 24. We have considered all additional information presented by MMB and believe the Legislature should still consider centralizing within MMB the determination of eligibility, calculation, and payment of military salary differential.

This audit was conducted by Tracy Gebhard, CPA (Audit Director); Tyler Billig, CPA (Senior Auditor); Scott Dunning (Senior Auditor); Erick Olsen (Senior Auditor); Sarah Olsen (Senior Auditor); Daniel Hade (Staff Auditor); Lisa Makinen, CPA (Staff Auditor); and Nick Anderson (Audit Intern).

We received the full cooperation of each state entity's staff while performing this audit.

Sincerely,

Lori Leysen, CPA
Deputy Legislative Auditor

Tracy Gebhard, CPA
Audit Director



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Introduction

The state pays employees in reserve forces who report to active service the difference between their state pay and active service pay.¹ This is commonly referred to as military salary differential pay. State statute details the specific eligibility requirements, provides instructions for the calculation, and identifies the frequency of payment.² The Department of Management and Budget is responsible for providing additional instruction to state entities to ensure compliance with state statute.³ It is the responsibility of each state entity to ensure it accurately and consistently determines eligibility and calculates and pays military salary differential to state employees.

The Office of the Legislative Auditor (OLA) conducted this audit to determine whether applicable state entities had adequate internal controls and complied with significant finance-related legal requirements to ensure that they accurately and consistently determined eligibility and calculated and paid military salary differential to state employees. We audited all military salary differential payments made by state entities from July 1, 2015, through March 31, 2020.

Internal controls are the policies and procedures management establishes to govern how an organization conducts its work and fulfills its responsibilities. A well-managed organization has strong controls across all of its internal operations. If effectively designed and implemented, controls help ensure, for example, that inventory is secured, computer systems are protected, laws and rules are complied with, and authorized personnel properly document and process financial transactions.

Minnesota Law Mandates Internal Controls in State Agencies

State agencies must have internal controls that:

- Safeguard public funds and assets and minimize incidences of fraud, waste, and abuse; and
- Ensure that agencies administer programs in compliance with applicable laws and rules.

The law also requires the commissioner of the Department of Management and Budget to review OLA audit reports and help agencies correct internal control problems noted in those reports.

— *Minnesota Statutes 2021, 16A.057*

Auditors focus on internal controls as a key indicator of whether an organization is well managed. In this audit, we focused on whether state entities had controls, such as the utilization of a calculation worksheet, to ensure that they accurately calculated military salary differential pay. We also reviewed the guidance and calculation worksheet developed by the Department of Management and Budget to assist state entities in the eligibility determination, calculation, and payment of military salary differential to state employees.

¹ Reserve forces include the National Guard or other reserve component of the United States armed forces and any other nonmilitary reserve component of the uniformed services of the United States, according to *Minnesota Statutes 2021, 43A.183, subd. 2(c)*.

² *Minnesota Statutes 2021, 43A.183*.

³ *Minnesota Statutes 2021, 43A.02, subd. 2*, clarifies that Chapter 43A applies to a “department, commission, board, institution, or other employing entity of the civil service, in which all positions are under the same appointing authority.” *Minnesota Statutes 2021, 43A.02, subd. 10*, defines “civil service” as “all employees in the legislative, judicial, and executive branches of state government.” *Minnesota Statutes 2021, 43A.183, subd. 6*, states: “This section does not apply to a judge, legislator, or constitutional officer of the executive branch.” *Minnesota Statutes 2021, 43A.183, subd. 5*.



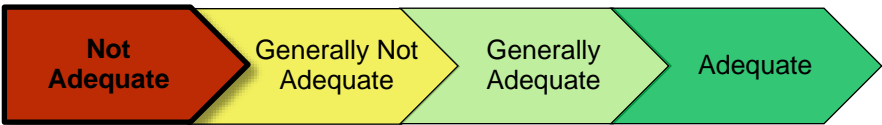
Report Summary

Conclusions

Internal Controls

OLA found that the internal controls developed by the Department of Management and Budget, such as the guidance and calculation worksheet, were not adequate to ensure state entities accurately and consistently determined eligibility and calculated and paid military salary differential to state employees, as required by state statute.⁴

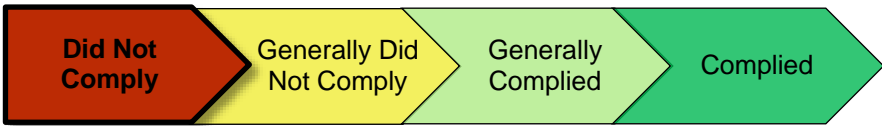
Internal Controls



Legal Compliance

OLA found that state entities did not comply with finance-related legal requirements regarding the eligibility, calculation, and payment of military salary differential to state employees.

Legal Compliance



Findings

	Internal Controls Not Adequate	Did Not Comply with Legal Requirements and State Policy
Finding 1. The Department of Management and Budget did not provide adequate guidance to state entities to ensure consistent and accurate eligibility determination, calculation, and payment of military salary differential to state employees. (p. 10)	✓	✓
Finding 2. The Minnesota Government Data Practices Act (MGDPA) does not directly classify personally identifiable information (such as names and employee identification numbers) of state employees as confidential or private data when associated with military service. (p. 16)		✓

⁴ Minnesota Statutes 2021, 43A.183, subd. 5.



