

MILITARY LEAVE

1. PURPOSE

It is the policy of the City of Concord to provide appropriate military leaves of absence, benefits and reinstatement privileges for eligible employees who are inducted, enlist, enter or are ordered or called into active military duty pursuant to state and federal law, subject to the procedures and limitations set forth in this Policy & Procedure.

2. DEFINITIONS

- 2.1 **Eligible Employee** means those employees who have been in the service of the City (or public service) for a period of not less than one year immediately prior to the date upon which a temporary military leave of absence begins. In determining the one-year of public agency service, all service of a public employee in the recognized military service shall be counted as public agency service (California Military and Veterans Code, Sect. 395.01).
- 2.2 **30 Day Period** means the first 30 calendar days of any military leave of absence. Military leave begins on the first day of ordered duty and ends on the last day of ordered duty and include workdays, non-workdays, holidays, and reasonable travel time.
- 2.3 **Salary/Compensation** means pay that is equal to the regular hourly wage for the days and hours the employee is normally scheduled. Pay will not exceed 80 hours per pay period.
- 2.4 **Annual Training** means engaged in military duty ordered for purposes of military training, where the period of ordered duty is no more than 17 calendar days annually including time involved in going to and returning from such duty.
- 2.5 **Inactive Duty Training (drill/weekend duty)** means the recurring requirement, usually 2 days per month, to perform inactive duty training (drill). Periods of military leave of absence to perform inactive duty training are not eligible for paid military leave.
- 2.6 **Official Orders for Active or Reserve Duty** means all written or verbal orders. Official Orders are considered valid when issued by competent military authority.

3. ELIGIBILITY

To be eligible for military leave, an employee must be a member of the “uniformed services,” United States Army, Navy, Air Force, Marines, Coast Guard, National Guard, Reserves or Public Health Service, or any other category of persons designated by the President in time of war or emergency (38 U.S.C. Section 4303 (13 & 16)).

4. QUALIFYING EVENTS

- 4.1 Temporary military duty ordered for purposes of active military training, encampment, naval cruises, special exercises or like activity for an employee serving as a member of a uniformed service (California Military and Veterans Code, Sect. 395.01).
- 4.2 Active military duty when an employee (California Military and Veterans Code, Sect. 395.02):
- 4.21 is ordered into active military duty as a member of a reserve component of the armed forces of the United States.

- 4.22 is ordered into active federal military duty as a member of the National Guard or Naval Militia.
- 4.23 is inducted, enlists, enters or is otherwise ordered or called into active duty as a member of the armed forces of the United States.

5. AMOUNT OF LEAVE ALLOWABLE

- 5.1 **Military Training.** An eligible employee is entitled to a military leave of absence while engaged in temporary military duty training as a member of a reserve unit or a National Guard unit, provided that the period of ordered temporary duty does not exceed 180 calendar days, including time involved in going to and returning from that duty (California Military and Veterans Code, Sect. 395. (a)).
- 5.2 Maximum limit is 5-year cumulative total of voluntary active duty military service not in support of war, national emergency, or certain operational missions (USERRA, Sect.4312 (c)).

6. PAID MILITARY LEAVE

- 6.1 An eligible employee is entitled to receive his or her base salary for the first 30 calendar days of military leave of absence. Pay for this purpose may not exceed 30 calendar days in any one fiscal year (California Military and Veterans Code, Sect. 395.01).
- 6.2 No more than the pay for a period of 30 calendar days shall be allowed under sections 4.1 and 4.2 for any one military leave of absence or during any one fiscal year. (California Military and Veterans Code, Sect. 395.01).
- 6.3 Employees on military leave may substitute their accrued vacation and/or compensatory time for unpaid military leave.

