

# **City of Mission Viejo Personnel Policy**

**Subject:**     **MILITARY LEAVE**

**Statement of Intent:**

To establish guidelines for providing military leave for City employees in accordance with applicable Federal and State law.

**Background:**

Military leave is governed by Federal law (the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. §§ 4301-4333), and California law (Military & Veterans Code §§ 387-398). This Policy incorporates by reference provisions of Federal and State laws, as these laws presently exist and as they may be amended from time to time. The intent of this Policy is to set out the basic parameters of applicable law, and is not intended to expand any rights beyond those provided by Federal and State laws, except as specifically provided herein. In the event of any inconsistency between this Policy and applicable Federal or State law, the Federal or State law will prevail. Specific questions regarding the application of USERRA and State law may be obtained by reviewing the applicable statutes directly.

**Policy:**

1.     DEFINITIONS. For purposes of this Policy, the following terms will have the following meanings unless otherwise specified:
  - a.    ACTIVE MILITARY DUTY: Ordered duty as a member of a reserve component of the armed forces of the United States, as a member of the National Guard or Naval Militia, or as an inductee, enlistee or otherwise serving active duty as a member of the armed forces of the United States. Periods of active military duty may be eligible for receipt of salary during the first thirty (30) calendar days of leave, as discussed and subject to the limits below.
  - b.    ARMED FORCES or ARMED FORCES OF THE UNITED STATES: The United States Air Force, Army, Navy, Marine Corps, Coast Guard, Revenue Marine Service, and the Army and Navy Nurse Corps.
  - c.    INACTIVE DUTY TRAINING: The recurring requirement, usually two (2) days per month for most reserve units to perform inactive duty training (drill), or as otherwise provided by law. Periods of inactive duty training are not eligible for receipt of salary during the first thirty (30) calendar days of leave, as discussed in more detail below.
  - d.    ONE YEAR OF PUBLIC AGENCY SERVICE: Includes the combination of all employment by the City and all service of the public

employee in recognized military service. "Recognized military service" is that recognized under State law.

- e. PAID MILITARY LEAVE: Military leave during which time the employee receives City salary and/or uses accrued paid City leave, and shall not include payment from the uniformed services or any non-City source.
- f. REEMPLOYMENT AND REINSTATEMENT: These terms have the same meaning and are used interchangeably throughout this Policy.
- g. SALARY OR COMPENSATION: Pay that is equal to the regular hourly wage for the days and hours that the employee is normally scheduled to work.
- h. TEMPORARY MILITARY DUTY: Ordered duty 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.
- i. TEMPORARY MILITARY LEAVE OF ABSENCE: A leave of absence from public employment to engage in ordered military duty for a period which by the order is not to exceed 180 (one hundred eighty) calendar days including travel time for purposes of active military training, encampment, naval cruises, special exercises or like activity as member of the reserve corps or force of the armed forces of the United States, or the National Guard, or the Naval Militia.
- j. 30-DAY PERIOD: The first thirty (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 includes workday, non-workdays, holidays and reasonable travel time. For purposes of the State law right to receive salary or compensation for the first 30 calendar days of a qualifying leave, the salary or compensation involves the number of working hours the employee would normally work during the 30 calendar days. Stated differently, it is the salary or compensation that is normally received by the employee during 30 calendar days, not 30 work days of pay.
- k. UNIFORMED SERVICES: For purposes of Federal law, the "uniformed services" comprise the armed forces (i.e., U.S. Army, Navy, Air Force, Marines and Coast Guard), Army National Guard, Air National Guard, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or emergency. National Guard duty under Federal statute, but not under State statute, is included under Federal law. The "military and naval forces" covered under State law vary between statutes, but generally comprise the reserve corps or forces of the United States (i.e. United

Sates Air Force, Army, Navy, Marine Corps, Coast Guard, Revenue Marine Service and the Army and Navy Nurse Corps), the California National Guard and the Naval Militia. Please consult the Human Resources Office with regard to coverage for any other service if there is a question of possible coverage. For convenience, the term “uniformed services” is used in this Policy. However, the specific services included for purposes of a specific right, benefit or duty will vary depending on the statute involved.

