

Military Leave

628.1 PURPOSE AND SCOPE

This policy provides general guidance regarding leave to perform military service as a member of the Reserves or National Guard, or for active duty in the U.S. Armed Forces as provided in the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) (38 USC § 4301 et seq.).

This policy does not address every situation or circumstance that may arise when an employee is performing military service or ordered to active duty. As military leave situations arise, supervisors should consult with the [personnelAgency] or legal counsel to obtain specific guidance regarding military leave rights.

628.2 POLICY

The [City_County] supports employees who may be called or who volunteer to serve in the military. The [City_County] will comply with USERRA and state and local laws relating to military leave.

628.3 MILITARY LEAVE

Generally, employees on military leave are entitled to the same rights and benefits that are provided to employees having similar seniority, status, and pay who are on furlough or leave of absence (38 USC § 4316).

628.3.1 LENGTH OF LEAVE

Employees are entitled to a military leave of absence for up to a maximum of five years. Military leave is available for both voluntary and mandatory service (38 USC § 4303; 38 USC § 4312).

There are exceptions to the five-year cumulative total, including inactive duty training (drills), annual training, involuntary recall, or retention in support of war, national emergency, certain operational missions, or training or retraining requirements (38 USC § 4312).

628.4 PROCEDURES AND RESPONSIBILITIES

Employees who require military leave shall provide as much advance written or verbal notice of the pending service as reasonably possible (38 USC § 4312).

Additionally, the employee should:

- (a) Provide copies of official orders or other official documentation, if available.
- (b) Select the benefit options desired during absence, if applicable.
- (c) Retain copies of all submitted documents.

628.5 COORDINATION WITH CONTRACTS, PRACTICES, AND OTHER RULES

Wherever USERRA has more generous protections and benefits than state or local law, any applicable employment agreement, or local policy or practice, the [City_County] will apply the more beneficial right or benefit (38 USC § 4302).

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628.6 LEAVE ACCRUALS

Employees are not required to use accrued leave while on military leave. However, employees may choose to use accrued annual leave or earned compensatory time, at their discretion (38 USC § 4316).

Employees will not accrue sick days or paid time-off days during any period of military leave without pay. However, upon return, military leave time will be included in determining leave accruals. For example, if vacation accrual increases from two weeks to three weeks upon completion of five years of service, then a person who works for two years, serves two years on active duty, and then returns, would be entitled to three weeks of vacation one year after reemployment.

628.7 HEALTH CARE BENEFITS

Employees on military leave may elect to purchase continuing health care coverage for a period of time that is the lesser of:

- (a) The 24-month period beginning on the first day of the employee's absence for military leave.
- (b) The period beginning on the first day of the employee's absence for military leave and ending on the date that they fail to return from service or apply for reemployment.

If the duration of an employee's military service is less than 31 days, the employee may purchase continuing health care coverage under the [city_county]'s health plan for no more than the regular employee share. If the military service is 31 days or more, the [City_County] will charge the employee for no more than 102% of the full premium of the health care plan (38 USC § 4317).

628.8 RETURN FROM DUTY

Employees returning from a military leave of absence must report to work as follows (38 USC § 4312; 20 CFR 1002.118):

- (a) For periods of service less than 31 days, employees must report back to work no later than the beginning of the first shift that begins on the first full day that follows the end of the employee's service period, plus a reasonable time to travel to the employee's residence, plus eight hours. If reporting within this period is impossible or unreasonable through no fault of the employee, the employee must return as soon as possible after expiration of the eight-hour period.
- (b) For periods of service of more than 30 days but less than 181 days, employees must apply for reemployment verbally or in writing no later than 14 days after completing service, or, if impossible or unreasonable to do so through no fault of the employee, no later than the next first full calendar day when it is possible to do so.
- (c) For periods of service of more than 180 days, employees must apply for reemployment verbally or in writing no later than 90 days after completion of service.

Employees who are recovering from an illness or injury incurred in or aggravated during military service must report to the [City_County] or apply for reemployment as provided in this policy at

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the end of the period necessary to recover from such illness or injury. The recovery period may not exceed two years, except when circumstances beyond the employee's control exist.

An employee who fails to report or apply for reemployment in a timely manner will be subject to the [city_county]'s rules of conduct and established policies covering absence from scheduled work.

628.9 REEMPLOYMENT RIGHTS

An employee returning from a temporary military duty leave of absence is generally entitled to reinstatement to the position and benefits they would have attained if not absent for military duty or, in some cases, a comparable job (38 USC § 4312).

628.9.1 FORMER POSITION

An employee returning from regular active military leave is entitled to reinstatement in the position that they would have attained had the employee not taken leave. If the leave exceeded 90 days, the employee is also entitled to a position of like seniority, status, and pay (38 USC § 4313).

