Los Angeles County Military Reservists

Benefits and Protections

Los Angeles County Reservists

Los Angeles County and the Department of Military and Veterans Affairs are here as a resource to ensure reservists are provided access to military leave related benefits and protections.

Military leave benefits for County employees are governed by a combination of Federal, State, and County regulations. Under California Military and Veterans Code, all public employers in California must provide military reservists with paid military leave. The law also provides for job protection when reservists are called to active duty. These protections are given to those who have completed at least one year of service with the County.

Benefits

Paid military leave for Reservists

Under Section 395.01 of California Military and Veterans Code, all public employees in California are provided their first 30 calendar days of pay for any period of active military service. Any reservist employee who is ordered into active-military duty after completing at least one year of service with his or her public employer is eligible.

Military leave is granted with their County pay for the first calendar 30 days. The 30 calendar days of pay covers annual training and certain other types of routine active military service for reservists, and it also covers the first calendar 30 days of longer term deployments.

Off-set military pay 31+ days of active duty

After calendar 30 days, reservists may also qualify for an offset pay. The County will pay the difference between an individual's military pay and his or her County pay. The benefit is calculated by subtracting the value of an employee's military pay from the County salary the employee would have otherwise received had he or she remained actively at work. The off-set benefit is uncapped, and starts after the 30-calendar day benefit has been exhausted, and terminates when the active military duty terminates.

Protections

Uniformed Service Employment and Reemployment Rights Act of 1994 (USERRA)

USERRA is a federal law that protects the civilian employment and reemployment rights of military personnel, including reservists, and prohibits employer discrimination based on military service or obligation. Basic job protections include, among other things, the right to a leave of absence and timely reinstatement upon release from active military service, preservation of an employee's seniority as if there was no employment absence, and employee opportunity to makeup pension payments to receive credit for the period of the absence.

Los Angeles County Military Reservists

Benefits and Protections

Veteran Resources

The Department of Military and Veterans Affairs is dedicated to being a resource for all military and veterans. Here are some common items we provide support for:

- ***Education***
- ***Career Opportunities***
- ***Pension/Compensation***
- ***Wellness and Fitness***
- ***Military Records***
- ***Housing***
- ***Communication***

County of Los Angeles

Department of Military and Veterans Affairs

1816 S. Figueroa St.
Los Angeles, CA 90015

1-877-4 LA VETS (8387)

http://mva.lacounty.gov

Ver. 06.12.18

YOUR RIGHTS UNDER USERRA

THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

USERRA protects the job rights of individuals who voluntarily or involuntarily leave employment positions to undertake military service or certain types of service in the National Disaster Medical System. USERRA also prohibits employers from discriminating against past and present members of the uniformed services, and applicants to the uniformed services.

REEMPLOYMENT RIGHTS

You have the right to be reemployed in your civilian job if you leave that job to perform service in the uniformed service and:

- ☆ you ensure that your employer receives advance written or verbal notice of your service;
- ☆ you have five years or less of cumulative service in the uniformed services while with that particular employer;
- ☆ you return to work or apply for reemployment in a timely manner after conclusion of service; and
- ☆ you have not been separated from service with a disqualifying discharge or under other than honorable conditions.

If you are eligible to be reemployed, you must be restored to the job and benefits you would have attained if you had not been absent due to military service or, in some cases, a comparable job.

RIGHT TO BE FREE FROM DISCRIMINATION AND RETALIATION

If you:

- ☆ are a past or present member of the uniformed service;
- ☆ have applied for membership in the uniformed service; or
- ☆ are obligated to serve in the uniformed service;

then an employer may not deny you:

- ☆ initial employment;
- ☆ reemployment;
- ☆ retention in employment;
- ☆ promotion; or
- ☆ any benefit of employment

because of this status.

In addition, an employer may not retaliate against anyone assisting in the enforcement of USERRA rights, including testifying or making a statement in connection with a proceeding under USERRA, even if that person has no service connection.

HEALTH INSURANCE PROTECTION

- ☆ If you leave your job to perform military service, you have the right to elect to continue your existing employer-based health plan coverage for you and your dependents for up to 24 months while in the military.
- ☆ Even if you don't elect to continue coverage during your military service, you have the right to be reinstated in your employer's health plan when you are reemployed, generally without any waiting periods or exclusions (e.g., pre-existing condition exclusions) except for service-connected illnesses or injuries.

ENFORCEMENT

- ☆ The U.S. Department of Labor, Veterans Employment and Training Service (VETS) is authorized to investigate and resolve complaints of USERRA violations.
- ☆ For assistance in filing a complaint, or for any other information on USERRA, contact VETS at **1-866-4-USA-DOL** or visit its website at **http://www.dol.gov/vets**. An interactive online USERRA Advisor can be viewed at **http://www.dol.gov/elaws/userra.htm**.
- ☆ If you file a complaint with VETS and VETS is unable to resolve it, you may request that your case be referred to the Department of Justice or the Office of Special Counsel, as applicable, for representation.
- ☆ You may also bypass the VETS process and bring a civil action against an employer for violations of USERRA.

