

CITY OF SPOKANE ADMINISTRATIVE POLICY AND PROCEDURE	ADMIN 0620-10-07 LGL 2010-0023
TITLE: MILITARY LEAVE AND MILITARY/FAMILY LEAVE OF ABSENCE	
EFFECTIVE DATE: March 1, 1994	
REVISION EFFECTIVE DATE: September 9, 2010	

1.0 GENERAL

- 1.1 This document outlines the City's policy for military leave and military leave of absence and the procedure for using both.
- 1.2 The provisions of this policy do not supersede the provisions of any collective bargaining agreements or Civil Service Rules, and when in conflict, the specific terms of the collective bargaining agreement or Civil Service Rules will prevail.

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2.0 DEPARTMENTS/DIVISIONS AFFECTED

This policy and procedure applies to all employees in all City divisions and departments.

3.0 REFERENCES

Applicable provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994: Sections 4312(a)(1), 4312(d)(1)(A), 4312(e), 4312(f)(3)(A), 4312(f)(3)(B), 4313(a), 4318(a)(2)(A) and 4318(b)(2)
29 USC Chapter 28
29 CFR Part 825
RCW 38.40.060

Chapter RCW 49.77 RCW

4.0 DEFINITIONS

None

5.0 POLICY

5.1 It is the policy of the City to support all applicable laws and regulations concerning military leave and military leaves of absence. Employees who exercise their rights under this policy shall be, upon reemployment, entitled to the job they would have had if they had not taken time off for military service so long as they make application to return to City employment within the prescribed times, and meet the requirements of the Uniformed Services Employment and Reemployment Rights Act of 1994.

6.0 PROCEDURE

6.1 Military Leave.

6.1.1 Every regular employee of the City who is a member of the National Guard or of the Army, Navy, Air Force, Coast Guard, or Marine Corps Reserve of the United States, or of any organized reserve or armed forces of the United States, shall be entitled to and shall be granted military leave of absence. Under Washington law, a public employee is entitled to a paid military leave of absence for a period not to exceed twenty-one (21) working days during each year beginning October 1st and ending the following September 30th. According to guidance from the Washington State Attorney General's Office, a day is calculated according to the number of days the employee would have worked, but for the military leave. The leave shall be granted in such a manner and at such time as he or she may be ordered to active duty or take part in active training duty. It shall be in addition to any vacation or sick leave to which the employee might otherwise be entitled and shall not involve any loss of seniority, status, or pay. All regular and permanent part-time employees are eligible for military leave.

6.1.2 For any calendar day in which an employee cannot report to work because he/she has been called to active military duty or to take part in active training duty, the employee is entitled to be excused from work, and is entitled to receive the compensation and benefits

that would otherwise have been paid for that day. For such a day, one (1) day of the annual twenty-one (21) working days of military leave is deducted, without regard to the number of hours the employee would have worked that day.

- 6.1.3 Military leave beyond the twenty-one (21) days of paid time off will be unpaid provided that employees may elect to use accrued vacation, compensatory time or other available paid time off during the period of military leave or by the terms of the appropriate collective bargaining agreement.

6.2 Military Leave of Absence.

- 6.2.1 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 a discretionary request for orders during calendar periods outside of peak operational seasons and not during the most popular vacation cycles.
- 6.2.2 Advance Notice. Employees are required to submit advance written or verbal notification prior to going on active duty or active duty training unless precluded by military necessity. Employees are highly encouraged to notify their supervisor of any "window" of anticipated military activity, when application for orders is made, or if notified of possible involuntary recall.
- 6.2.3 Employees receiving orders, whether verbally or in writing shall immediately notify their supervisor so that appropriate arrangements can be made to cover the absence. Employees shall provide a copy of their orders, the annual drill schedule, or other type of documentation as soon as available and, if possible before commencement of military duty.
- 6.2.4 An employee who receives orders to report for active duty or active duty for training beyond twenty-one (21) days may require an unpaid military leave of absence. The military leave of absence must not be longer than five (5) cumulative years, including all previous absences by the employee by reason of military service.
- 6.2.5 Employees need not exhaust vacation leave, floating holidays, personal leave or compensatory time before going on a military leave of absence.