If an employee returning from military leave is not able to perform the essential duties of the position the employee would have attained, the [City_County] will make reasonable efforts to help the employee become qualified (20 CFR 1002.198). If the employee remains unable to perform the essential duties of the position after the [city_county]'s reasonable efforts, the employee is entitled to their previously held position at the time of departure or, in the case the leave exceeded 90 days, a position of like seniority, status, and pay. Where an employee remains unqualified for both of these positions after reasonable efforts by the [City_County], the employee is entitled to the nearest approximation to these positions (38 USC § 4313).

When a returning employee cannot become qualified because of a disability incurred in or aggravated during uniformed service, the [City_County], after making reasonable accommodations, must find a position of equivalent seniority, status, and pay for which the employee is qualified, or the nearest equivalent (38 USC § 4313; 20 CFR 1002.198).

628.9.2 COMPENSATION AND BENEFITS

Upon return from regular active military duty, an employee is entitled to seniority and seniority-based rights and benefits, including but not limited to:

- (a) Receiving credit for the time spent in uniformed service under honorable conditions for purposes of seniority, retirement, promotion, and merit salary increases (20 CFR 1002.210).
- (b) Receiving credit for time spent on military leave for purposes of calculating eligibility for leave under the Family and Medical Leave Act (20 CFR 1002.210).
- (c) Returning to the level in the salary range that they would have attained had the employee not left on military leave (20 CFR 1002.236).
- (d) Receiving the same contribution to retirement benefits upon reemployment that the [City_County] would have contributed had they not taken leave (20 CFR 1002.261).

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- (e) Being treated as not having a break in service for purposes of participation, vesting, and accrual of pension benefits (38 USC § 4316; 38 USC § 4318).
- (f) Reenrolling in [city_county] health benefits without any waiting period.
- (g) Restoring benefits that were elected by the employee and their dependents at the time military service began, as well as to any other benefits that began during the leave for which the employee would reasonably have become eligible.

628.9.3 EMPLOYEE REEMPLOYMENT RESPONSIBILITIES

An employee returning from regular active military leave is entitled to reinstatement rights only if the employee (38 USC § 4312):

- (a) Has given advance written or verbal notice of such service, unless precluded by military necessity.
- (b) Has served in the uniformed service for no more than five years cumulatively while employed at the [City_County], except as provided in 38 USC § 4312(c).
- (c) Has been issued a discharge under honorable conditions.
- (d) Reports to the [City_County] or applies for reemployment in a timely manner as provided in this policy.
 - 1. In the case that the military leave exceeds 30 days, submits documentation showing (20 CFR 1002.121; 20 CFR 1002.123):
 - (a) The application for reemployment is timely.
 - (b) The employee has not exceeded the cumulative five-year limit of service in the uniformed services, except as provided in 38 USC § 4312(c).
 - (c) The employee's separation or dismissal from service was not disqualifying.

628.9.4 [CITY_COUNTY] REEMPLOYMENT RESPONSIBILITIES

The [City_County] shall promptly reinstate employees entitled to reinstatement but no later than 14 days after a request for reinstatement. In the case of unusual circumstances, the [City_County] shall reinstate employees as soon as practicable (20 CFR 1002.181).

The [City_County] is not required to reemploy a person after military leave if any of the following conditions exist (38 USC § 4312):

- (a) The [city_county]'s circumstances have so changed as to make such reemployment impossible or unreasonable.
- (b) Such reemployment would impose an undue hardship upon the [City_County].
- (c) The person held a nonrecurrent job for a brief period of time and had no reasonable expectation that such employment would continue.

Supervisors should consult with the [personnelAgency] or legal counsel before determining whether any of these conditions exist.

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628.10 RETENTION

An employee who is reinstated after returning from military leave may not be discharged, except for cause (38 USC § 4316; 20 CFR 1002.247):

- (a) For 180 days after the date of reemployment if the most recent period of military service was more than 30 days and less than 181 days.
- (b) For one year after the date of reemployment if the most recent period of military service was more than 180 days.

628.11 DISCRIMINATION AND RETALIATION PROHIBITED

Discrimination or retaliation against any employee for participation in military service is prohibited, whether the employee volunteers or is ordered to active military service (38 USC § 4311).

628.12 STATE AND LOCAL MILITARY LEAVE CONSIDERATIONS

Eligible employees may be entitled to additional benefits related to military leave under state and local requirements (e.g., compensation, drills, temporary military leave for training).

The [City_County] will comply with the requirements of any applicable state or local laws that provide for military leave benefits.

Employees should consult with their supervisor and the [personnelAgency] for additional information regarding applicable leave benefits.