



Military Leave Policy

Policy Topic: Military Leave
Policy Contact: Human Resources
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Approved By: HR/Legal/City Manager

Application

The City is committed to protecting the job rights of employees who are on military leave. Any employee who is a member of the Uniformed Services of the United States will be granted a leave of absence for military training or related obligations in accordance with applicable law. At the conclusion of the leave, upon the satisfaction of certain conditions, an employee generally has a right to return to the same position he or she held prior to the leave or to a position with like seniority, status and pay that the employee is qualified to perform.

Statement of Policy

The administration of military leave is subject to the requirements of the Uniformed Services Employment and Reemployment Rights Act (USERRA); previously referred to as Veterans Reemployment Rights (VRRRA) and any applicable state laws of the Commonwealth of Virginia. Managers need to be aware that statutorily protected leaves of absence for military training/service are not subject to management approval and that employees may be entitled to reemployment upon return from leave.

Military Leaves

Employees directed to participate in military duties in the U.S. Armed Forces or uniformed services will be placed in military leave status. Employees will be entitled to the rights and benefits described subject to the procedures outlined in this policy.

1. **Paid Military Leave:** Employees will be eligible to receive up to 15 workdays of paid military leave within the federal fiscal year.
2. **Temporary Military Leave (less than 31 days):** Eligible employees who must be absent from their job for a short term period of less than 31 days each federal fiscal year in order to participate in temporary military duty are entitled to temporary military leave. All benefits will continue during an employee’s temporary military leave. Employees may use annual leave/PTO for any unpaid portion of temporary leave.
3. **Extended Military Leave (greater than 30 days):** Eligible employees who must be absent from their job for a period of more than 30 days are entitled to extended military leave. All benefits will be handled as described below. Employees may be eligible for makeup pay as described below.

Pre-Departure for All Military Leave

Upon receipt of orders for active or reserve duty or documentation for federally funded military duty, an employee should notify their immediate supervisor and the Human Resources Department and inform them that they will be engaging in military service. The employee should provide a copy of the orders or documentation for federally funded military duty directing the military duty, unless the employee is prevented from doing so by military necessity. Employees are requested to provide a minimum of 30 days advanced notice of active military service, when feasible. Such notice may be given verbally or in writing.

Annual Leave, PTO and Compensatory Time

Employees on temporary or extended military leave may, at their option, use any or all eligible annual leave, PTO and/or compensatory time during their absence. However, an employee cannot be paid military leave pay and annual leave/PTO or compensatory pay concurrently.

Benefits

All benefits will continue during an employee's temporary military leave (less than 31 days in duration.) If an employee is on extended military leave (more than 30 days), benefits will be impacted as follows:

1. Health insurance coverage will cease at the end of the month following the month in which the employee last worked.
2. Group life insurance and retirement benefits will be provided in accordance with the policies and procedures of the Virginia Retirement System.
3. Employees do not accrue annual, sick leave, or any other paid leaves while on an unpaid military leave status.

Reemployment

Generally speaking, an employee is entitled to the seniority and seniority based rights and benefits that they had on the date the military service began, plus any rights or benefits that the employee would have attained had they remained continuously employed. The period of absence due to military service is not considered a break in employment.

1. Application for Reemployment

An employee returning from a temporary military service leave (less than 31 days in duration), must be given enough time to report for reemployment. Generally speaking, the employee will report to the City no later than the beginning of the next work period following the end of service plus eight hours or as soon as possible after the end of the eight-hour period if earlier reporting is impossible through no fault of the employees.