6.3 Reemployment Rights.

6.3.1 The general requirements for reemployment are:

- a. except in the case of military necessity, the employee has given his/her supervisor advance written or verbal notice of the military service;
- b. the cumulative absence from the City has not exceeded five (5) years;
- c. the employee has not received an other-than-honorable discharge; and
- d. the employee submits a timely application for reemployment.

6.3.2 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). In this case, the probationary period must be completed upon reinstatement as described in the applicable collective bargaining agreement or Civil Service Rules.

6.3.3 If the break in City service was ninety (90) days or less, the employee shall be returned to the position he/she would have had but for the military service, or, if not qualified, to the exact position the employee left. If the break was for more than ninety (90) days, the employee shall be returned to the position he/she would have had or to a position of like seniority, status and pay (for which the employee is qualified), or to the exact position the employee left. The City must make reasonable efforts to qualify the employee for the position he/she would have had.

6.3.4 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/she had occupied the position when it ceased to exist

6.3.5 The City need not reemploy the employee if circumstances have so changed as to make it impossible, unreasonable, or would impose an undue hardship on the City. However, if the returning

employee is not qualified as a result of an injury or medical condition sustained during the service, or during the determination of his/her qualifications for the former position, the City will engage in an interactive process in an attempt to reasonably accommodate the returning employee. If the City's reasonable efforts are unsuccessful, the returning employee is to be offered any other vacant position which is equivalent in seniority, status and pay (for which the employee is qualified), or in a position which is the nearest approximation to such position.

6.3.6 If the returning employee is not qualified to perform the job he/she would have had, or the job he/she left, and cannot become so qualified by reasonable efforts by the City, then the employee shall be offered any other vacant position of lesser status and pay which the employee is qualified to perform, with full seniority.

6.4 Re-employment Deadlines.

6.4.1 The returning employee must notify the City of his/her intent to return to a position of employment with the City as follows

Length of Military Service	Deadline
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30 days or less	The employee must report to work the first regular work day after a reasonable period within which to return home plus eight (8) hours' rest (unless prior arrangements have been made for taking vacation leave, personal leave, floating holiday or compensatory time).
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31-180 days	After completing military service, the employee must apply within fourteen (14) days.
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181 days or more	After completing military service, the employee must apply within ninety (90) days.
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The deadline for reinstatement may be extended for up to two (2) years for employees who are convalescing due to an injury or medical condition incurred or aggravated during military service.

6.4.2 An employee on military leave of absence for a period of thirty-one (31) days or more must provide documentation showing that the application for reemployment is timely; the five (5)-year service

limitation has not be exceeded; and the separation from service was other than disqualifying under USERRA, Section 4304. Only honorably discharged veterans are covered.

- 6.4.3 The City will reemploy an eligible returning employee in a timely manner after receiving a written request for reemployment.
- 6.4.4 If an employee does not provide satisfactory documentation because the documentation is not readily available or does not yet exist, the City will honor the right to reemployment contingent upon subsequent receipt of the documentation as soon as it becomes available. If, after reemployment, documentation becomes available that shows that one (1) or more of the reemployment requirements were not met, the City may terminate the employee subject to the appeal rights provided in the applicable collective bargaining agreement or Civil Service Rules
- 6.4.5 A returning employee may be discharged only for cause during the first six (6) months of reemployment after completing between thirty (30) and one-hundred and eighty (180) days of service, or during the first twelve (12) months of reemployment after more than one-hundred and eighty (180) days of service.

6.5 Health, Disability and Life Insurance.

- 6.5.1 Whether or to what extent an employee is covered by City-sponsored medical, dental, life, and long-term disability insurance is governed by the terms of the appropriate collective bargaining agreement and the insurance contracts as well as by state and federal law.
- 6.5.2 The employee may elect to continue health insurance while in an unpaid status; however he/she shall not be required to pay more than one hundred two percent (102%) of the full premium. Employees who perform service in the uniformed services for less than thirty-one (31) days are not required to pay more than the employee share, if any, for the coverage.
- 6.5.3 The maximum period of coverage of the employee and the employee's dependents under such an election shall be the lesser of:
 - a. the twenty-four (24) month period beginning on the date of absence; or

- b. the day after the date on which the employee fails to apply for or return to a position of employment, as determined under 38 USC 4312 (e).

