



# ADMINISTRATIVE POLICIES

<b>SECTION:</b> 300 - Human Resources	<b>POLICY#:</b> 302	
<b>TITLE:</b> Military Leave	<b>R &amp; O #:</b> 17-83	
	<b>IMPLEMENTED BY PROCEDURE #:</b> N/A	
<b>SPONSORING DEPT/DIV:</b> Support Services/Human Resources		
<b>ADOPTED:</b> 07/11/2017	<b>REVIEWED:</b>	<b>REVISED:</b>

**PURPOSE:** The purpose of this policy is to define the provisions for employees to take leaves of absence for military service or training.

**AUTHORITY:** Uniformed Services Employment and Reemployment Rights Act (USERRA) and Oregon Revised Statutes, §408.240 to §408.290.

**APPLICABILITY:** This policy applies to all employees of Washington County.

**GENERAL POLICY:** The [Uniformed Services Employment and Reemployment Rights Act \(USERRA\)](#) is the Federal law that establishes rights and responsibilities for persons serving in the active components of the Armed Forces, members of the National Guard and Reserves who, voluntarily or involuntarily, take a leave of absence for military service or training. Providing that the service member meets all criteria, Washington County shall provide:

- prompt job reinstatement;
- accumulation of seniority including pension plan benefits;
- reinstatement of health insurance benefits;
- training/retraining of job skills, including accommodations for the disabled; and
- protection against employment discrimination or retaliation.

Washington County provides leave, benefits, and reinstatement rights to eligible employees who voluntarily or involuntarily take a leave of absence for military service or training. This policy is in accordance with USERRA and Oregon Revised Statutes ([§408.240 to §408.290](#)).

## **POLICY GUIDELINES:**

### **1. Responsibilities:**

The Human Resources Division is authorized to establish necessary procedures to implement and monitor this policy and may modify the established procedures as necessary to carry out the intent of this policy.

### **2. Eligibility Requirements for Protected Military Leave:**

In general, an employee who has been absent from duty due to service in the uniformed services will be eligible for reemployment under this policy if they meet the following criteria:

- 2.1. The employee must provide notice to the County that leave is needed for military training or service;
- 2.2. The leave must not exceed five-years of cumulative services (not including types of service listed in the United States Department of Labor's Code of Federal Regulations (CFR), 20 CFR Part 1002.103);
- 2.3. The employee must be released from services under honorable conditions; and
- 2.4. The employee must report back to work in a timely manner or make timely application for reemployment.

### **3. Notice Requirement for Requesting Military Leave:**

- 3.1. An employee must give advance notice to the County for any leave of absence for military service or training, unless the giving of such notice is precluded by military necessity or is otherwise impossible or unreasonable. Advance notice is referenced by USERRA as "as much advance notice as possible." Notification may be either verbal or written and need not be in any particular format.
- 3.2. An "appropriate officer" (defined as a commissioned, warrant, or non-commissioned officer authorized to give such notice) may give notice on the employee's behalf.
- 3.3. Military leave must be granted by the County and the employee shall be considered to be on leave of absence for the period of military service.

### **4. Duration of Service:**

An employee may be absent for up to five (5) years (cumulative or consecutive) for military duty and retain reemployment rights. The following leaves do not count toward the cumulative five (5) year limit:

- 4.1. Inactive duty training or annual Reserve training;
- 4.2. Involuntary recall to active duty or involuntary retention on active duty;
- 4.3. Voluntary or involuntary service performed by Reserve or National Guard members in time of war, national emergency, or certain operational missions, when Reserve Component members are being recalled; and

- 4.4. Service that is performed if the person is unable to obtain orders releasing them prior to expiration of the five (5) year period and which was of no fault of their own.
- 4.5. An employee will be entitled to take leave beyond five (5) years if necessary to complete an initial period of obligated service (i.e., a six (6) year tour in the Navy's nuclear power program).