The rights listed here may vary depending on the circumstances. The text of this notice was prepared by VETS, and may be viewed on the internet at this address: **http://www.dol.gov/vets/programs/userra/poster.htm**. Federal law requires employers to notify employees of their rights under USERRA, and employers may meet this requirement by displaying the text of this notice where they customarily place notices for employees.

U.S. Department of Labor
1-866-487-2365

U.S. Department of Justice

Office of Special Counsel

1-800-336-4590

Publication Date — April 2017

	USERRA	LA COUNTY
REEMPLOYMENT RIGHTS	-Right to *reemployment* in civilian job. -Must be *restored* to the job and benefits you would have attained if you had not been absent due to military service.	-30 calendar days pay Military leave each fiscal year. -Uncapped post 30 day off-set pay Military leave. -Item control – employees on long-term military leave should be treated as though they are on long-term leave, meaning that the employee should be left sitting against the position. Employees on military leave cannot be moved or transferred to a lower-level position and should return to the same exact position as if they had never left for military leave.
FREE FROM DISCRIMINATION	-Employer may not deny you initial employment, reemployment, retention in employment, promotion, or any benefit of employment because of uniformed status.	-LA County Policy of Equity includes all Federal and State protected classes. The policy has a lower threshold than actionable legal level.
HEALTH INSURANCE PROTECTION	-Right to elect to continue your existing employer-based health plan for you and your dependents for up to 24 months while in the military.	-Cafeteria Plan contribution towards their health, dental and other cafeteria plan benefits continue while on military leave.
MISCELLANEOUS RIGHTS/BENEFITS		-Waive the five year service eligibility requirement for Long Term Disability (LTD) and Disability Retirement (LACERA) for reservists who are disabled or killed as a consequence of active military duty. CEO the discretion to adjust LTD claims submission deadlines for injured or killed reservists; removal of "act of war" exclusion. -Extend retiree health insurance to reservists. -Cafeteria Plan contribution towards their health, dental and other cafeteria plan benefits continue while on military leave. -Military service is a "qualifying life event"- which enables changes to medical/dental insurance, supplemental life insurance, accidental death and dismemberment options. -Retirement: County will continue to make Employer contributions to LACERA while on active military service. -Deferred Compensation: Employee contributions and the County match to Horizons, Savings Plan, and the Pension Savings Plans will continue to be made from the employee's offset pay. -Vacation, Sick Leave, and Holidays continue to accrue while on active military leave. -FMLA: 5 days to spend with a family member who is serving active duty; and up to 26 weeks of FMLA to take care of an injured or disabled family member who is serving.

Event Type Code	Description	Notes
024	ACTIVE MILITARY LEAVE 1 TO 30 CALENDAR DAYS PAID USAGE	Used when an employee is on Military Leave and is eligible to receive all "County Pay" and continue receiving all benefits
043	ACTIVE MILITARY LEAVE 31+ OFFSET SPECIAL PAID - USAGE	Used when an employee is on Military Leave and is eligible to receive all "County Pay", offset by his or her military pay, and continues receiving all benefits
ML043	ACTIVE MILITARY PAY	New event code, used in conjunction with '043', to report the amount of military pay
014	INACTIVE MILITARY LEAVE ABSENCE WITHOUT PAY 1-180 DAY USAGE	Used when an employee is on Military Leave, up to 180 days, and is no longer eligible to receive "County Pay", nor receive benefits, except continue to accrue sick and vacation
013	INACTIVE ML/LONG TERM-AUTHORIZED ABSENCE W/OUT PAY 180+ DAYS	Used when an employee is on Military Leave, longer than 180 days, and is no longer eligible to receive "County Pay", nor is eligible for benefits Used with work cycle 'ALTLV'
048	MILITARY LEAVE TRACKING - RDO - USAGE	Used to track military leave that would have been coded on non-scheduled work days (e.g., weekends, RDOs)

ref.: COUNTYWIDE DESK PROCEDURE - "Military Leave Personnel Action" DP-TM-162-D

County of Los Angeles
CHIEF EXECUTIVE OFFICE
Kenneth Hahn Hall of Administration
500 West Temple Street, Room 713, Los Angeles, California 90012
(213) 974-1101
http://ceo.lacounty.gov

WILLIAM T FUJIOKA
Chief Executive Officer

Board of Supervisors
GLORIA MOLINA
First District

MARK RIDLEY-THOMAS
Second District

ZEV YAROSLAVSKY
Third District

DON KNABE
Fourth District

MICHAEL D. ANTONOVICH
Fifth District

March 26, 2013

To: Departmental Human Resources Managers

From: Maryanne Keehn, Manager
Benefits & Compensation Policy

MILITARY LEAVE PROGRAM OVERVIEW

In 2012, the Board of Supervisors made adjustments to the Military Leave Policy for County employees who are military reservists and are called into active military service.