Background

Military Salary Differential Overview and History

In 1991, the Legislature first enacted into law the payment of salary differentials for reserve forces on active duty, commonly referred to as military salary differential pay.⁵ The law was repealed in 1997.⁶ In 2003, the Legislature again enacted into law the payment of salary differentials for eligible reserve forces who report for active service.⁷ The law required state entities to pay each eligible member of the reserve components of the armed forces of the United States an amount equal to the difference between the member's basic active duty military salary and the salary the member would be paid as an active state employee.⁸ It further required the departments of Employee Relations and Finance, which were subsequently combined into the Department of Management and Budget (MMB), to adopt procedures required to implement this law.⁹

To comply with the law, in 2003, the former Department of Employee Relations issued a memo to all state entity payroll and human resources staff. The memo provided high-level instruction for the calculation of military salary differential pay.¹⁰ The former department issued another memo in 2006 highlighting changes to the calculation instructions it previously provided, along with a calculation worksheet, to all state entities.¹¹ In 2010, MMB revised the calculation worksheet, and in 2014, it issued a memo with general guidance and information on military salary differential pay, including instructions for determining eligibility and calculating payments.¹²

While MMB established general guidance, it is the responsibility of each state entity to accurately and consistently determine eligibility, and calculate and pay military salary differential in compliance with state statutes and MMB guidance.

⁵ Reserve forces include the National Guard or other reserve component of the United States armed forces and any other nonmilitary reserve component of the uniformed services of the United States, according to *Minnesota Statutes* 2021, 43A.183, subd. 2(c). *Laws of Minnesota* 1991, chapter 345, art. 1, sec. 68, codified as *Minnesota Statutes* 1991, 43A.182, and repealed in 1997.

⁶ *Laws of Minnesota* 1997, chapter 97, sec. 20.

⁷ *Laws of Minnesota* 2003, chapter 123, sec. 1, codified as *Minnesota Statutes* 2021, 43A.183.

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ Don Smith, Director of Statewide Payroll Services, former Department of Employee Relations, memorandum to Agency Payroll and Human Resources Staff, *Military Differential Pay*, June 16, 2003.

¹¹ Don Smith, Director of Statewide Payroll Services, former Department of Employee Relations, memorandum to Human Resources Directors/Designees, *Statute Changes to Military Differential Pay*, PERSL 1395, February 10, 2006.

¹² Department of Management and Budget, *Worksheet for Computing Pay Difference Between State and Military Base Pay*, last updated January 19, 2010. See Appendix A of this report for the calculation worksheet. Department of Management and Budget, Human Resources and Labor Relations General Memo #2014-5, *Military Leave*, December 1, 2014.

Military Salary Differential Pay Expenditures

From July 1, 2015, through March 31, 2020, 15 state entities paid over \$1.2 million in military salary differential to 83 employees, as shown in Exhibit 1.

Exhibit 1: Military Salary Differential Paid, July 1, 2015, through March 31, 2020

State Entity	Number of Employees Paid	Amount Paid
Departments of:		
Corrections	18	\$ 215,054
Employment and Economic Development	1	13,695
Human Services	7	63,635
Labor and Industry	1	23,837
Military Affairs	21	201,298
Public Safety	4	99,317
Revenue	2	9,878
Transportation	10	266,079
Veterans Affairs	1	862
Bureau of Mediation Services	1	27,407
Minnesota IT Services	9	211,705
Minnesota State Colleges and Universities	3	36,236
Public Defense Board	2	19,044
Supreme Court	2	24,733
Trial Courts	1	10,604
Total	83	\$1,223,384

NOTES: One employee received military salary differential pay when working as an employee at Minnesota IT Services and then the Department of Transportation. This employee is reflected in the count for both agencies and in the total.

SOURCE: State of Minnesota's accounting system.

Audit Scope, Objectives, Methodology, and Criteria

The Office of the Legislative Auditor (OLA) conducted this audit to determine if applicable state entities: (1) had adequate internal controls over their calculation of military salary differential pay, and (2) complied with significant finance-related legal requirements to ensure that they accurately and consistently determined eligibility and calculated and paid military salary differential to state employees. The audit scope included all military salary differential payments made by state entities from July 1, 2015, through March 31, 2020.

OLA designed its work to address the following questions:

- Did the state entity utilize a calculation worksheet when calculating military salary differential paid to state employees?
- Did the state entity accurately and consistently determine eligibility and calculate and pay military salary differential to state employees, as required by state statute?¹³

To answer these questions, OLA interviewed staff from each state entity that paid military salary differential during the period examined to gain an understanding of internal controls and compliance over eligibility determination, calculation, and payment. We performed the following testing to ensure state entities had adequate internal controls and complied with legal requirements.