2. TYPE OF LEAVE: Eligible employees are entitled to the following types of leave, as classified by State law:

- a. TEMPORARY MILITARY LEAVE OF ABSENCE: Military leave for an individual while engaged in temporary military duty training as a member of a reserve or National Guard unit, provided that the temporary duty does not exceed one hundred eighty (180) calendar days, including time involved in traveling to and from duty. (California Military & Veterans Code § 395(a).)
- b. INDEFINITE MILITARY LEAVE or MILITARY LEAVE OTHER THAN TEMPORARY MILITARY LEAVE OF ABSENCE: Military leave for an individual called to active military duty in excess of 180 calendar days.
- c. EMERGENCY MILITARY LEAVE: Military leave where a member of the National Guard is ordered to active duty during an emergency declared by the Governor of California or under other circumstances where the Governor is authorized to call the National Guard into active service. The leave period is not to exceed the duration of the emergency and time required while going to and returning from such duty. (California Military & Veterans Code § 395.05.)

3. NOTICE REQUIREMENTS

- a. Employees must notify the City when they intend to leave an employment position to perform service in the uniformed services. Notice should be provided as soon as information is available to the employee and as far in advance as is reasonable under the circumstances. Notice may be verbal or written.
- b. Notice should be provided to the supervisor or manager to whom the employee normally reports absences. If that person is not available, notice may be provided to the Department Director, Senior Human Resources Analyst or City Manager. An appropriate officer of the uniformed service in which the service is to be performed may provide notice in lieu of notice from the employee. An appropriate officer is one authorized to give such notice by the service involved.

- c. Advance notice may be excused where prevented by military necessity or where it is impossible or unreasonable under the circumstances. The designated military authority determines military necessity.
- d. To the extent possible, employees should submit requests for orders during calendar periods outside of peak operational seasons and popular vacation cycles.
- e. A copy of orders, the annual drill schedule, or other type of documentation should be submitted as soon as available. Official orders are required for periods of military leave of absence exceeding thirty (30) days and may be required for other periods of military leave.

4. GRANTING LEAVE

- a. The City Manager or his/her designee will grant military leave time to eligible employees unable to report for scheduled work because of an obligation to perform service in the uniformed services, as provided under Federal or State law. Except as otherwise provided by law, the City may not deny military leave required to permit an employee to perform service in the uniformed services.
- b. During the period of service in the uniformed services, the employee will be considered to be on leave of absence or furlough from the City.

5. PAY WHILE ON LEAVE: Except as otherwise provided by law or a duly adopted resolution, ordinance or memorandum of understanding of the City, military leave shall be unpaid.

- a. TEMPORARY MILITARY LEAVE OF ABSENCE: Subject to subsection (d), an employee ordered to active military training, encampment, naval cruises, special exercises or the like, and who has one (1) year of City service immediately prior to the date on which the leave begins, is entitled to receive normal salary for the first thirty calendar (30) days of such absence. (California Military & Veterans Code § 395.01(a).) Periods of military leave of absence to perform inactive duty training are not eligible for paid military leave. (California Military & Veterans Code § 395.01(b).)
- b. INDEFINITE MILITARY LEAVE: Subject to subsection (d), an employee who is inducted, enlists or is ordered to active military duty and who has one (1) year of City service immediately prior to the date on which the leave begins, is entitled to receive normal salary for the first 30 calendar days of such absence while engaged in the performance of ordered military duty. (California Military & Veterans Code § 395.02.)

- c. EMERGENCY MILITARY LEAVE: An employee who is a member of the California National Guard who is ordered to active duty during an emergency declared by the Governor of California or under other circumstances where the Governor is authorized to call the National Guard into active service is entitled to receive normal salary for the first 30 calendar days of declared emergency. There is no minimum City service requirement and eligible employees are entitled to pay for the first 30 calendar days of each declared emergency in California, regardless of the number of emergencies declared during a particular fiscal year. (California Military & Veterans Code § 395.05; 83 Ops. Cal. Atty. Gen. 148 (2000).)
  - d. 30-CALENDAR DAY PAY ENTITLEMENT: Eligible employees are entitled to a maximum of 30 calendar days of City pay for any one leave or for a combination of temporary and indefinite leaves during a fiscal year. (California Military & Veterans Code § 395.03.) Further, employees on temporary and indefinite military leaves do not receive an additional 30-calendar day leave entitlement with the start of a new fiscal year.
  - e. USE OF COMPREHENSIVE ANNUAL LEAVE OR SIMILAR PAID LEAVE TIME: An employee on an otherwise unpaid military leave may request to use earned or accrued Comprehensive Annual Leave (CAL) credits, floating holidays, or compensatory time. Use of accrued CAL credits, floating holidays, or compensatory time is voluntary and the City will not require an employee on military leave to use accrued CAL credits, floating holidays or compensatory time. Requests for use of accrued CAL credits, compensatory time or floating holidays must be submitted at least five (5) calendar days prior to the commencement of military leave. Where 5-days prior notice is not feasible, the request for use of accrued paid leave shall be submitted not later than the deadline for submittal of time sheets for the first pay period immediately following the commencement of the employee's military leave.
6. BENEFITS: During military leave, employees are entitled to the non-seniority rights and benefits generally provided by the City to other employees with similar seniority, status, and pay that are on furlough or leave of absence.
- a. HEALTH INSURANCE AND DISABILITY INSURANCE PREMIUM BENEFITS: The City will continue to pay its designated contribution toward the cost of health and disability insurance premiums for the employee and any dependents for up to four (4) months in a calendar year for an employee on military leave, whether such military leave is paid or unpaid.

