



MILITARY LEAVE

PM-66-03

Section: 66-00, EMPLOYEE STATUS

I. PURPOSE & SCOPE

The City's military leave policies have been adopted in accordance with applicable federal and state law. Interpretation of such law is made by the Human Resources Division, office of the Director of Human Resources, in conjunction with the office of the City Attorney. All questions concerning the City's military leave policies should first be directed to the office of the Director of Human Resources.

II. POLICY

This policy is promulgated in compliance with applicable federal and state statutes and is subject to change as the law changes.

Strict compliance with all sections of this policy is required regardless of scheduling, work shortage, etc.

III. REQUEST FOR MILITARY LEAVE

It is incumbent upon employees requesting military leave to inform their immediate supervisor of the anticipated date(s) of military leave and to present competent orders immediately upon receipt of same, unless giving such notice is precluded by military necessity or is otherwise impossible or not reasonably practicable. It is incumbent upon the employee's Division Director or designee upon receipt of the employee's competent orders to immediately present the orders to the Director of Human Resources or designee, Division of Human Resources, along with all pertinent documents and necessary notations for placement in the employee's personnel file held in Data Management, Division of Human Resources.

IV. REGULAR COMPONENTS OF THE ARMED FORCES USA

A. Regular, Full-Time City Employees

Regular, full-time City employees, including those in their initial probationary period, will be granted leave without pay for the purpose of active military service with one of the regular components of the Armed Forces of the United States.



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Upon returning to City employment under the guidelines and provisions of the Uniformed Services Employment and Reemployment Rights Act ("USERRA"), the employee shall be reinstated to a position of employment as follows:

1. If the military absence was for less than 91 days, reinstatement shall be to the position in which the employee would have been employed but for the military absence, unless the employee is unqualified to perform the duties of such position, in which case reinstatement shall be to the position the employee last held.
2. If the military absence was for more than 90 days, reinstatement shall be to the position in which the employee would have been employed but for the military absence, or a position of like status, grade, and pay, unless the employee is unqualified to perform the duties of such position, in which case reinstatement shall be to the position the employee last held, or a position of like status, grade, and pay.
3. If a disability incurred in, or aggravated during, military service disqualifies an employee from reinstatement to the position in which the employee would have been employed but for the military absence, reinstatement shall be to a position which is equivalent in status, grade, and pay, the duties of which the employee is qualified to perform or would become qualified to perform with reasonable efforts by the employer.

During the period of active military duty up to a cumulative military service absence of 5 years, the employee will continue to accrue City seniority. The employee will begin all leave accrual based on their seniority date on the first date the employee returns to City employment.

When an employee leaves for active duty, the employee has the option of having all leave frozen to be activated the first day of their reinstatement to City employment, or claiming for use their unused accrued vacation and bonus days at the time the employee leaves for active duty. This option belongs to the employee and not the City; and the City cannot force the employee to use their accrued vacation and bonus day leave. In all cases, the employee's sick



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leave is frozen on the last day on the payroll as well as time accrued toward the 3-month period for earning a bonus day.

If the employee does not report back to their City position within the time allotted by USSERA, all accrued seniority will cease and the employee will be separated from the City's payroll. If the employee, at the time they left City employment for active duty, froze unused accrued vacation and bonus days, the employee will be paid at the rate of pay the employee was earning for the frozen leave. Payment for sick leave is only allowed at the time of retirement from City employment.

For information regarding life insurance, health care plans, and pension provisions, reference should be made to the sections in this policy titled, LIFE/HEALTH CARE INSURANCE PROVISIONS and PENSION PROVISIONS.

B. Contingent Employees

If an individual is employed by the City as a contingent employee and leaves City employment for the purpose of active military service with one of the regular components of the Armed Forces of the United States, and the temporary employee is leaving a City position that is not durational in nature, the temporary employee shall be given leave without pay, and upon returning to City employment, under the provisions and guidelines of USSERA, will be reinstated to a position of like status, provided such position has not expired. However, the contingent employee is not entitled to any benefits that the City does not normally grant to its contingent employees.

V. TENNESSEE NATIONAL GUARD/RESERVE COMPONENTS OF THE ARMED FORCES USA

A. LEAVE OF ABSENCE WITH PAY

City employees who are or who may become members of the Tennessee National Guard or any reserve component of the Armed Forces of the United States shall be entitled under competent orders to a leave of absence with pay not to exceed 20 working days in any one calendar year, plus such additional days as may result from any call to active state duty. The leave provided shall apply to all city employees, including contingent employees and those in their initial probationary period, regardless of the date of employment or length of City service, and regardless of scheduling or work



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availability issues. Upon returning from all or any portion of the annual paid 20 working day military leave, the regular/full-time and/or regular/part-time employee will be returned to the position they occupied prior to the leave. Contingent employees will be returned to the position they held provided the position has not expired.

Employees hired into regular, full-time positions, including those in their initial probationary period, shall continue to accrue benefits for which they are eligible, such as but not limited to seniority, vacation, sick leave, bonus day leave, insurance, health care plans, and pension during the annual paid 20 working day military leave. Contingent employees are excluded from this provision.

B. LEAVE OF ABSENCE WITHOUT PAY

From time to time, a City employee may be required as a member of the Tennessee National Guard or any reserve component of the Armed Forces of the United States, under competent orders, to report for additional military training and/or schooling over and above the annual paid 20 working day military leave granted by law. Pursuant to federal and/or state statutes, a leave of absence without pay shall be granted by the City and shall apply to all City employees including contingent employees and those in their initial probationary period, regardless of the date of employment or length of City service, and regardless of scheduling or work availability issues.

