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MAYOR OF JERSEY CITY

# CITY OF JERSEY CITY

## DEPARTMENT OF HUMAN RESOURCES

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## MILITARY LEAVE

### **I. Purpose of the Policy**

This policy is intended to reflect and expand upon applicable federal and state laws, and outline the City of Jersey City's ("the City") internal procedure for processing a military leave of absence and any expansion on employee benefits already provided under the law. The City complies with all applicable provisions of the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the State of New Jersey's Title 38, which provide rights and benefits for veterans and members of the active and Reserve components of the U.S. armed forces<sup>1</sup>. This includes provisions regarding leave of absence for active and inactive duties, which includes, but is not limited to, initial active duty for training, inactive duty training, full-time National Guard duty, absence from work for an examination to determine a person's fitness for any of the previously mentioned types of duty, funeral honors duty performed by National Guard or Reserve members, and any duty performed by intermittent employees of the National Disaster Medical System (NDMS). Any union contractual language shall supersede this policy should it establish an employment right or benefit that is different than a right or benefit provided under this policy, USERRA, and any applicable law. Failure to comply with this policy may result in discipline, up to and including termination.

### **II. Notice of Leave**

The law requires employees to provide their employers with advance notice of military service:

- a. Notice may be either written or oral and must be provided to the Department of Human Resources. It may be provided by the employee or by the Commanding Officer and/or his/her designee of the branch of the military in which the employee will be serving.
  - i. Employee should make every effort to notify the employer as soon as practical after applying for or receiving notice of military, this includes notices of any on call duty. If foreseeable, employees are encouraged to give at least thirty (30) days' notice prior to departing for uniformed service.
  - ii. Employee must submit their yearly required drill (e.g., one weekend a month, 2 weeks a year) upon receipt to their supervisor in a timely manner.
  - iii. In the event an employee submits a request for voluntary military training to his/her Commanding Officer and/or his/her designee, the employee shall provide the City with notice of the request as soon as practical after its submission.
  - iv. The City reserves its right to contact the appropriate military authorities to address concerns over the timing, frequency or duration of the employee's service and to discuss adjusting

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<sup>1</sup> Army, Navy, Marine Corps, Air Force and Coast Guard, Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve and Coast Guard Reserve, Army National Guard and Air National Guard, Commissioned Corps of the Public Health Service, and any other category of persons designated by the President in time of war or emergency.

scheduled absences, if necessary. Abuse of military orders will be brought to the attention of the appropriate military authorities.

- b. Exception to notice:
  - i. Cases of military necessity, as defined by the Secretary of Defense, “a mission, operation, exercise or requirement that is classified, or a pending or ongoing mission, operation, exercise or requirement that may be compromised or otherwise adversely affected by public knowledge” (See 32 CFR 104.3), prevents the giving of notice; or
  - ii. Cases where the giving of notice is otherwise impossible or unreasonable. The City reserves the right to verify any military service.

### **III. Rights While on Leave**

An employee on a military leave of absence has the right to:

- a. Be reemployed at his or her former job (or as nearly comparable a job as possible) with the same benefits considering:
  - i. You ensure that your employer receives advance written or verbal notice of your service;
  - ii. You have five (5) years or less of cumulative service in the uniformed services while with that particular employer;
  - iii. You return to work or apply for reemployment in a timely manner (see V. Reemployment “Application”/Return to Work Process) after conclusion of service; and
  - iv. You have not been separated from service with a disqualifying discharge or under other than honorable conditions.
- b. Seniority and all rights and benefits based on seniority that they would have attained with reasonable certainty had they remained continuously employed;
- c. Participate in any rights and benefits not based on seniority that are available to employees on comparable nonmilitary leaves of absence, whether paid or unpaid.