We audited all military salary differential payments made by state entities during the time frame reviewed in our audit. This included 15 state entities and their payments to 83 state employees. We tested to ensure the state entity: (1) accurately and consistently determined member, service, and fiscal eligibility; (2) utilized the calculation worksheet; and (3) accurately and consistently calculated and paid the military salary differential pay on a biweekly basis.

We conducted this performance audit in accordance with generally accepted government auditing standards.¹⁴ Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We assessed internal controls against the most recent edition of the internal control standards, published by the U.S. Government Accountability Office.¹⁵ To identify legal compliance criteria for the activity we reviewed, we examined state and federal laws and guidance established by the Department of Management and Budget.

¹³ *Minnesota Statutes* 2021, 43A.183.

¹⁴ Comptroller General of the United States, Government Accountability Office, *Government Auditing Standards* (Washington, DC, December 2011).

¹⁵ Comptroller General of the United States, Government Accountability Office, *Standards for Internal Control in the Federal Government* (Washington, DC, September 2014). In September 2014, the State of Minnesota adopted these standards as its internal control framework for the executive branch.



Findings and Recommendations

Our audit identified (1) payments made to employees whose military service was not eligible for military salary differential pay, (2) significant errors in the calculation of military salary differential pay, and (3) payments made at intervals other than that specified by statute. Exhibit 2 shows the number of employees with errors and the amount of error calculated.

Exhibit 2: Military Salary Differential Pay Errors, July 1, 2015, through March 31, 2020

State Entity	Number of Employees with Ineligible Service	Number of Employees with Calculation Errors	Total Error Amount
Departments of:			
Corrections	9	18	\$101,810
Employment and Economic Development	0	1	693
Human Services	1	7	53,061
Labor and Industry	0	1	2,166
Military Affairs ^a	0	21	29,468
Public Safety	1	4	57,547
Revenue	0	2	1,097
Transportation	2	10	39,822
Veterans Affairs	0	1	35
Bureau of Mediation Services	0	1	2,770
Minnesota IT Services	3	8	38,595
Minnesota State Colleges and Universities	0	2	1,780
Public Defense Board	0	2	2,051
Supreme Court	1	2	1,710
Trial Courts	0	1	3,168
Total	17	81	\$335,773

NOTES: The total error amount is reported as an absolute value. We identified 31 employees who were overpaid \$194,803 and 50 employees who were underpaid \$140,970. Approximately \$165,712 of the total overpayments were made to 17 employees who had one or more instances of military service that was not eligible.

^a For one employee, the Department of Military Affairs did not retain any calculation worksheets. The total error amount reported for this employee (\$2,386) is for military salary differential payments from pay periods ending July 29, 2014, through January 12, 2016. Without the calculation worksheets, we were unable to determine the total error amount from the start of our audit scope (July 1, 2015) through January 12, 2016.

SOURCE: State of Minnesota's accounting system.

FINDING 1

The Department of Management and Budget did not provide adequate guidance to state entities to ensure consistent and accurate eligibility determination, calculation, and payment of military salary differential to state employees.

State statute requires the Department of Management and Budget (MMB) to adopt procedures to implement the military salary differential pay law.¹⁶ We identified many instances where the guidance provided by MMB was not adequate, as described below, which led to errors in determining eligibility, and in calculating and paying military salary differential to state employees.

Eligibility

Minnesota Statutes 2021, 43A.183, subd. 2(e), defines “active service” eligibility for military salary differential pay:

“Active service” has the meaning given in section 190.05, subdivision 5, for military members, and includes substantially comparable service for reserve members of other nonmilitary components of the uniformed services of the United States, but excludes service performed exclusively for purposes of:

- (1) basic training, advanced individual training, annual training, and periodic inactive duty training;
- (2) special training periodically made available to reserve members;
- (3) service performed in accordance with section 190.08, subdivision 3; and
- (4) service performed as part of the active guard/reserve program pursuant to United States Code, title 32, section 502(f), or other applicable authority, as well as substantially comparable service by members of other nonmilitary components of the uniformed services of the United States.

MMB memos have not supplemented this statutory language to provide additional clarification regarding what constitutes and how to determine “active service.” In addition, the MMB memos do not require military orders to confirm the purpose of the service.¹⁷

¹⁶ *Laws of Minnesota* 2003, chapter 123, sec. 1, codified as *Minnesota Statutes* 2021, 43A.183.

¹⁷ Department of Management and Budget, Human Resources and Labor Relations General Memo #2014-5, *Military Leave*, December 1, 2014; Don Smith, Director of Statewide Payroll Services, former Department of Employee Relations, memorandum to Human Resources Directors/Designees, *Statute Changes to Military Differential Pay*, PERSL 1395, February 10, 2006; and Don Smith, Director of Statewide Payroll Services, former Department of Employee Relations, memorandum to Agency Payroll and Human Resources Staff, *Military Differential Pay*, June 16, 2003. Only military orders consistently specify the purpose of the service.