In an effort to ensure that all military reservists are treated consistently by their respective County departments, we have prepared the attached document, entitled "Military Leave Program Overview." This document provides departmental human resources and payroll staff with guidelines on Military Leave in general, payroll instructions on calculating "offset pay" for employees receiving Military pay, and information on how to coordinate Cafeteria Plan, Deferred Compensation, and Retirement benefits for Military reservists.

Our office, in conjunction with the Auditor-Controller's Countywide Payroll Division, will be presenting this information at the next Departmental Human Resources Managers meeting on Thursday, March 28, 2013. We will be available to answer questions from you and your staff on the Military Leave Program Overview document. The meeting will be held at the Department of Public Works on March 28, 2013 at 1:30 p.m. in the Alhambra Room.

If you have any questions or need further clarification, please contact Lorraine Sunday Brown at (213) 974-5951.

JA:MTK
LSB:mst

Attachment

N:\BENEFITS & COMP POLICY\MILITARY LEAVE\DHRM - Military Leave Program Overview Memo.docx

MILITARY LEAVE PROGRAM OVERVIEW

2012 Military Leave Policy Changes

On October 16, 2012, the County Board of Supervisors approved a number of policy changes affecting paid leave and other benefit coverage for County employees who are military reservists and who are called into active military service. These changes do the following:

1. Ensure 30 days of "State mandated" paid military leave each year for those reservists who are continuously activated for more than one year.

2. Remove the previous limit of 720 days on the paid leave benefits applicable to each continuous period of active military duty. This type of paid leave is now limited only to the length of time a reservist is called into active military duty.

3. Redefine "County pay" and "Military pay" for purposes of computing the military offset pay amounts due to reservists.

4. Waive the five-year service eligibility requirement for Long-Term Disability (LTD) and Disability Retirement (LACERA) for reservists who are disabled or killed as a consequence of active military duty.

5. Give the Chief Executive Office (CEO) the discretion to adjust LTD claims submission deadlines where injured or killed reservists are concerned.

6. For reservists only, eliminate the "act of war" exclusion under the Short-Term Disability (STD) and LTD Benefit Plans. This also affects the LTD Health Insurance benefit that is embedded in the LTD Plans.

7. Extend retiree health insurance to reservists who are disabled or killed before attaining ten years of retirement service credit, and extend to them and/or their dependents, the County subsidy (40%) normally attributable to ten years of retirement service credit.

Military Activation

Military service for reservists may be considered "Active" or "Inactive" service depending on the nature of the duty as outlined below. Paid military leave benefits under both California State law and the Los Angeles County Code are available only for Active Military Service.

"Active Military Service" means full-time active duty within a branch of the United States armed forces (Army, Navy, Marine Corps, Air Force, Coast Guard, or National Guard). Ideally, the employee should provide a copy of the military orders prior to activation showing the type and dates of military duty. However, it is not uncommon for military activation and deployment to be communicated on such short-notice as to make it impracticable for a reservist to provide the requisite documentation in advance. In such instances, the employee's verbal notice to the department is sufficient to initiate military leave on the understanding that the requisite documentation will be obtained as soon as possible on a post-activation basis. If there are any questions about the military paperwork, departments should contact the employee's commanding officer or listed duty station officer for clarification.

"Inactive" Military Service means weekend drills, training, or voluntary maintenance activities of the military unit. Public agencies, as in the case of the County of Los Angeles, are not required to provide paid military leave for inactive service but the employee is entitled to use available 100% leave time on the books or take an unpaid leave of absence. Inactive Military Service up to 180 days is coded under ***Leave Event Code 014*** and after 180 days, the leave time is coded under ***Leave Event Code 013***.

Note: If the employee receives military orders to attend Annual Training, for a period of two weeks or more, this is considered Active Duty and is eligible for Military Leave Pay.

Military Leave Benefits – Full Pay for the First 30 Calendar Days

Under the California Military and Veterans Code, the first 30 calendar days of any period of active military service is paid at full County pay ***(Leave Event Code 024).*** This compensation is in addition to the pay an employee otherwise receives from the military.

An "eligible employee" for this purpose is any employee who:

1. is a member of the reserve corps of the armed forces (reservist); and
2. is called into active military duty; and
3. has completed at least one year of service with the County.
   (Note that prior military service can be counted for this purpose and the prior military service could have been served at any time prior to County service. An example of acceptable documentation would be a Certificate of Discharge from Active Duty (DD - 214). This document displays the dates of active duty service during a specified deployment, mobilization, or general active duty.)