5. Return to Work:

- 5.1. Employees absent on leave for military training or service are eligible for reinstatement to their former or an equivalent position if the former position no longer exists, provided they are discharged from their service under honorable circumstances and return to work or request reemployment under the following timelines:
  - 5.1.1. **Periods of training or service up to 30 consecutive days:** The employee must report back to work on the first full work shift following completion of military service. The employee will be allowed a reasonable period for safe travel to the employee's residence plus eight (8) hours of rest following the completion of military service or training prior to being required to report to work.
  - 5.1.2. **Periods of training or service between 31-180 days:** The employee must report to work or request reemployment not later than fourteen (14) days after the completion of service.
  - 5.1.3. **Periods of training or service of 181 days or more:** The employee must report to work or request reemployment not later than ninety (90) days after the completion of service, or from hospitalization continuing after discharge for a period of not more than a year.
  - 5.1.4. Employees who are hospitalized for or convalescing from injuries incurred in or aggravated by military service must apply for reemployment within two (2) years following recovery from such injuries.
- 5.2. When submitting a request for reemployment, the employee is notifying the County that that they are returning from military service and that they are seeking reemployment. The application need not be in writing, but the County may require documentation of service to establish if the application for reemployment is timely and to verify the service has not exceeded five (5) years (via a DD-214, an endorsed copy of military orders or a letter from the Commanding Officer).
- 5.3. For periods of military service or training greater than thirty (30) days, an employee may be required to submit documentation to establish that:
  - 5.3.1. the employee has reported to work or applied for reemployment in a timely manner;
  - 5.3.2. the employee has not exceeded the five (5) year total time limit; and
  - 5.3.3. the employee's separation or dismissal from the uniformed service was under honorable circumstances.

- 5.4. The following is required for an employee returning to work from military leave:
  - 5.4.1. The employee must be promptly re-employed.
  - 5.4.2. An employee returning from military leave is entitled to reinstatement to their former position or an equivalent position if the former position no longer exists. (See exceptions in section below)
  - 5.4.3. For periods of military service between 31-180 days, the employee may not be discharged (except for cause) for a period of one hundred and eighty (180) days from the date of reemployment.
  - 5.4.4. For periods of military service of 181 days or more, the employee may not be discharged (except for cause) for period of one (1) year from the date of reemployment.
  - 5.4.5. The County must make reasonable efforts to train or retrain an employee returning from leave.
  
6. Return to Work for Limited Duration, Temporary, Variable Hour and Seasonal Employees:
  - 6.1. Following the conclusion of a military leave of 31 days or more Washington County will make an attempt to reemploy employees who worked in Limited Duration, Temporary, Variable Hour and Seasonal positions. However the employee may not have reemployment rights if the employment assignment or position that he or she held prior to leaving to serve in the uniformed services was for a brief, non-recurrent period and there is no reasonable expectation that the employment would have continued indefinitely or for a significant period (20 CFR §1002.41).
  - 6.2. Reemployment will be determined on a case-by-case basis for employees leaving Limited Duration, Temporary, Variable Hour or Seasonal positions for military service depending on whether the position continues to exist when the employee's military service ends.
  
7. Leave of Absence with Pay:
  - 7.1. An employee who has been employed with Washington County, the State of Oregon or its counties, municipalities or other political subdivisions for six (6) months or more immediately preceding the request for military leave will be granted a leave of absence with pay for initial active duty for training and annual active duty for training for a period not to exceed fifteen (15) calendar days, or eleven (11) working days, in a Federal fiscal year (October 1 through September 30) (ORS 408.290).
  - 7.2. For employees serving more than two (2) calendar weeks in active duty or training, the first eleven (11) paid work days (for employees on a 5-day work week) or the first nine (9) paid work days (for employees on a 4-day work week) in a training year may be credited towards military leave with pay. The term training year refers to the federal fiscal year defined as October 1 through September 30.

7.3. For eligible employees, up to eighty-eight (88) hours of paid military leave accrual will be made available October 1 of each qualifying year or once an employee has fulfilled his/her six (6) month service time. Military leave accruals will be prorated for employees in positions requiring less than a forty-hour work week. If a County paid holiday occurs while an employee is in paid leave status, the employee shall receive their regular holiday pay for that day and it shall not be counted against their military paid leave of absence.