7. SUPPLEMENTAL COMPENSATION

- 7.1 By resolution, City Council of the City of Concord has authorized additional paid military leave for military reservists called to active duty beyond the thirty (30) days of leave as specified in this policy. This resolution is intended to provide for the differential between the employee's base compensation and active military duty compensation and shall be referred to for purposes of this policy as supplemental compensation.
- 7.2 Employees with at least one year of City service who are involuntarily ordered to active duty by authority of the President in a time of war or other military conflict who are required to serve related to terrorist attacks or impending or actual armed conflict, the following supplemental compensation will be provided:
 - 7.21 After serving the first 30 days of paid military leave in a fiscal year, employees' active military duty compensation shall be supplemented by the difference between the employee's base salary and most current active military duty compensation.
 - 7.22 In calculating supplemental compensation, the City will take into consideration all extra military pay including, but not limited to, dependent allowance, housing allowance, hazardous duty and flight pay.
 - 7.22.1. Pay differential for sworn employees who have achieved the Master Officer and/or Master Sergeant designation is included in the employee's base pay for purposes of calculating military leave supplemental compensation.
 - 7.22.2 Pay differential for sworn employees who participate in the Police Professionalization Program shall be included in the employee's base pay for purposes of calculating military leave supplemental compensation.

- 7.23 Supplemental compensation will be provided for the duration of the employee's active military deployment pursuant to the most recent active duty orders once the initial thirty-day paid military leave has been exhausted.
- 7.3 Employees who may qualify for supplemental compensation will be required to furnish sufficient documentation of the employee's military orders and documentation of current active military duty compensation. Failure to provide the required documentation will render the employee ineligible for supplemental compensation.
- 7.31 The employee will be required to submit a copy of their military pay stub on a quarterly basis to ensure that their supplemental compensation is based on the most current active military duty pay.
- 7.4 The Human Resources Department functions as the City's military leave administrator and is authorized to make determinations regarding the provisions of paid military leave and whether an employee's active duty assignment qualifies for supplemental compensation as provided for in this policy.

8. REQUESTING AND SCHEDULING LEAVE

Employees are expected to be sensitive to employer scheduling requirements when providing notification and when submitting application to the unit for orders. When possible, an employee should submit requests for orders during calendar periods outside of peak operational seasons and not during the most popular vacation cycles.

- 8.1 **Advance Notice.** Written or oral notification must be given prior to going on duty, unless precluded by military necessity. Employees are highly encouraged to notify the supervisor of any "window" of anticipated military activity, when application for orders is made, or if notified of possible involuntary recall (USERRA, Sect. 4312 (a) (1)).
- 8.2 **Official Orders.** Employees shall provide a copy of orders, the annual drill schedule, or other type of documentation as soon as available and, if possible, before commencement of military duty. Official orders are required for periods of military leave of absence exceeding 30 days.

9. RE-EMPLOYMENT RIGHTS

- 9.1 Any employee whose absence from a position of employment is necessitated by reason of service in the uniformed services shall be entitled to the reemployment rights and benefits and other employment benefits if:
- 9.11 the employee (or an appropriate officer of the uniformed service in which such service is performed) has given advance written or verbal notice of such service to the City;
- 9.12 the cumulative length of the absence and of all previous absences from a position of employment with the City by reason of service in the uniformed services does not exceed five years; and
- 9.13 the employee reports to, or submits an application for reemployment to, such employer in accordance with the provisions of 38 USC §4312, subsection (e).
- 9.2 After completion of approved military leave of absence an employee shall return to work according to the following: (USERRA, Sect. 4312 (e)).
- 9.21 **Fitness Exams and Service of 1 to 30 days** - on the first full scheduled day of work after a reasonable period for safe transportation home and an eight hour rest period.
- 9.22 **Service of 31 to 180 days** - application for reinstatement must be submitted not later than 14 days after completion of military duty.

- 9.23 Service of 181 or more days - application for reinstatement must be submitted not later than 90 days after completion of military duty.
- 9.24 The deadline for reinstatement may be extended for up to 2 years for employees who are convalescing due to a disability incurred or aggravated during military service.
- 9.3 Documentation upon return (USERRA, Sect. 4312 (f)). An employee on military leave of absence for a period of 31 days or more must provide documentation showing that:
 - 9.31 The application for reemployment is timely
 - 9.32 The five-year service limitation has not been exceeded
 - 9.33 The separation from service was other than disqualifying under USERRA, Section 4304.
- 9.4 If employee does not provide satisfactory documentation because it's not readily available or does not yet exist, the City will honor the right to reemployment contingent on subsequent production of the documentation. If, after reemployment, documentation becomes available that shows one or more of the reemployment requirements were not met, the City may terminate the employee subject to the appeal rights provided in the applicable MOU or Personnel Rules. (USERRA, Sect. 4312 (f) (3) (A)).
- 9.5 Pension Contributions. Pursuant to section 8.2 of this policy, if a person has been absent for military service for 91 or more days, the City may delay making retroactive pension contributions until the employee submits satisfactory return documentation (USERRA, Sect. (f) (3) (B)).