Previous County Policy:

Employees currently receive fully paid military leave for the first 30 calendar days per military activation but not more than 30 days within any one fiscal year (July 1st through June 30th). However, employees who experience one continuous military activation period lasting more than one year received only one 30-day allotment of full County pay. Employees who experience multiple activations (return-to-work and then activated again) in separate fiscal years will receive up to 30 days of State mandated paid leave for each fiscal year.

Note Change in County Policy:

If an eligible employee's active military service is continuous and lasts for more than one year, the employee will now be entitled to another 30 calendar days commencing with the second continuous year. Each additional year that the employee is continuously activated to military service, an additional 30 calendar days of full County pay will be granted. The employee is not required to return back to work to receive the additional 30 calendar days of full County pay.

Example:

An employee has military orders for deployment beginning June 18, 2012 and going through July 30, 2013. The employee is entitled to 30 calendar days of pay (June 18, 2012 through July 17, 2012) in the 2011/2012 fiscal year. Since the military orders span over two fiscal years, the employee is entitled to an additional 30 calendar days of pay for the 2012/2013 fiscal year which should be paid commencing with the second continuous year (June 18, 2013). Prior to returning to work, the employee receives additional orders to serve continuously from July 31, 2013 to September 1, 2014. If the employee has not returned to work and is still serving on continuous active military duty for the third year, the employee would receive another 30 days for the 2013/2014 fiscal year commencing with the third continuous year (June 18, 2014).

Military Leave Benefits – "Offset Pay" 31st Calendar Day to Unlimited

This benefit is commonly referred to as "military offset pay" and provides the difference between an employee's regular County salary and his/her military pay.

Previous County Policy:

The Military "Offset Pay" is to supplement the difference between an individual's military pay up to and not to exceed the County pay when the military pay is less - for a maximum of 720 days.

To process "Offset Pay" in Advantage Human Resources Management System (eHR), the employee's time is reported using ***Leave Event Code 043,*** and the amount of military pay is reported with ***Pay Event Code OP099***. (This system offset procedure has not changed).

Note: If the military pay is more than the County pay, the full County pay should be offset so that nothing is paid to the employee. Cafeteria plan benefits will be continued while on leave if ***Leave Event Code 043*** is used.

Note Change in County Policy:

The previous 720-day limit for "Offset Pay" is now **Unlimited** until the policy is changed by the Board of Supervisors.

Note Change in County Policy:

The "Offset Pay" amount is calculated by subtracting the employee's Military Pay from the County salary. For this purpose, Military Pay and County Pay are re-defined.

County pay is re-defined as "all pay" a reservist would have otherwise received during a period of active military duty based on:

1. the position, assignment, and regular work schedule applicable to the employee immediately prior to activation, and
2. the assumption the employee would have remained actively at work in the same position, assignment, and work schedule during the activation period.

Therefore, County pay will now include all bonuses and/or special pay provisions which the employee was entitled to receive prior to military activation. This includes post bonuses, shift differentials, longevity, bilingual, out-of-class, additional responsibilities, etc. It may also include overtime pay if the overtime is "built-in" and part of an employee's regular work schedule established at least 60 days prior to activation. Overtime that is unplanned or that otherwise does not meet this criteria will not be

included. Departments must still record all appropriate payroll codes when posting bonuses and overtime on employee's timecards.

The taxable cash portion of the employee's cafeteria benefit plan should not be included in the calculation of the County's military offset pay and should not be included as County pay. The taxable cash portion of the employee's cafeteria benefit plan will continue to be paid absent any change of status under the cafeteria plan.

Military pay is re-defined as the sum of Basic Military Pay and Basic Allowance for Housing. Nothing else will be included. Basic Military Pay is essentially a base salary and a function of an individual's military rank and length of military service. The Basic Allowance for Housing is additional compensation intended to pay for an employee's civilian "home" residence (not housing at the point of deployment). It is essentially an adjunct to Basic Military Pay and is a function of rank, zip code, and number of dependents. The employee's military pay can be confirmed or verified from the Defense Finance and Accounting Service (DFAS) website at http://www.dfas.mil/.

Previous County Policy:

The current practice requires that reservists submit proof of military pay each month through submission of their military pay stubs known as "Leave Earnings Statements."

Note Change in County Policy:

Leave Earnings Statements (military pay stubs) are only required at the beginning of the employee's military leave after initial deployment to military service. That same amount should be used to calculate offset pay until the reservist returns to work. The reservist is no longer required to provide Leave Earnings Statements on a continuous basis, even if there is a promotion or increase in military pay, unless the military pay has been reduced which would result in a higher Offset Pay amount.

As mentioned above, the amounts attributable to these components for Military Pay will be the amounts at the outset of an activation based on the reservist's rank and length of military service. No adjustments will be made in these amounts post-activation unless the adjustments reflect general across-the-board military pay adjustments announced by the Department of Defense. In that case, the CEO will provide information to departments on how to re-calculate the military pay offset amount.