7.4. Military leave may be taken consecutively or intermittently throughout the year. These leaves of absence with pay are generally used for annual duty and training associated with State National Guard or reserve units of the United States Military. An employee must show proof of military service to have time credited towards leave of absence with pay. If the employee does not show proof of military service either in advance or upon return to work, the employee may use vacation accruals or choose to use leave without pay for time away from work.

8. Service Accruals and Use of Paid Leave Accruals during Military Leave:

8.1. Military Leave of Absence with Pay shall include the first eleven (11) work days for an employee on a five (5) day/week work schedule or the first nine (9) work days for an employee on a four (4) day/week schedule occurring between October 1 and September 30th.

8.1.1. All time spent on military leave counts towards continuous employment with the County.

8.1.2. The maximum annual entitlement for paid leave is 88 or 90 hours (equivalent to eleven (11) working days for an employee on a five (5)-day work week or nine (9) working days for an employee on a four (4) day work week).

8.1.3. For military leave that exceeds the annual entitlement for paid leave, an employee may choose to use accrued vacation or compensatory time, or may choose to take leave of absence without pay.

8.1.4. Upon the return to employment with the County, the employee is entitled to begin at the level of seniority, salary, and vacation accrual rate as the employee would have achieved had they not left on military leave.

8.1.5. An employee is still required to complete the remainder of their initial or career probationary period if it was not completed prior to going on military leave.

8.1.6. All military leave must be reported on a Personnel Action form and identified as leave with pay or leave without pay.

8.1.7. An FLSA exempt (MAPPS) employee who works any part of a work week while on temporary military leave (defined as up to 3 months), shall receive a full week's salary for that particular week. However, the employee will only be paid the difference between the amount received from the employee's

military pay and the salary due for that particular week. The employee shall receive full credit toward accrual of sick and vacation leave hours and will be paid for any holiday occurring during such week.

- 8.2. Timesheets for the employees on military leave shall be designated for military leave with pay or military leave without pay. If an employee chooses to use vacation or compensatory time for additional days of training or weekend duty, this time shall be reported on the employee's time sheet but is not required to be designated on a personnel action form.
- 8.3. Regular employees who are members of an armed forces reserve program and who are called up to active duty will continue to accrue vacation leave during the military leave of absence and/or annual training. The accrual rate will not be affected by the leave. Employees will have the option to use accrued vacation leave while on active duty or during annual training.
- 8.4. Employees who are members of an armed forces reserve program and who are called up to active duty will continue to accrue sick leave during the military leave of absence. The use of sick leave will not be allowed while the employee is out on military leave.

9. Benefits During Military Leave:

The following information regarding healthcare and other benefits applies only to employees who are eligible for benefits at the time their active military duty begins.

- 9.1. For military service of duration less than thirty-one (31) days, healthcare benefit coverage and participation in voluntary benefit options will continue. Employees remain responsible for paying any required employee contributions.
- 9.2. For military leaves of thirty-one (31) days or more, employees may elect and purchase continuation of medical, dental, and vision benefits for themselves under COBRA for a period of up to twenty-four (24) months, or until the employee fails to apply for reinstatement or fails to return to employment with the County, provided they are already enrolled in the County medical, dental or vision coverage.
- 9.3. Voluntary benefit options offered by the County will continue to the extent required by federal and state laws, County policy, and benefit provider plan documents. Employees are encouraged to contact Benefits staff for questions related to voluntary benefit options and provisions.

10. PERS/OPSRP Contributions:

- 10.1. For military deployments requiring the absence of the employee for duration that exceeds thirty (30) continuous days, the County shall pay the employee portion of required PERS/OPSRP contributions for the duration of the deployment. The pick-up of the employee portion of PERS/OPSRP shall apply to deployments commenced on or after January 1, 2003. For military deployments of less than thirty (30) days, the

employee shall be responsible paying the employee's portion of the PERS/OPSRP contributions.

11. Exceptions:

Exceptions to this policy may only be granted by the County Administrator.

12. Implementation:

Elected officials and department directors are expected to be knowledgeable of, and shall be responsible for, implementing this policy within their respective departments. Observance of this policy is mandatory for all County employees and violation may result in disciplinary action (up to and including termination).

13. Periodic Review:

This policy shall be reviewed by Support Services, Human Resources Division at least every three years, or more often if needed, and updated as necessary.