An employee returning from an extended military service leave (more than 30 days), in order to be entitled to the reemployment rights set forth, typically should submit an application for reemployment according to the following schedule:

- a. If service is for 31 days or more but less than 180 days - the employee must submit an application for reemployment with Human Resources no later than 14 days following the completion of service.
- b. If service is over 180 days - the employee must submit an application for reemployment with Human Resources no later than 90 days following the completion of service.
- c. If the employee is hospitalized or convalescing from a service-connected injury - the period of their military leave is extended until their recovery or two years, whichever is shorter. The two year period can be extended to accommodate circumstances beyond the employees' control that make timely reporting impossible or unreasonable. An employee's manager will, upon the employee's application for reemployment, request that the employee provide the City with military discharge documentation that establishes the timeliness of the application for reemployment and length and character of the employee's military service. Employees who fail to notify the City of their intent to return to work within these time frames do not automatically forfeit their rights. Instead, they are treated as other employees who are absent from scheduled work according to the City's policy on employee leaves of absence.

If the employee does not return to work, the manager must notify Human Resources so that appropriate action may be taken.

2. Benefits upon Reemployment

- a. Employees reemployed following military leave will receive seniority and other benefits determined by seniority that the employee had at the beginning of the military leave, plus any additional seniority and benefits the employee would have attained, with reasonable certainty, had the individual remained continuously employed. In addition, an employee's time spent on active military duty will be counted toward their eligibility for FMLA leave once they return to their job at the City.
- b. Upon return to work, the employee's hire date prior to taking military leave will be used to determine annual leave/PTO eligibility.
- c. Group life insurance and retirement benefits will be provided in accordance with the policies and procedures of the Virginia Retirement System.

3. Position Upon Reemployment

Upon an employee's prompt application for reemployment (as defined above) an employee will be reinstated to employment in the following manner depending upon the employee's period of military service:

- a. Less than 91 days of military service:
 - i. In a position that the employee would have attained if employment had not been interrupted by military service; or
 - ii. If found not qualified for such position after reasonable efforts by the City, in the position in which the employee had been employed prior to military service.
- b. More than 90 days and less than 5 years of military service:
 - i. In a position that the employee would have attained if employment had not been interrupted by military service or a position of like seniority, status and pay, the duties of which the employee is qualified to perform; or
 - ii. If proved not qualified after reasonable efforts by the City, in the position the employee left, or a position of like seniority, status and pay, the duties of which the employee is qualified to perform.

4. Employee with a service-connected disability

If after reasonable accommodation efforts by the employer, an employee with a service connected disability is not qualified for employment in the position they would have attained or in the position that they left, the employee will be employed in:

- i. Any other position of similar seniority, status and pay for which the employee is qualified or could become qualified with reasonable efforts by the City; or
- ii. If no such position exists, in the nearest approximation consistent with the circumstances of the employee's situation.

Exceptions to Reemployment

In addition to the employee's failure to apply for reemployment in a timely manner, an employee is not entitled to reinstatement as described above if any of the following conditions exist:

- a. The City's circumstances have so changed as to make reemployment impossible or unreasonable (i.e. plant closing, reduction in force).
- b. The employee's employment prior to the military service was merely for a brief, non-recurrent period and there was no reasonable expectation that the employment would have continued indefinitely or for a significant period.
- c. If it is determined that assisting the employee in becoming qualified for reemployment would impose an undue hardship.

Anti-Retaliation

The City does not deny employment, reemployment, retention, promotion, or any other benefit to employees because of application for, performance of, or obligation to perform military service. The City does not retaliate or take adverse employment action against employees who take action to enforce protections under USERRA, testify or otherwise participate in a USERRA-related proceeding or investigation, or exercise USERRA rights.

The City does not take adverse action against employees or other persons because of activities protected under USERRA regardless of whether they have performed military service.

Complaint Procedures

Employees should immediately contact Human Resources about any violations of the City's Military Leave Policy or any applicable law relating to military leave. All complaints are promptly investigated. Cooperation is expected with investigations. Information obtained during investigations is confidential and only disclosed to those who have a need for the information.

Interpretation and Administration

The City Manager and Human Resources are responsible for the interpretation and administration of this policy and its various provisions. The City of Waynesboro has the authority to change, modify, or approve exceptions to this policy at any time without notice.

Revisions and Approvals

Date	Version	Approver	Change Description
8/14/17	II	Nichole Nicholson	Replaced "120 hours" with "15 working days" of military leave. Provided guidelines on reemployment administration.