When available, we requested and reviewed military orders to determine individuals' eligibility for differential pay.¹⁸ However, if an agency did not have the military orders, we did not consider the service to be ineligible unless other documentation explicitly stated that the service was for an ineligible purpose, as defined above.¹⁹

Some entities did not obtain military orders. When we asked why the military orders were not obtained, one entity cited federal provisions that a "service member...may give verbal notice" as the reason why they did not obtain military orders.²⁰ In some cases, entities did not consider the military orders and eligibility requirements when determining service eligibility. For example, three entities paid military salary differential even though employees submitted documentation that said they were participating in basic training, which is not eligible. Furthermore, some entities had difficulty understanding the orders and the eligibility requirements. Orders sometimes included contradictory information, varied depending upon the branch of military, and included acronyms. For example, one entity obtained an employee's military orders stating the purpose of service was to respond to a natural disaster but also included reference to annual training, which is ineligible. Two other entities did not correctly identify military orders, listing the purpose as "MOS," which is the same as advanced individual training and is ineligible.²¹

Calculation

Minnesota Statutes 2021, 43A.183, subd. 2(b), specifies how entities should calculate the military salary differential.

"Salary differential" means the difference between: (1) the person's monthly total gross earnings as an active state employee, excluding any overtime pay received but including all other earnings, averaged over the last three full months of the person's active state employment prior to reporting to active service, and including any additional salary or earnings adjustments that the person would have received at any time during the person's authorized leave from state employment had the person been serving as an active state employee during that time; and (2) the person's monthly base pay in active service.

In the following sections, we identify additional guidance provided by MMB and our interpretation of the applicable legal criteria, as related to specific statements within the statute mentioned above. In addition, we provide some examples of state entities' interpretations of or confusion about applicable legal criteria.

¹⁸ Of the 83 employees tested, state entities did not obtain military orders for 24 employees and did not obtain all active service orders for 3 additional employees.

¹⁹ Other documentation includes the Certificate of Release or Discharge from Active Duty form (DD214 form) and the leave and earnings statements.

²⁰ U.S. Department of Labor, Veterans' Employment and Training Service Fact Sheet 4, question 1, which asks whether an employer can "require an employee to fill out a standardized leave request form for their uniformed service time and submit it to the human resources department a certain number of days in advance of their absence to perform uniformed service."

²¹ "MOS" means military occupational specialty.

Monthly Total Gross Earnings

The 2014 memo does not provide any additional guidance or clarification on the calculation of monthly total gross earnings.²² However, in the 2006 memo, the former Department of Employee Relations instructed state entities to calculate the monthly total gross earnings by reviewing the employee's timesheets and calculating the earnings for each paid day for that month.²³ In addition, it provided state entities a calculation worksheet to use when determining the military salary differential pay.²⁴

When testing, we reviewed employee timesheets to obtain the hours worked and human resources transactions to obtain the compensation rate.

Entities used a variety of methods to calculate the employee's monthly total gross earnings. Some entities calculated monthly total gross earnings using the assumption that the employee worked eight hours a day, Monday through Friday. Another entity told us it received guidance from MMB to calculate monthly total gross earnings by summing the amount recorded in the state's accounting system for each pay check end date within the month, which contradicts the instructions in the 2006 memo.²⁵

All Other Earnings

In the 2003 memo, the former Department of Employee Relations required that state entities exclude from earnings calculations any differential pay, such as shift differentials.²⁶ In the 2006 memo, the department then instructed state entities to include all earnings except overtime and business expense reimbursements and to recalculate all differential payments made since 2003.²⁷ The 2014 memo mirrors the state statute and requires that all other earnings except overtime be included.²⁸

²² Department of Management and Budget, Human Resources and Labor Relations General Memo #2014-5, *Military Leave*, December 1, 2014.

²³ Don Smith, Director of Statewide Payroll Services, former Department of Employee Relations, memorandum to Human Resources Directors/Designees, *Statute Changes to Military Differential Pay*, PERSL 1395, February 10, 2006.

²⁴ Department of Management and Budget, *Worksheet for Computing Pay Difference Between State and Military Base Pay*, last updated January 19, 2010. See Appendix A of this report for the calculation worksheet.

²⁵ Don Smith, Director of Statewide Payroll Services, former Department of Employee Relations, memorandum to Human Resources Directors/Designees, *Statute Changes to Military Differential Pay*, PERSL 1395, February 10, 2006.

²⁶ Don Smith, Director of Statewide Payroll Services, former Department of Employee Relations, memorandum to Agency Payroll and Human Resources Staff, *Military Differential Pay*, June 16, 2003. A shift differential is additional pay an employee receives for hours worked outside of the normal work hours, as defined by the employee's bargaining unit agreement.

²⁷ Don Smith, Director of Statewide Payroll Services, former Department of Employee Relations, memorandum to Human Resources Directors/Designees, *Statute Changes to Military Differential Pay*, PERSL 1395, February 10, 2006.

²⁸ Department of Management and Budget, Human Resources and Labor Relations General Memo #2014-5, *Military Leave*, December 1, 2014.

We interpreted “all other earnings” to include everything except for overtime and any other earnings associated with overtime (such as shift differentials or weekend bonuses related to overtime hours worked). We did not consider achievement awards to be “earnings,” as this is an award given for outstanding performance.