Employee Benefits While on Military Leave

Cafeteria Plan County Contribution

Activated reservists continue to receive the County's cafeteria plan contribution towards their health, dental, and other cafeteria plan benefits while receiving the first 30 days of full County pay and while receiving military leave "Offset Pay." If the allowance is insufficient to pay for the benefits to be purchased, the Department of Human Resources (DHR) will invoice the reservist for the unpaid portion.

If the reservist receives more military pay than the County pay, no salary will be paid to the employee but the County's cafeteria plan benefits must be continued during the course of the unpaid leave. In this scenario, departments should use ***Pay Event Code ML043*** with the flat amount of the military pay to offset the employee's full County pay. The employee will continue to receive the cafeteria plan contribution towards health, dental, and other insurance benefits as well as taxable cash, if applicable.

Changes During the Plan Year: Changes in Family Status

The deployment to active military service is considered a qualifying life event for a "Change in Family Status" in order to change cafeteria benefit coverage mid-year. Changes must be made within 90 days of the qualifying event. The following changes can be made:

WAIVE MEDICAL & DENTAL INSURANCE:

A reservist may elect to waive Medical and/or Dental Insurance provided by the County for the time on active military service because the Military also provides medical and dental insurance benefits. This action allows the reservist to receive eligible taxable cash in lieu of the County's Insurance coverage.

SUPPLEMENTAL LIFE INSURANCE:

A reservist may enroll in supplemental life insurance or increase coverage by one times salary. For example: If the employee has coverage equal to one times annual salary, the coverage may be increased up to two times annual salary.

ACCIDENTAL DEATH & DISMEMBERMENT (AD&D):

A reservist may elect to cancel AD&D coverage because the reservist is no longer eligible for coverage while on Military Leave. However, the employee cannot elect separate Employee coverage if Family coverage was elected. So, if the employee has Family coverage for AD&D and elects to cancel coverage, eligible dependents are also cancelled and coverage ends on the last day of the month following the month of military activation. If the employee wants to continue coverage for dependents, the employee's Family coverage may be continued; however, the employee will not be

covered for an Accidental Death or Dismemberment as a result of active military service.

HEALTHCARE AND DEPENDENT CARE SPENDING ACCOUNTS:

Participation may be continued during military activation through the employee's cafeteria plan deductions if there are enough earnings.

Other Benefits While on Military Leave

Retirement:

The County will continue to make the Employer contributions to Los Angeles County Employees Retirement Association (LACERA) while the reservist is on active military service as long as ***Leave Event Codes 024 and 043*** *are used.* The Employee contributions will be taken from the employee's offset pay only if there are sufficient earnings for the monies to be withheld. Retirement service credit is only given if both the County portion and the employee portion are paid. Federal law provides, upon the employee's return to civilian employment, for a reservist to make-up missed employee contributions. The employee has 3 times the length of military service (not to exceed 5 years) to make up pension payments.

Deferred Compensation:

Employee contributions and the County match to Horizons, Savings Plan, and the Pension Savings Plans will continue to be made from the employee's offset pay as long as there are sufficient earnings. However, the employee contributions will be less than normal because it is based on the percentage of the offset pay; subsequently, the County match will be reduced. Federal law provides, upon the employee's return to civilian employment, for a reservist to make-up missed/reduced contributions and receive the corresponding County matching contribution. Make-up contributions must be made within five years from the date the employee returns back to work. Make-up contributions may be made on a pre- or post-tax basis, as applicable, and contributions are based on the salary or wages the employee would have received if he or she had not been on leave during the period of military service. Employees should contact the Department of Human Resources Employee Benefits Division to set up make-up contributions.

Vacation, Sick Leave, Holidays:

While on active military leave, time will be accrued as if the reservist had not left County service. At any time during the employee's military leave, he has the discretion to use 100% leave time on the books (accrued vacation/holiday) in lieu of military offset pay.

Family and Medical Leave Act (FMLA):

An eligible employee may take up to five days of FMLA leave to spend time with a family member who is serving active duty in the military. And, an employee may take up to 26 weeks of FMLA to take care of an injured or disabled family member who is serving in the Armed Forces. This also applies to veterans who are discharged or released from the military for conditions other than dishonorable discharge.

Other Concerns While on Military Leave

USERRA - Uniform Services Employment and Reemployment Rights Act of 1994:

This Federal law provides activated military personnel with civilian employment rights while in active service and upon return to their civilian job. USERRA states that employees returning from active military service shall receive the same vacation, sick leave, and holiday privileges and the same rights and privileges to promotion, continuance in office, employment, reappointment to office, or reemployment that the employee would have enjoyed had he/she not been absent. USERRA prohibits employees from being discharged following reemployment for one year, except for just cause.

In general, the County's policies are greater than those mandated by USERRA. USERRA does not supersede any state or local laws that provide a right or benefit greater than those afforded under USERRA. For a listing of key points, please review the attached Fact Sheet from the Employer Support of the Guard and Reserve (ESGR).