6.5.4 If health insurance is not continued during the military leave of absence, the returning employee shall have his/her health insurance reinstated without waiting periods or new employee exclusions.

6.6 Pension Benefits.

6.6.1 The returning employee is entitled to the pension rights and benefits he/she would have enjoyed had he/she remained continuously employed. Military service will not be treated as a break in service, provided that missed benefit contributions to the pension plan are made up. Upon return from military leave, the employee has a period equal to three (3) times the length of service (not to exceed five (5) years) within which to make the required retirement contributions and the City will fund the resulting obligation of the plan(s) within the same time frame. Should the returning employee elect not to make up the missed contributions then the period of military leave of absence will be subject to the rules of the plan. In no case will the City fund the "employer" share of the pension contribution if the employee does not make the required "employee" contribution.

6.6.2 If an employee has been absent for military service for ninety-one (91) or more days, the City may require the employee to provide documentation as described in Section 6.2 above and USERRA section 7312(f)(3)(B) before beginning to treat the employee as not having incurred a break in service for pension purposes. n

6.7 Vacation, Illness Leave and Holidays.

6.7.1 Eligible employees on paid military leave under sections 6.1.1 and 6.1.2 continue to accrue vacation and illness leave while in paid military leave status. Holidays that fall under paid military leave do not accrue and are treated as paid military leave.

6.8 Federal Military Family Leave Entitlements.

6.8.1 During a period of military conflict declared by the President or Congress, an employee who is the spouse of a member of the Armed Forces, National Guard or Reserves is entitled to up to fifteen (15) days of unpaid leave while his/her spouse is on leave from deployment, or before and up to deployment. The purpose of

this leave is to support the families of military personnel serving in military conflicts by permitting them to spend time together before a family member is deployed or while the family member is on leave from a deployment. An employee must work an average of twenty (20) hours per week to be eligible for this family military leave.

- 6.8.2 Eligible employees with a spouse, son, daughter, or parent on active duty or called to active duty status in the National Guard or Reserves in support of a contingency operation may use their twelve (12) week family medical leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include unusually short notice deployment, attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.
- 6.8.3 The Family and Medical Leave Act (FMLA) also includes a special leave entitlement that permits eligible employees to take up to twenty six (26)-weeks of leave to care for a covered employee during a single twelve (12)-month period. A covered employee is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the employee medically unfit to perform his/her duties for which the employee is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.

6.9 Washington State Military Family Leave Act.

- 6.9.1 During a period of military conflict, an employee who is the spouse or registered domestic partner (as defined in RCW 49.77.900) of a member of the Armed Forces of the United States, National Guard or Reserves who has been notified of an impending call or order to active duty or has been deployed is entitled to a total of fifteen (15) days of unpaid leave per deployment after the military spouse has been notified of an impending call or order to active duty and before deployment or when the military spouse is on leave from deployment.
- 6.9.2 An employee who takes leave under this state law is entitled:
 - a. to be restored to a position of employment in the same manner as an employee entitled to leave under chapter 49.78.280 RCW is restored to a position of employment; and

b. to continue benefits in the same manner as an employee entitled to leave under chapter 49.78.290 RCW continues benefits.

6.9.3 An employee who seeks to take leave under this state law must provide the City with notice, within five (5) business days of receiving official notice of an impending call or order to active duty or of a leave from deployment, of the employee's intention to take leave under this state law.

6.9.4 An employee who takes leave under this state law may elect to substitute any of the accrued leave to which the employee may be entitled for any part of the leave provided under this state law.

6.10 Departments are responsible for notifying the Human Resources Department when an employee requests military leave and upon the employee's return to work or reemployment.


7.0 RESPONSIBILITIES

The Human Resources Department is responsible for administering this policy.

8.0 APPENDICES

None

APPROVED BY:



City Attorney (ASST)

8-23-10

Date



Director - Human Resources

8-24-10

Date



City Administrator

8-25-10

Date