Entities told us they did not know how to interpret “all other earnings” and what should be explicitly included or excluded. Some entities excluded shift differentials or included achievement awards. Other entities did not include or consider including any other earnings in the calculation.

Last Three Full Months Prior to Active Service

MMB memos do not provide additional guidance or clarification on how to identify the last three full months of the employee’s active state employment prior to reporting to active service.²⁹ However, the calculation worksheet states that these three months may be nonconsecutive and should occur prior to the employee leaving for active military duty.³⁰

We interpreted the “three full months” to mean those months in which the employee worked and did not use any unpaid leave.³¹ Furthermore, we interpreted the “prior to active service” to exclude the month in which the service or payment began, based on a review of military orders or leave and earnings statements, or both, when applicable.

Some entities had difficulty determining the start date because military orders included multiple dates or because the entity did not obtain updated orders. In addition, one entity used months when the employee received state pay, but without ensuring that the employee did not use any unpaid leave. This entity included months where the employee worked less than their normal 80 hours in a pay period.

Additional Salary or Earnings Adjustments

MMB memos do not provide additional guidance or clarification on additional salary or earnings adjustments.³² The calculation worksheet requires state entities to include any

²⁹ Department of Management and Budget, Human Resources and Labor Relations General Memo #2014-5, *Military Leave*, December 1, 2014; Don Smith, Director of Statewide Payroll Services, former Department of Employee Relations, memorandum to Human Resources Directors/Designees, *Statute Changes to Military Differential Pay*, PERSL 1395, February 10, 2006; and Don Smith, Director of Statewide Payroll Services, former Department of Employee Relations, memorandum to Agency Payroll and Human Resources Staff, *Military Differential Pay*, June 16, 2003.

³⁰ Department of Management and Budget, *Worksheet for Computing Pay Difference Between State and Military Base Pay*, last updated January 19, 2010. See Appendix A of this report for the calculation worksheet.

³¹ While an employee using unpaid leave is considered an active state employee, we interpreted a “full month” to mean a month where the employee did not use any unpaid leave. This interpretation would increase the amount of military salary differential pay the employee is eligible to receive.

³² Department of Management and Budget, Human Resources and Labor Relations General Memo #2014-5, *Military Leave*, December 1, 2014; Don Smith, Director of Statewide Payroll Services, former Department of Employee Relations, memorandum to Human Resources Directors/Designees, *Statute Changes to Military Differential Pay*, PERSL 1395, February 10, 2006; and Don Smith, Director of Statewide Payroll Services, former Department of Employee Relations, memorandum to Agency Payroll and Human Resources Staff, *Military Differential Pay*, June 16, 2003.

“percent increases the employee would have received if working.”³³ However, MMB did not design the calculation worksheet to prorate or compound percentage increases, and did not separate the earnings that should be included but were calculated at a fixed rate. We included all percentage increases recorded in the state’s accounting system, prorated increases that occurred in the middle of a state pay period, and compounded state increases for employees that received multiple increases. In addition, we separated earnings calculated at a fixed rate, such as shift differentials or weekend bonuses, to ensure that percentage increases were not applied to these earnings.

Entities did not always include all percentage increases. In some cases, the percentage increase was recorded in the state’s accounting system approximately a year after the effective date of the increase, and the state entity did not apply that increase retroactively. In addition, many entities applied the percentage increase to the entire pay period instead of prorating the increase based on the effective date. Many state entities did not compound percentage increases. Instead, some entities applied the sum of the percentage increase to the average “three full months” of state pay. For example, one entity added the employee’s cost of living increase of 3 percent to their performance increase of 2.5 percent (which the employee received one year later) and applied the 5.5 percent sum of the increases to the average “three full months” of state pay. Some entities applied percentage increases to earnings calculated at a fixed rate. For example, one entity included shift differential, which is calculated at a fixed rate, when calculating the average “three full months” of state pay and applied the percentage increase to that amount.

Monthly [Military] Base Pay in Active Service

Only the 2003 MMB memo required that state employees “must provide documentation [of base military pay] to the agency before the [differential] payment may be processed.”³⁴ The 2006 and 2014 memos did not provide any additional guidance or clarification.³⁵ However, it is not clear if the 2003 memo was provided to all state entities or should be considered formal guidance in addition to the other MMB memos.³⁶ Also, MMB did not design the calculation worksheet to allow for the proration of the military base pay.³⁷

³³ Department of Management and Budget, *Worksheet for Computing Pay Difference Between State and Military Base Pay*, last updated January 19, 2010. See Appendix A of this report for the calculation worksheet.

³⁴ Don Smith, Director of Statewide Payroll Services, former Department of Employee Relations, memorandum to Agency Payroll and Human Resources Staff, *Military Differential Pay*, June 16, 2003. The memorandum identifies pay stubs, which are called leave and earnings statements, as the documentation required before payment is processed.