10. DISQUALIFYING SERVICE

- 10.1 The City has the right to refuse reemployment or terminate an employee for the following circumstances: (USERRA, Sect. 4304):
 - 10.11 Separation from the service with a dishonorable or bad conduct discharge.
 - 10.12 Separation from the service under other than honorable conditions.
 - 10.13 Dismissal of a commissioned officer in certain situations involving a court martial or by order of the President in time of war (Section 1161 (a) of Title 10)
 - 10.14 Dropping a individual from the rolls when the individual has been absent without authority for more than three months or who is imprisoned by a civilian court (Section 1161 (b) of Title 10).

11. REINSTATEMENT FROM LEAVE

- 11.1 An employee returning from military leave of absence is entitled to return to the same or equivalent position with equivalent benefits, pay, and other terms and conditions of employment, and without loss of job seniority or any other status or benefits accrued prior to or during military leave provided the employee would still be employed if military leave had not been taken; with the exception of an uncompleted probationary period (USERRA, Sect. 4313 (a)). In this case, the probationary period must be completed upon reinstatement as described in the applicable MOU or the Staffing Policy.
- 11.2 If the position has been abolished or otherwise has ceased to exist during the employee's absence, the employee will have the same rights and privileges as though he or she had occupied the position when it ceased to exist (USERRA, Sect. 4312 ((d) (1) (A))).
- 11.3 Service credit accrues during military leave of absence for the purposes of retirement, vacation accrual rate, and employee recognition awards.

12. FUNDING OF BENEFITS**12.1 Health Benefits (USERRA, Sect. 4317)**

- 12.11 Group health, dental and vision plan coverage will be continued at City expense for the first thirty (30) days of active military leave as described in paragraph 4.2. Following the first thirty (30) days of active military leave through the duration of the employee's involuntary active military leave, group health, dental and vision plan coverage will be continued at the City and employee normal contribution rates. Health insurance waiver in lieu of coverage is not available beyond the first 30 calendar days.
- 12.12 Group health and dental plan coverage will be continued at City expense for up to 180 days of temporary military duty as described in paragraph 4.1. Health insurance waiver in lieu of coverage is not available beyond the first 30 calendar days.
- 12.13 For military leaves, which extend beyond the limit of City provided health plan coverage; employees may elect to pay for COBRA coverage for up to 24 months. Upon return to duty, health insurance will be reinstated with no waiting period.
- 12.14 If an employee's monthly COBRA payment is more than 30 days late, the City may terminate coverage.

12.2 Pension/Retirement Plans

- 12.21 The following applies to City and employee contributions to PERS and City paid 401(k) contributions for management employees (USERRA, Sect. 4318):
 - 12.211 a returning employee will be treated as not having incurred a break in service. The City shall maintain employer and appropriate employee contributions to PERS and 401(k), if applicable;
 - 12.212 military service will be considered service with the City for vesting and benefit accrual purposes;
 - 12.213 the City will fund any resulting obligation; and
 - 12.214 the employee is entitled to any accrued benefits from employee contributions only to the extent that the employee repays the employee contributions.
- 12.22 Upon return from military leave, the employee has a period equal to 3 times the length of service (not to exceed 5 years) within which to make the required contributions to PERS and the City will fund the resulting obligation of the plan within the same time frame (USERRA Sect. 4318 (b) (2)).

12.3 Vacation, Sick Leave, and Holidays

- 12.31 Eligible employees on paid military leave under sections 4.1 and 4.2 continue to accrue vacation and sick leave while in paid military leave status. Holidays that fall during paid military leave do not accrue and are treated as paid military leave. Employees who continue on a military leave of absence beyond the first thirty (30) days of paid military leave will not accrue any further paid leave. Leave balances for employees on extended military leave of absence will be frozen until the employee returns to City employment and resumes a fully paid status.
- 12.32 Unpaid military leave will not effect years of service for the purpose of calculating vacation accrual rate (California Military and Veterans Code, Sect. 395.(d)).