Paid Military Leave Reported as Taxable Income:

The County's position is that in order to receive paid military leave under the California mandated program or the County Special Military Leave program, the reservist must be considered an employee and subject to normal taxation rules. Certain military personnel may be exempt from federal taxation of their military pay. However, the military leave pay provided by the County is civilian pay and may not be subject to those exemptions. Reservists should seek assistance of a professional tax preparer when filing their annual income returns.

Reporting:

In addition to the information currently provided to the Department of Human Resources on a quarterly basis, we are asking County departments to include the number of reservists in your Department who have been on continuous military leave in 30-day increments by Event Codes (Code 024, Code 043, and Code 014).

For example: the number of reservists served 0 to 30 days, 31 to 60 days, 61 to 90 days, etc. by each eHR Leave Event Code. **Please add this information to the quarterly report provided to DHR effective January 1, 2013.**

Item Control:

For item control purposes, employees on long-term military leave should be treated as though they are on long-term leave, meaning that the employee should be left sitting against the position. Ideally, the position should be budgeted/ordinanced but if budgeting the position is a problem, then ordinanced only. Employees on military leave cannot be moved or transferred to a lower-level position and should return to the same exact position as if they had never left for military leave.

N:\BENEFITS & COMP POLICY\MILITARY LEAVE\Military Leave Overview 2012.doc

MILITARY LEAVE: FREQUENTLY ASKED QUESTIONS

Does a new employee who is immediately called to active duty still have to satisfy a probationary period?

> Yes, a new employee who is immediately deployed must complete the remaining probationary period when he/she returns back to work from military leave in order to secure the status, seniority, and benefits that would have received if the employee had not been deployed.

What if an employee who is a candidate for one of the County's Training Academy Programs is deployed prior to completing the program?

> During military leave, the offset pay will be based on employee's County training candidate pay. Upon return from military service, the employee has the option to either resume and successfully complete the training program OR return to his/her position prior to training program.

What if the employee is on a "Voluntary" Military Leave of Absence?

> If the employee wants to volunteer to serve a period of military service, the Department must allow the employee to take an unpaid leave of absence. The employee is unpaid and ***Leave Event Code 014*** (1-180 days) and Leave Event Code 013 (180+ days) are used. There is no County contribution towards health insurance.

What if the employee's Military Pay is more than his/her County pay?

> If the reservist receives more military pay than the County pay, no County salary is to be paid to the employee. Cafeteria plan contributions may be paid to the employee, but no salary. To effectuate this, you must use ***Leave Event Code 043*** to offset the employee's full County pay. The employee will continue to receive the cafeteria plan contribution towards health, dental, and other insurance benefits. Vacation, sick leave, and holiday leave benefits continue to accrue.

Should we allow an employee to return back to work who has not been released and has not resigned from the military?

> No, USERRA reemployment rights are only provided if the employee has been honorably discharged from active military service and with proper documentation. Departments are not to accept the return of any employee while on active military service. Departments are to note potential liability that the reservist may be undergoing some type of military "cool-down" period and without proper military discharge documentation, fitness to return to civilian life is questionable.

Fact Sheet - USERRA

Subject: The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), Chapter 43 of Title 38, US Code, as enacted by Public Law 103-353, October 13, 1994, updated in October 1996 and November 1998.

Purpose:

1. To encourage non-career service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment, which can result from such service;
2. To minimize the disruption to the lives of persons performing service in the uniformed Services as well as to their employers, their fellow employees, and their communities, <u>but providing for the prompt reemployment of such persons upon their completion of such service</u>
3. To prohibit discrimination against persons because of their service in the uniformed services.

Key Points:

1. Requirements for the uniformed service member to be protected under USERRA:
   a. Must provide advance notice to the civilian employer—written or oral
   b. Limited to less than five years cumulative absence (certain types of duty excluded)
   c. Military service must be under honorable conditions
   d. Timely return to civilian job.
      1) 30 days or less of military leave: authorized safe travel time plus 8 hours
      2) 31 to 180 days of military leave: two weeks
      3) over 180 days of military leave: 90 days
2. Responsibilities of the National Guard/Reserve member:
   a. Notification;
   b. Documentation; and
   c. Reporting back on time
3. Responsibilities of the Employer:
   a. Grant leave of absence
   b. Timely reinstatement of member on return from military leave
   c. Grant status/seniority/benefits to returning members as if they had not been on leave
   d. Train member, if necessary (i.e., injury, different job)
   e. Do not discriminate in hiring, employment, reemployment, promotion or giving of benefits on the basis of membership in the uniformed services
4. Other Benefits
   a. Health Benefits
      i. Absence of less than 30 days -- benefits continue as if the employee has not been absent.
      ii. Absence of 31 days or more -- coverage stops unless the employee elects to pay for COBRA-like coverage (for a period of up to 18 months @ up to 102% premium).
      iii. Health insurance must be reinstated the day an employee is reinstated with no waiting period.

b. Pension -- Upon reemployment, the employee has 3 times the length of service (not to exceed 5 years) to makeup pension payments and the employer is liable to fund any resulting obligation of the plan within the same time frame.

c. Seniority -- upon an employee's return to employment he or she is entitled to restoration of the pre-military service seniority and seniority credit for the period of the military service.