### **IV. City Health Benefits, Pay and Pension While on Leave**

- a. Health Benefits
  - i. You have the right to elect to continue your existing employer-based health plan coverage for you and your dependents for up to twenty-four (24) months while in the military.
  - ii. If you do not elect to continue coverage during your military service, you have the right to be reinstated in your employer’s health plan when you are reemployed, generally without any waiting periods or exclusions (e.g. pre-existing condition exclusions) except for service-connected illnesses or injuries.
  - iii. Service members may be required to pay the employee cost of any funded benefit to the extent that other employees on leave of absence are so required.
- b. Pay
  - i. All members of the National Guard or Reserves will be granted time off with full pay to attend required drills. Such time off will be in addition to vacation, sick and administrative leave.
  - ii. In the event an employee is called to **active duty**, the employee shall receive the difference in pay between his/her military pay and his/her regular pay for up to 180 days. The City may, at its option, extend the 180-day limit.
  - iii. An employee may choose to take his/her leave of absence for inactive military duty, including voluntary training, without pay or may choose to utilize his/her vacation, personal business, sick time or compensatory time while out.

- c. Pension plans, which are tied to seniority, are given separate, detailed treatment under the law. The law provides the following:
  - i. A reemployed person must be treated as not having incurred a break in service with the employer maintaining a pension plan.
  - ii. Military service must be considered service with an employer for vesting and benefit accrual purposes.
  - iii. The employer is liable for funding any obligation of the plan to provide required benefits.
  - iv. The reemployed person is entitled to any accrued benefits contingent upon employee contributions only to the extent that the person repays the employee contributions.

**V. Reemployment “Application”/Return to Work Process**

You have the right to return to work or apply for reemployment according to the length of service.

<b>Length of Service</b>	<b>Timeframe for Notice of Reemployment</b>
Service of 1 to 30 Days	<p>The person must report to his or her employer by the beginning of the first regularly scheduled work period that begins on the next calendar day following completion of service, after allowance for safe travel home from the military duty location and an 8-hour rest period. For example, an employer cannot require a service member who returns home at 10:00 p.m. to report to work at 12:30 a.m. that night. But the employer can require the employee to report for the 6:00 a.m. shift the next morning.</p> <p>If, due to no fault of the employee, timely reporting back to work would be impossible or unreasonable, the employee must report back to work as soon as possible after the expiration of the 8-hour period.</p>
Fitness Exam	<p>The time limit for reporting back to work for a person who is absent from work in order to take a fitness-for-service examination is the same as the one above for persons who are absent for 1 to 30 days. This period will apply regardless of the length of the person’s absence.</p>
Service of 31 to 180 Days	<p>An application for reemployment must be submitted to the employer no later than 14 days after completion of a person’s service. If submission of a timely application is impossible or unreasonable through no fault of the person, the application must be submitted as soon as possible on the next day when submitting the application becomes possible.</p>
Service of 180 Days or More	<p>An application for reemployment must be submitted to the employer no later than 90 days after completion of a person’s military service.</p>
Disability Incurred or Aggravated	<p>The reporting or application deadlines are extended for up to two years for persons who are hospitalized or convalescing because of an injury or illness incurred or aggravated during the performance of military service.</p> <p>If the employee fails to timely report for or apply for reemployment, he or she does not automatically forfeit entitlement to USERRA’s reemployment and other rights and benefits. Rather, the employee becomes subject to the conduct rules, established policy, and general practices of the employer pertaining to an absence from scheduled work.</p>

## **VI. Procedure**

- a. The employee is to complete and submit the “Notice of Military Leave” form provided on page 5 of this policy to Human Resources;
  - i. The employee must contact the Department of Human Resources if length of military leave changes to ensure accurate processing of leave.
- b. The employee must provide a copy of official government document authorizing military duties immediately upon receipt to Human Resources.
- c. Human Resources will provide confirmation of receipt to employee and applicable Department Director and/or his/her designee.
- d. Human Resources will notify Department to complete a status form if the military leave is to extend beyond two (2) full workweeks.
  - i. If it will not extend two (2) full workweeks, a status form is not necessary, but Human Resources will notify the Department Director and/or his/her designee to ensure proper timekeeping records.