- i. Employees with less than thirty (30) days of service with the City will not be eligible for health insurance or disability insurance benefits pursuant to the City's health insurance and disability insurance plans.
  - ii. If an employee performs service in the military for less than thirty-one (31) days, the employee will not be required to pay more than the regular employee share of the health insurance premiums for health plan coverage.
  - iii. For periods of unpaid military leave of 31 days or more, following the expiration of the four-month period set forth in Subsection 6(a), above, employees may elect to pay for continuation coverage (similar to COBRA) for up to the lesser of (i) twenty-four (24) months from the date the leave began or (ii) the day after the date on which the person fails to apply for or return to a position of employment. (38 U.S.C. § 4317.)
- b. OTHER BENEFITS DURING PAID LEAVE: During the period of a paid military leave (including the concurrent use of accrued CAL, floating holiday, or compensatory time), other leave and benefits continue to accrue in the same manner as if the employee was not on military leave.
  - i. CAL credits will continue to accrue during any period of paid military leave.
  - ii. With regard to holidays, an employee will be paid for any City holidays that fall during a period of paid military leave to the extent that the employee would otherwise be eligible for holiday pay under the City's holidays policy. (See Holidays Policy.)
  - iii. During any period of paid military leave, all other benefits will continue to accrue in the same manner as if the employee was not on military leave.
- c. CASH CONTRIBUTION FROM HEALTH BENEFIT PROGRAM DURING UNPAID MILITARY LEAVE: In accordance with the City's Leave of Absence Without Pay Policy, the City will not pay an employee any cash contribution under the City's health benefit program during any period of unpaid military leave of absence.
- d. CAL CREDITS AND HOLIDAYS DURING UNPAID MILITARY LEAVE:
  - i. Employees on a temporary military leave of absence for training who have been serving the City for at least one (1) year continue to accrue the same CAL credits and floating holiday

privileges, up to the maximum period of 180 days applicable to temporary military leave, as if the employee had not been on military leave (California Military & Veterans Code § 395(d).)

- ii. Employees on indefinite military leave do not accrue CAL credits or floating holidays while on unpaid military leave. (California Military & Veterans Code § 395.1.)
- iii. Employees on unpaid emergency military leave do not accrue CAL credits or floating holidays while on unpaid leave. (California Military & Veterans Code § 395.05.)
- iv. Except as provided in this section, no leave benefits shall accrue during periods of unpaid leave, except as may be required by law.

e. SERVICE CREDIT: Service credit accrues during military leave of absence for purposes of retirement, any length of service requirements under the City's retiree insurance programs, and for CAL accrual rate.

f. OTHER BENEFITS WHILE ON UNPAID LEAVE: Questions regarding other benefit plans should be referred to Human Resources. Regardless of continued coverage under or the availability of the various plans, war exclusions may apply, as provided by the involved plan, carrier or both.

7. REEMPLOYMENT/REINSTATEMENT: Following release from military service, employees will have the right to return to City employment, subject to the procedures and limitations provided by Federal and State laws. Employees must timely follow reporting, application and documentation requirements.

a. FIVE-YEAR LIMIT

- i. An employee has a right to reemployment where the cumulative length of absence from the City by reason of service in the uniformed services does not exceed five (5) years.
- ii. The five-year period, including any periods exempt from the five-year period, shall be determined in accordance with applicable statutes and regulations. (38 U.S.C. § 4312.)

b. REPORTING REQUIREMENTS

- i. 30 DAYS OR LESS: Employees performing 30 days or less of military service must report back to work at the beginning of the next regularly scheduled work shift that begins after the employee's safe return home plus eight (8) hours.