³⁵ Department of Management and Budget, Human Resources and Labor Relations General Memo #2014-5, *Military Leave*, December 1, 2014; and Don Smith, Director of Statewide Payroll Services, former Department of Employee Relations, memorandum to Human Resources Directors/Designees, *Statute Changes to Military Differential Pay*, PERSL 1395, February 10, 2006.

³⁶ Don Smith, Director of Statewide Payroll Services, former Department of Employee Relations, memorandum to Agency Payroll and Human Resources Staff, *Military Differential Pay*, June 16, 2003.

³⁷ Department of Management and Budget, *Worksheet for Computing Pay Difference Between State and Military Base Pay*, last updated January 19, 2010. See Appendix A of this report for the calculation worksheet.

We reviewed the leave and earnings statements to determine individuals' military base pay. If the leave and earnings statements were not available for the duration of the individual's active service, we used the annual Defense Finance and Accounting Service (DFAS) military pay tables to determine the employee's base pay.³⁸ For any changes in base pay, we prorated the pay based on the effective date of the increase.

Some entities did not identify changes in military base pay because they did not obtain all leave and earnings statements for the duration of the military leave or did not use the DFAS tables. For those entities that did identify changes in military base pay, the entities did not prorate the increases using the effective dates.

One additional impact to the above sections is the employee's State of Minnesota work schedule. MMB memos have not provided additional guidance or clarification on the calculation for entities whose employees work in 24-hour facilities, such as at the departments of Corrections, Human Services, and Military Affairs as correctional officers, health care employees, and firefighters, respectively.³⁹ These employees do not always have a consistent work schedule, and, in order to correctly prorate state and military pay percentage increases, the employee's work schedule must be factored into the calculation.⁴⁰

Payment

Minnesota Statutes 2021, 43A.183, subd. 1, specifies how state entities must pay military salary differential.

Payments must be made at the intervals at which the member received pay as a state employee, except that any back pay due under this section may be paid as a lump sum.

Only the 2003 MMB memo required that state employees "must provide documentation to the agency before the payment may be processed."⁴¹ The 2006 and 2014 memos did not provide any additional guidance or clarification.⁴² However, it is not clear if the

³⁸ DFAS tables are military pay charts and can be found at: <https://www.dfas.mil/MilitaryMembers/payentitlements/Pay-Tables/PayTableArchives/>.

³⁹ Department of Management and Budget, Human Resources and Labor Relations General Memo #2014-5, *Military Leave*, December 1, 2014; Don Smith, Director of Statewide Payroll Services, former Department of Employee Relations, memorandum to Human Resources Directors/Designees, *Statute Changes to Military Differential Pay*, PERSL 1395, February 10, 2006; and Don Smith, Director of Statewide Payroll Services, former Department of Employee Relations, memorandum to Agency Payroll and Human Resources Staff, *Military Differential Pay*, June 16, 2003.

⁴⁰ One entity, the Department of Military Affairs, created its own calculation worksheet to account for its firefighters who work 24-hour shifts, including weekends. This worksheet contains all of the elements of the MMB calculation worksheet, but calculates the pay for each day of the month instead of a biweekly state pay period.

⁴¹ Don Smith, Director of Statewide Payroll Services, former Department of Employee Relations, memorandum to Agency Payroll and Human Resources Staff, *Military Differential Pay*, June 16, 2003.

⁴² Department of Management and Budget, Human Resources and Labor Relations General Memo #2014-5, *Military Leave*, December 1, 2014; and Don Smith, Director of Statewide Payroll Services, former Department of Employee Relations, memorandum to Human Resources Directors/Designees, *Statute Changes to Military Differential Pay*, PERSL 1395, February 10, 2006.

2003 memo was provided to all state entities or should be considered formal guidance in addition to the other MMB memos.⁴³

We reviewed military salary differential payments recorded in the state's accounting system to ensure payments were made biweekly, which is the interval state employees receive their pay.

Not all entities were aware of this requirement; some paid military salary differential monthly or as a lump sum upon the employee's return from active service. Another entity stated the requirement could not always be met because the location or type of active service prohibited the state employee from providing their leave and earnings statements monthly or bimonthly, depending on the military branch.

Without current and adequate guidance, state entities cannot consistently and accurately determine eligibility or properly calculate and pay military salary differentials to employees. State employees may not receive the pay they are entitled to by law, depending upon the state entity responsible for the calculation and payment of military salary differential.

RECOMMENDATIONS

- **The Department of Management and Budget should provide adequate guidance to ensure consistent and accurate eligibility determination, calculation, and payment of military salary differential to state employees.**
- **The Legislature should add statutory language requiring that employees submit military orders to document eligibility of the service prior to receiving military salary differential pay.**
- **The Legislature should consider centralizing within the Department of Management and Budget the determination of eligibility, calculation, and payment of military salary differential to ensure consistency.**

As part of this audit, we requested and received various documentation that included the names and identification numbers of individuals associated with military service, such as the Minnesota National Guard.

FINDING 2

The Minnesota Government Data Practices Act (MGDPA) does not directly classify personally identifiable information (such as names and employee identification numbers) of state employees as confidential or private data when associated with military service.