The Uniformed Services Employment and Reemployment Rights Act (USERRA), provides job protection and rights of reinstatement to employees who participate in the National Guard and Reserve. The National Committee for Employer Support of the Guard and Reserve (ESGR), an agency within the Office of the Assistant Secretary of Defense for Reserve Affairs, operates programs directed toward U.S. employers, employees, and communities to ensure understanding of the role of Reserve component members. ESGR encourages development of employer policies and practices to facilitate employee participation in the Reserve components through a network of volunteers and the ESGR Ombudsman program provides "third party assistance" and informal mediation services to employers and members of the National Guard and Reserve. It works in conjunction with the Veterans' Employment and Training Service (VETS), U.S. Department of Labor. Volunteer members are trained to provide assistance in the resolution of employment conflicts that can result from military membership, training, or other service requirements protected under USERRA.

USERRA Questions & Answers:

1. *Is an employee protected from unlawful discrimination by an employer based on military affiliation?*

Yes. USERRA provides protections for initial hiring and adverse employment actions by an employer if the action is motivated even in part by the employee's military service. This protection also extends to those who assist service members or testify in a USERRA investigation.

2. *What are the basic eligibility requirements for job protection under USERRA?*

To be protected, a National Guard or Reserve member must have a civilian job, must provide timely notification to the employer of military duty, and must report back to work for reemployment in a timely manner. Reemployment rights are provided even if the civilian job is described as "temporary," unless the employment was for a brief period with no reasonable expectation of continuance for a significant period of time.

3. *Can an employer refuse to allow an employee to attend scheduled drills or annual training?*

No. Employees must be excused from work to attend inactive duty training (drill) or annual training and the employer must reemploy the employee as if he or she has not been absent.

4. *Is there a limit to the amount of active duty an employee can perform and still have reemployment rights?*

Yes, there is a 5-year cumulative total of military service an employer is required to support. Not included in that total are: inactive duty training (drills); annual training; involuntary recall to or retention on active duty; voluntary or involuntary active duty in support of a war, national emergency, or certain operational missions; or additional training requirements determined and

certified in writing by the Service Secretary, and considered to be necessary for professional development or for completion of skill training or retraining.

5. *When should an employee provide notification of upcoming duty?*

Written or oral notification must be made to employers prior to going on duty, unless precluded by military necessity. Employees are highly encouraged to notify their employer of any "window" of anticipated military activity, when application for orders is made, or if notified of possible involuntary recall. Employees should be sensitive to employer scheduling requirements when providing notification and when submitting application to the unit commander for orders. Where possible, an employee should submit requests for orders during calendar

6. *Is prior notice to the employer required for leave of absence for military duty?*

Yes. Unless precluded by military necessity, advance notice must be provided either orally or in writing. The context for what constitutes timeliness of notification was not spelled out in detail by Congress under USERRA. However, employees who participate in the National Guard or Reserve should provide their employers as much advance notice as possible. Failure to provide notice could result in a denial of the protection of USERRA.

7. *What are valid military orders?*

All written or verbal orders are considered valid when issued by competent military authority. A military member in receipt of official orders is obligated by federal statute to execute them. The recurring requirement to perform inactive duty training (drill) is an example of when written orders may not be formally issued.

8. *Does USERRA apply to "state" military duty or governor call-ups of National Guard members?*

No. However, protection for such duty is generally provided by state statutes and in most instances is comparable to protections provided under the USERRA.

9. *When may an employer require an employee to provide documentation of military service?*

After periods of military leave of absence for more than 30 days, the employer has the right to request such documentation, which can be used to establish the employee's basic eligibility for protection under USERRA. All National Guard and Reserve members are encouraged to provide a copy of orders, the annual drill schedule, or other type of documentation to employers as soon as available and, if possible, before the commencement of military duty.

10. *What if the employee cannot provide satisfactory documentation for military service in excess of 30 days?*

The employer must promptly reinstate the employee pending its availability. The employer may contact the military unit if necessary.

11. *Can an employer require an employee to apply for military leave of absence or otherwise submit official documentation for approval of military leave of absence?*

No. As stated earlier, an employer may not require documentation for notification prior to military duty. Further, an employer does not have a "right of refusal" for military leave of absence, so long as the employee has not exceeded the 5 years of cumulative service provided under USERRA.

12. *Can an employee be required to find someone to cover his or her work period when military duty interrupts the work schedule?*

No, an employee is responsible for notification but not for altering the work schedule or finding a replacement.