Upon returning to City employment under the guidelines and provisions of the Uniformed Services Employment and Reemployment Rights Act ("USERRA"), regular full-time employees, including those in their initial probationary period, shall be reinstated to a position of employment as follows:

If the military absence was for less than 91 days, reinstatement shall be to the position in which the employee would have been employed but for the military absence, unless the employee is unqualified to perform the duties of such position, in which case reinstatement shall be to the position the employee last held.

If the military absence was for more than 90 days, reinstatement shall be to the position in which the employee would have been employed but for the military absence, or a position of like status, grade, and pay, unless the employee is unqualified to perform the duties of such position, in which case reinstatement



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shall be to the position the employee last held, or a position of like status, grade, and pay.

If a disability incurred in, or aggravated during, military service disqualifies an employee from reinstatement to the position in which the employee would have been employed but for the military absence, reinstatement shall be to a position which is equivalent in seniority, status, and pay, the duties of which the employee is qualified to perform or would become qualified to perform with reasonable efforts by the employer.

A contingent employee will be reinstated to a position of like status, provided such position was not of a durational nature and has not expired. However, the temporary employee is not entitled to any benefits that the City does not normally grant to its contingent employees.

Employees hired into regular, full-time positions, including those in their initial probationary period, have the option of having all leave frozen at the time the employee leaves for military service and to have that leave activated the first day of their reinstatement to City employment; or claiming for use their unused accrued vacation and bonus days at the time the employee leaves for military service. This option belongs to the employee and not to the City; and the City cannot force the employee to use their accrued vacation and bonus day leave. In all cases, the employee's sick leave is frozen on the last day the employee is on the payroll as well as time accrued toward the 3 month period for earning a bonus day. All frozen leave shall be activated the first day the employee returns to City employment. The accrual of all leave benefits begins the first day the employee returns to City employment from military service.

In the year following the regular, full-time employee's military leave of absence without pay, the employee's vacation shall be prorated in accordance with the VACATION POLICY, PM-46-02, SECTION titled, VACATION IN YEAR FOLLOWING LEAVE OF ABSENCE WITHOUT PAY.

VI. 56 HOUR EMPLOYEES

A. Annual Paid 20 Working Day Leave

Employees who work an extended scheduled work week of 56 hours or more shall be entitled to the necessary number of 24 hour shift days off to satisfy the annual paid 20 day working day military leave requirement.



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The leave provided shall apply the same to employees whether regular, full-time, including those in their initial probationary period, or contingent, and is unaffected by the date of employment or length of service, and is required regardless of scheduling, work shortages, etc.

All City policies in this section regarding rights and benefits afforded to employees on the annual paid 20 working day leave for either the Tennessee National Guard or one of the reserve components of the Armed Forces of the United States shall apply to 56 hour employees.

B. Leave of Absence Without Pay

All provisions stated in this policy apply the same to employees who work an extended scheduled work week of 56 hours or more.

VII. LIFE/HEALTH CARE INSURANCE PROVISIONS

A. Annual Paid 20 Working Day Leave

All insurance and health plan coverage in which the employee is enrolled continues as if the employee were reporting to their City job daily. In addition, pension rights to which the employee is entitled continues during this same period of time. Contingent employees are not included in this provision.

B. Leave Without Pay

When a regular, full-time employee, including an employee in their initial period reports for military service under competent orders and is placed on a leave of absence without pay, the employee may:

- Continue all insurance, including dependant life insurance, and health care plans in which the employee is enrolled. The maximum period of coverage of an employee and the employee's dependants under such an election shall be the lesser of the 24-month period beginning on the date on which employee's absence begins, or the day after the date on which employee fails to apply for or return to a position of employment under the guidelines and provisions of USERRA. To remain under the coverage of such plans for the 24-month period of time, the employee must pay their portion of the premium for the first three months and



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then pay the full premium owed for the remaining twenty-one months. Temporary employees are not included in this provision.

An employee returning to City employment from military leave is entitled to immediate insurance and health coverage without waiting for an open enrollment period. Contingent employees are not included in this provision.

COBRA rights may be exercised by eligible employees upon separation from payroll. (Reference PM-42-01, HEALTH CARE PLAN.)

VIII. PENSION PROVISIONS

When an employee City government under competent orders for military service in the Tennessee National Guard, one of the reserve components of the Armed Forces of the United States, or one of the components of the Armed Forces of the United States that exceeds the annual paid 20 working day military leave, and if the employee is a member of the City of Memphis Retirement System, that employee will continue to hold all pension rights to which they are entitled. If an employee fails to return to City employment for any reason, the employee's pension contributions will be refunded. All matters of pension shall be governed by the rules and regulations of the City of Memphis Retirement System.

IX. SENIORITY

Regular, full-time employees, including those in their initial probationary period, who leave City employment for military duty in the Tennessee National Guard, one of these reserve components of the Armed Forces of the United States or one of the components of the Armed Forces of the United States, shall continue to accrue seniority while service in such a capacity. This includes the annual 20 working days, extended training and schooling, and up to 5 years of active military duty. No adjustment to the date of employment is allowed regardless of whether the leave is with or without pay. This provision does not apply to contingent employees.

AUTHORITY

- 38 U.S.C. §§ 4312, 4313, 4316, 4317
- T.C.A. § 8-33-102, 103, 104, 105, 109
- T.C.A. 58-1-604