During our audit, a question arose as to whether the names and identification numbers of state employees who are associated with military service, such as the Minnesota National

⁴³ Don Smith, Director of Statewide Payroll Services, former Department of Employee Relations, memorandum to Agency Payroll and Human Resources Staff, *Military Differential Pay*, June 16, 2003.

Guard, are public data under the MGDPA. When we requested data from the 15 state entities we audited, they did not classify these data as not public. Later, the Department of Military Affairs (DMA) concluded that these data are not public. We take no position as to whether these names and identification numbers are public; however, without additional clarity, we have and will continue to classify these data as private.

In a legal opinion provided to us, DMA asserted that “foreign and domestic enemies could use members’ names (in conjunction with data mining techniques) to conduct vulnerability assessments implicating national and personal security issues.”⁴⁴

DMA contends that federal law and regulations, which protect these data, qualify under an MGDPA exception.⁴⁵ In addition, DMA argues that service members’ names and identification numbers could fall under the MGDPA’s security information category but that “it would be useful for the legislature to further clarify and delineate this term.”⁴⁶

RECOMMENDATION

The Legislature should clarify the law on the classification of personally identifiable information (such as names and employee identification numbers) of state employees when associated with military service.

⁴⁴ Justin K. Maehren, Legal Advisor, Minnesota National Guard, memorandum to Elizabeth Stawicki, Legal Counsel, Office of the Legislative Auditor, *Classification of Military Data Under the Minnesota Government Data Practices Act (MGDPA)*, October 19, 2020, 4.

⁴⁵ *Minnesota Statutes* 2021, 13.01, subd. 3. “[The MGDPA] establishes a presumption that government data are public...unless there is federal law, a state statute, or a temporary classification of data that provides that certain data are not public.” DMA cites, for example, 10 *U.S. Code*, sec. 130b (2021) (personally identifiable information may be withheld from public disclosure in connection with any member of the armed forces assigned to a routinely deployable unit).

⁴⁶ *Minnesota Statutes* 2021, 13.37, subd. 1(a). Justin K. Maehren, Legal Advisor, Minnesota National Guard, memorandum to Elizabeth Stawicki, Legal Counsel, Office of the Legislative Auditor, *Classification of Military Data Under the Minnesota Government Data Practices Act (MGDPA)*, October 19, 2020, 4.



List of Recommendations

- The Department of Management and Budget should provide adequate guidance to ensure consistent and accurate eligibility determination, calculation, and payment of military salary differential to state employees. (p. 16)
- The Legislature should add statutory language requiring that employees submit military orders to document eligibility of the service prior to receiving military salary differential pay. (p. 16)
- The Legislature should consider centralizing within the Department of Management and Budget the determination of eligibility, calculation, and payment of military salary differential to ensure consistency. (p. 16)
- The Legislature should clarify the law on the classification of personally identifiable information (such as names and employee identification numbers) of state employees when associated with military service. (p. 17)



Appendix A

DEPARTMENT OF MANAGEMENT AND BUDGET

WORKSHEET FOR COMPUTING PAY DIFFERENCE BETWEEN STATE AND MILITARY BASE PAY

Agency: _____
Employee Name: _____
Time Period: _____

LINE DESCRIPTION	EXAMPLE	ACTUAL
1. Base Military Pay (month).	\$ 2,000.00	_____
2. Gross pay for days in the third full month* prior to leaving for active military duty (excluding overtime).	\$ 2,250.03	_____
3. Gross pay for days in the second full month* prior to leaving for active military duty (excluding overtime).	\$ 2,175.75	_____
4. Gross pay for days in the last full month* prior to leaving for active military duty (excluding overtime).	\$ 2,310.15	_____
5. Average Monthly Gross State Pay* (add Employee's Gross Pay from steps 2, 3, and 4 and divide by 3).	\$ 2,245.31	_____
6. Percent increase/s (if any) employee would have received if working (leave blank if no increase would have been granted).	2%	_____
7. Average Monthly Gross State Pay After Increase.	\$ 2,290.22	_____
8. Line 7 minus Line 1.	\$ 290.22	_____
* If Line 1 is greater than Line 7, stop here, the employee is not eligible for the payment.		
* If Line 1 is less than Line 7, the employee is eligible for the payment.		
9. Annualized Difference Between State and Military Base Pay (Step 8, if greater than zero, multiplied by 12).	\$ 3,482.64	_____
10. Lump sum amount to be paid biweekly (step 9 divided by 26).	\$ 133.95	_____

* Note: When calculating the Average Monthly Gross State Pay, you may find that the last three full months worked are not consecutive months.





December 3, 2021

Judy Randall
Legislative Auditor
658 Cedar Street, Suite 140
St. Paul, MN 55155-4708

Dear Ms. Randall,

Thank you for the opportunity to review and respond to the findings and recommendations included in the Military Salary Differential Pay Internal Controls and Compliance audit conducted by your office. The OLA report highlights issues with military differential pay that we agree should be clarified to improve administration of this important benefit supporting our military personnel. On behalf of all of the state agencies included in the audit, thank you for your diligent work.