13. *Does an employee have the right to make up periods of work missed due to drill or military leave of absence?*

No. An employer may choose to offer an employee the opportunity to work hours missed as a benefit not provided under the USERRA. For example, an employer is not required to provide hours of work for an average 2-week, 80-hour period if part of that period is missed due to military service.

14. *After completion of weekend drill, what is the time limit for an employee to return to work?*

The beginning of the next regularly scheduled work period on the first full day following completion of service and expiration of an 8-hour rest period following safe transportation home. For example, an employer cannot require a service member who returns home at 10 p.m. to report to work 2.5 hours later at 12:30 a.m. However, the employer can require the employee to report for the 6 a.m. shift, or scheduled work period, the next morning (after reasonable commute from military duty to home followed by 8-hours). Included in the 8 hour period is time for rest and the commute to work.

15. *What is the time limit for an employee to return to work after Annual Training or other types of extended military leave of absence?*

Time limits for returning to work depend on the duration of the orders. The rules are:

- Service of 1 to 30 days: the beginning of the next regularly scheduled work period on the first full day following completion of service and expiration of an 8-hour rest period following safe transportation home.
- Service of 31 to 180 days: application for reinstatement must be submitted not later than 14 days after completion of military duty.

- Service of 181 or more days: application for reinstatement must be submitted not later than 90 days after completion of military duty.

16. *What if an employee does not return in a timely manner to work?*

The employee is subject to the personnel policies and practices of the employer for unexcused absences.

17. *What if the employee has an accident, is delayed by lack of military transportation, or is otherwise unable to report back in a timely manner?*

The employee must report back to work as soon as possible. Unless the delay is through no fault of the employee, he or she is subject to the personnel policies and practices the employer would normally apply to employees with unexcused absences.

18. *What if an employee is injured or incurs a disability during military duty?*

The deadline for reinstatement may be extended for up to 2 years for persons who are convalescing due to a disability incurred or aggravated during military service, and employers must make reasonable accommodations for the impairment.

19. *What job position is an employee returned to after military leave of absence?*

Except with respect to persons whose disability occurred in or was aggravated by military service, the position into which an employee is reinstated is determined by priority, based on the length of military service. The rules are:

- Service of 1 to 90 days:

a. (a) in the job the person would have held had he or she remained continuously employed (possibly a promoted position), so long as the person is qualified for the job or can become qualified after reasonable efforts by the employer, or
b. (b); if the person cannot become qualified, in the position the person was employed on the date of the commencement of the military service.

- Service of 91 or more days:

a. (a) same as for service of 1 to 90 days, or a position of like seniority, status and pay, so long as he or she is qualified, or
b. (b) if the person cannot become qualified, in the position the person was employed on the date of the commencement of the military service or which nearly approximates that position.

Note: The reemployment position with the highest priority reflects the "escalator" principle, which requires that a returning service member steps back onto the seniority escalator at the point the person would have occupied if the person had remained continuously employed.

USERRA specifies that returning employees must be "promptly reemployed." What is prompt will depend on individual circumstances. Reinstatement after 3 years on active duty might require two weeks to allow giving notice to an incumbent employee who might have to vacate the position.

20. *How does military service affect employee status or seniority in the workplace?*

An employee must be considered not to have been absent from the workplace if the only reason for that absence was service in a uniformed service. A returning employee must be made "whole" by:

- being allowed to contribute to the pension plan any amount that would have been contributed had the employee not been absent
- being reinstated with privileges and status the employee earned by length of service (for example, after 3 years with a company an employee may be entitled to accrue more vacation per year, or after 5 years an employee is automatically advanced to a management position.)

21. *What are the rules on contribution to the pension or thrift savings plan for periods of military leave of absence?*

Upon reemployment, the employee has 3 times the length of service (not to exceed 5 years) to make payments and the employer is liable to fund any resulting obligation of the plan within the same time frame.

22. *Can an employee contribute to the pension plan when on military leave of absence?*

There is no burden under the law for an employer to continue pension contributions while the employee is away from the work site. An employer may choose to offer this benefit.

23. *What are the rules for entitlement to health insurance?*

For absence of less than 30 days, benefits continue as if the employee has not been absent. For absence of 31 days or more, coverage stops unless the employee elects to pay for COBRA-like coverage (for a period of up to 24 months). Health insurance must be reinstated the day an employee is reinstated with no waiting period. If the employer cannot put the employee back to work immediately upon application, the health insurance must be restored immediately.

24. *Does an employee accrue vacation or medical/sick days from the employer while on military leave of absence?*

No. However, as in the previous question, an employer may choose to offer accrual of vacation or medical/sick days as an additional benefit. An employer is not required under USERRA to provide short term compensation (pay, vacation accrual, etc.) when an employee is not working at the worksite.

25. *Is an employer required to pay an employee who is on military leave of absence?*

No. While many employers offer differential pay or a specific number of paid military leave days, an employer is not required to pay an employee on military leave of absence.