- ii. **FITNESS TO PERFORM SERVICE:** Employees who are absent from work for a period of any length for purposes of an examination to determine their fitness to perform service in the uniformed services, must report back to work at the beginning of the next regularly scheduled work shift that begins after the employee's safe return home plus eight (8) hours.
  - iii. **31 DAYS TO 180 DAYS:** Employees returning from 31 to 180 days of military leave must submit an application for reemployment no later than fourteen (14) days after completion of military service.
  - iv. **181 DAYS OR MORE:** Employees returning from 181 days or more of military leave must submit an application for reemployment no later than ninety (90) days after the completion of service.
- c. **SEASONAL AND TEMPORARY EMPLOYEES:** Seasonal and temporary employees will have a right to reinstatement and reemployment only to the extent required by Federal and State laws.
- d. **NOTICE/APPLICATION:** Notice that an employee is returning to work or an application for reemployment must be made to the Department Director of the Department in which the employee served before taking leave, unless the employee is notified that a different supervisor or manager will serve as the contact. If that person is not available, the application may be provided to the Senior Human Resources Analyst or City Manager. An application for reemployment may be oral or written. However, an application for reemployment in writing is strongly encouraged as the best means to preserve the employee's reemployment request. If the 14-day or 90-day deadline falls on a day when no one is available to accept the application, the time is extended to the next business day.
- e. **FAILURE TO MEET TIME DEADLINES:** Time deadlines may be excused or extended only under the special circumstances provided by law. Employees who fail to apply for reemployment or report for work or both, within the time limits required by law, may be considered to have resigned their employment, waived reemployment rights or may be subject to disciplinary action up to and including termination, as provided under City polices, rules or procedures.
- f. **ESTABLISHING ELIGIBILITY:** Employees returning after 31 days or more of military service must provide documentation establishing their military service and eligibility for reemployment. An employee is entitled to reemployment upon establishing that:

- i. He or she made timely application for reemployment;
  - ii. The cumulative time in service has not exceeded the five (5) year limit (or a longer period, if authorized under the limited exceptions under Federal law or provisions of State law); and
  - iii. Separation under honorable conditions.
- g. UNAVAILABLE DOCUMENTATION: The failure to provide documentation will not be used as the basis for denying reemployment if it does not exist or is not available at the time of the City's request. However, if after reemployment, documentation becomes available showing that the employee did not meet the reemployment criteria, the City may retroactively deny reemployment and immediately terminate the employee's employment.
- h. HONORABLE SEPARATION FROM SERVICE: The City has the right to refuse reemployment or to terminate an employee for separation from the service with a dishonorable, bad conduct or other than honorable discharge, dismissal of a commissioned officer in certain situations involving a court martial or order of the President in time of war, or having been absent without authority for more than three months or imprisoned by a civilian court, or on such other basis provided by Federal or State law.
- i. REEMPLOYMENT POSITION:
  - i. An employee returning from military service will be placed in the reemployment position with the pay, rights and benefits required by law. Generally, the returning employee is returned 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 or as otherwise specified in Subdivisions (ii) and (iii), below).
  - ii. In the case of a probationary employee, the probationary period must be completed upon reinstatement.
  - iii. If the employee's position has been abolished or otherwise 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.
- j. OTHER RIGHTS AND BENEFITS: As noted, military service is considered service with the City for retirement vesting and certain

benefit accrual purposes. In addition, where applicable, reemployed service members will be credited with additional seniority, rights and benefits the member would have received if the member had remained continuously employed. For example, military leave time normally counts toward the time considered in establishing CAL accrual rates. If a returning employee's health plan terminated while on military leave, no exclusion or waiting period will apply on reemployment unless such exclusion or waiting period would have applied had the coverage not been terminated as a result of the military service or as authorized by law.

8. EMPLOYEES WITH LESS THAN ONE YEAR OF SERVICE

- a. If an employee has served less than one year of employment with the City, any period(s) of military leave will be unpaid.
- b. With regard to an employee with more than thirty (30) days employment but less than one year employment with the City, the City will continue to pay its designated contribution toward the cost of health and disability insurance premiums for the employee with and his/her dependents, up to four (4) months, while the employee is on military leave.
- c. Nothing in this Policy shall preclude an employee with less than one year of service from using his/her accrued CAL, floating holidays and/or compensatory time for any part or whole period of military leave. During any period of military leave that the employee voluntarily uses accrued CAL or floating holiday, his/her military leave shall be considered paid leave, and all City benefits shall continue to accrue that normally accrue during any paid leave period.

9. **DISCRIMINATION AND RETALIATION PROHIBITED:** It is the policy of the City of Mission Viejo that discrimination and retaliation against persons who served in the uniformed services, including those who apply to be a member of or to perform service, and acts or reprisal, are prohibited, as provided in Federal and State law.

**Administration:**

In accordance with City of Mission Viejo Municipal Code chapter 2.60 "Personnel System", this Personnel Policy is deemed to have a direct financial impact on the City. City Council approval is required prior to initial implementation and for any subsequent amendments.

Implemented: Resolution No. 14-06, January 20, 2014.