Finding 1:

The Department of Management and Budget did not provide adequate guidance to state entities to ensure consistent and accurate eligibility determination, calculation, and payment of military salary differential to state employees.

Recommendations:

The Department of Management and Budget should provide adequate guidance to ensure consistent and accurate eligibility determination, calculation, and payment of military salary differential to state employees.

The Legislature should add statutory language requiring that employees submit military orders to document eligibility of the service prior to receiving military salary differential pay.

The Legislature should consider centralizing within the Department of Management and Budget the determination of eligibility, calculation, and payment of military salary differential to ensure consistency.

Response:

The OLA report identifies areas of inconsistency of interpretation amongst state agencies that we agree should be clarified. The need for further clarity was evident not just in different interpretations from state agencies, but also in discrepancies between the methodologies used by the OLA to produce the report and the

interpretation of the law by MMB. Two examples include the calculation of “monthly total gross earnings”¹ and the determination of the “last three full months of the person’s active state employment prior to reporting to active service.”² These issues will be addressed through refined guidance from MMB.

We agree that there are portions of Minnesota Statutes § 43A.183 that are unclear and could be improved. We also agree that the Legislature should add statutory language requiring employees to submit military orders to document eligibility prior to receiving military salary differential pay. We will review the statute and request legislative changes to improve administration of this benefit.

We disagree that this function should be centralized within MMB. As your report notes at Page 15, an employee’s work schedule is often a critical element in determining the appropriate calculation, particularly for those in 24-hour facilities. MMB does not have access to employee schedules, as that information is not consistently tracked in SEMA4, and the SEMA4 system only tracks total hours worked in a day, not when those hours start or stop. As such, MMB does not have the records to make appropriate calculations for the vast majority of employees eligible for the differential.³ While MMB can work on additional tools to standardize certain parts of the calculation and provide more clarity about the earnings that must be included as part of total gross earnings, agencies—which have the access to employee schedules—should remain ultimately responsible for the calculations that affect their employees.

Finding 2:

The Minnesota Government Data Practices Act (MGDPA) does not directly classify personally identifiable information (such as names and employee identification numbers) of state employees as confidential or private data when associated with military service.

¹ For example, the OLA determined that certain types of non-overtime pay such as Achievement Awards and hiring incentive pay should be excluded from “all other earnings.” We do not see a basis to exclude these types of non-overtime earnings from the monthly calculation, given that the statute uses the inclusive word “all” to modify “other [non-overtime] earnings.”

² The OLA report states that “[w]hile an employee using unpaid leave is considered an active state employee, we interpreted a ‘full month’ to mean a month where the employee did not use any unpaid leave.” We believe that “full” modifies the word “month” and means a full calendar month (see Minn. Stat. § 645.44, subd. 13 (month means a calendar month)). The statute nowhere mentions days of unpaid leave in the determination of what constitutes a month, and we do not believe that we have the flexibility under the plain language of the statute to discount a full calendar month simply because the employee used unpaid leave, especially given that an employee is still considered to be in “active state employment” despite the use of unpaid leave.

³ Of the 83 employees who have received military salary differential pay since 2015, 51 were employed at Corrections, DHS, Military Affairs, Public Safety, and Veterans Affairs, all of which have 24-hour operations. An additional 10 employees worked at DOT, which has 24-hour operations during snow and ice season.

Recommendation:

The Legislature should clarify the law on the classification of personally identifiable information (such as names and employee identification numbers) of state employees when associated with military service.

Response:

MMB does not have an opinion on this recommendation to the Legislature.

Person responsible for corrective action:

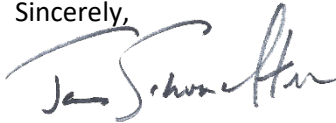
Kristin Batson, Deputy Commissioner, Enterprise Employee Resources

Anticipated completion date for corrective action:

June 30, 2022

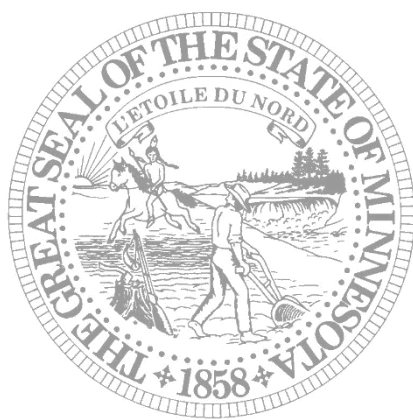
Again, thank you for the opportunity to respond to the audit findings. We value your work and the results further improve our financial management practices.

Sincerely,

A handwritten signature in black ink, appearing to read "James Schowalter". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

James Schowalter
Commissioner







Financial Audit Staff

Judy Randall, *Legislative Auditor*
Lori Leysen, *Deputy Legislative Auditor*

Education and Environment Audits

Vacant, Audit Director

Sarah Bruder
Shannon Hatch
Heather Rodriguez
Kris Schutta
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CENTENNIAL OFFICE BUILDING – SUITE 140
658 CEDAR STREET – SAINT PAUL, MN 55155