
MILITARY LEAVE

Provisions

The following policy conforms to Arkansas Statutes 21-4-102, 12-62-413, and the United States Employment and Re-employment Rights Act (USERRA). Neither have been included in their entirety. For complete information on specific details it will be necessary to consult the Arkansas Code or USERRA provisions. If there is any conflict between this policy and either law, the law will prevail. If there is a conflict between Arkansas Statutes and USERRA's provisions, USERRA will prevail.

Annual Training and Duties Performed in an Official Duty Status

Any employee who is a reservist or member of the National Guard, who desires or is ordered to participate in the military training programs made available by the National Guard or any of the reserve branches of the armed forces, shall be entitled to a paid leave of absence for a period of fifteen (15) days plus necessary travel time for annual training requirements or other duties performed in an official duty status in any one (1) calendar year. Necessary travel time is calculated based on the authorized mode of travel listed on the employee's orders and the Official Table of Distances published by the federal government.

To the extent this leave is not used in a calendar year, it will accumulate for use in the succeeding calendar year until it totals fifteen (15) days at the beginning of the calendar year. The employee shall be entitled to his regular salary during the time he is away from his duties during such leave of absence. Such leave of absence shall be in addition to the regular vacation time allowed to the employee.

Whenever any employee of the City is granted military leave for a period of fifteen (15) days per calendar year, the unused military leave will accumulate for use in succeeding calendar years until it totals fifteen (15) days at the beginning of the calendar year, for a maximum number of military leave days available in any one (1) calendar year to be thirty (30) days.

An employee who is scheduled to attend drill during scheduled work days may elect to count this time towards meeting the allotment mentioned above. After an employee has exhausted his allotted military paid leave days in a calendar year, his participation in annual training programs or assignments shall be considered as leave without pay for the remainder of that calendar year, unless the employee opts to use available paid annual or personal leave.

Employees called to duty in emergency situations by the Governor or by the President shall be granted leave with pay not to exceed thirty (30) working days, after which leave without pay will be granted. This leave shall be granted in addition to all other leave the employee shall be entitled to. "Emergency situations" as defined by Arkansas Statutes § 21-4-212(e), are "any case of invasion, disaster, insurrection, riot, breach of peace, or imminent danger thereof, threats to the public health or security, or threats to the maintenance of law and order."

During a military leave of absence, the employee shall be entitled to preserve all seniority rights, efficiency or performance ratings, promotional status, retirement privileges, life and disability insurance benefits, and any other rights, privileges, and benefits to which the employee has become entitled.

The period of military service shall, for purposes of computations to determine whether such person may be entitled to retirement benefits, be deemed continuous service, and the employee shall not be required to make contributions to any retirement fund. The City shall continue to contribute its portion of any life or disability insurance premiums during the leave of absence on behalf of the employee, if requested, so that continuous coverage may be maintained.

An employee who is drafted or called to active duty in the armed forces of the United States or who volunteers for military service shall be placed on extended military leave without pay.

The right of reemployment shall conform to all federal and state government rules and regulations.

Notification Requirements

The employee shall be required to furnish the department head with copies of military orders or other appropriate verifying documentation as soon as possible after the employee receives it.

Record keeping Requirements

Copies of all military orders shall be forwarded to the Human Resources Department for inclusion in the employee's official personnel file.

A copy of the orders or other qualifying documentation must also accompany the bi-weekly time sheets to the Finance Department, with the days the employee is absent from work so noted in the section provided, or in the "Comments" section regarding each employee.

Reinstatement Following Active Duty

Re-employment rights and benefits and other employment benefits are conditioned on

- The employee or an appropriate officer of the uniformed service in which service is performed providing advance written or verbal notice of such service to the department head, unless such notice is precluded by military necessity or, under all of the relevant circumstances, the giving of such notice is otherwise impossible or unreasonable. A determination of military necessity for the purposes of this policy shall be made pursuant to regulations prescribed by the Secretary of Defense and shall not be subject to judicial review;
- The cumulative length of the absence and of all previous absences from a position of employment with the City by reason of service in the uniformed services does not exceed five (5) years, except for reasons described in USERRA as described below;
- The employee being released from service under honorable or general conditions; and
- The employee reporting to the department head or submitting an application for reemployment to the department head within the period of time set out below.

Five-year limit. USERRA sets a 5-year cumulative limit on the amount of military leave you can perform and retain reemployment rights with your employer. There are some important exceptions to the 5-year limit. If you are unable to obtain release or if service is required to complete an initial period of obligated service, that time of service is exempt (examples: An initial enlistment may last more than 5 years, such as for nuclear power training. In this case, an employee retains reinstatement rights with the employer. If an employee was hospitalized for or is convalescing from an illness or injury incurred in, or aggravated during military service, the limit may be extended up to an additional 2 years.) Drills (inactive duty training), annual training, involuntary active duty extensions (including training certified as necessary by your service), and recalls due to a war or national emergency are not counted in the 5-year cumulative total.

Employees who have been on active duty military leave of absence in a uniformed service shall be re-employed in the position vacated or an equivalent position at no loss of seniority or any of the other benefits and privileges of employment.

Reinstatement is based on the duration of the uniformed service. For periods of military service up to 30 days, the employee must report back to work at the next regularly scheduled shift on the day following release from the military, safe travel home, and eight hours of rest. Following a period of service of 31-180 days, the employee must apply for reemployment within 14 days following release. Following a period of service of 181 days or more, the employee must apply for reemployment within 90 days after release. In applying for reemployment the employee should identify himself or herself, state that he/she left the City's employment to perform military service, that he/she has completed the service and want to be reinstated. Failure to return to work or apply for reemployment within the specified time limits through the employee's own fault does not necessarily forfeit the employee's reemployment rights, but makes the employee subject to the City's rules concerning unauthorized absences from work.

Reservists ordered to initial active duty for not less than twelve (12) weeks have thirty-one (31) days from the date of release after satisfactory service to apply for reemployment.

No application for reemployment is required by law for reservists or members of the National Guard who perform weekend, annual, or special duty training.

An employee may not be re-employed if the City's circumstances have changed so as to make such reemployment impossible or unreasonable or such reemployment would impose an undue hardship on the City, or the department from which the person leaves.

Definitions

The term "uniformed services" means the Armed Forces (Army, Navy, Marines, Coast Guard), the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or national emergency.

"Active service" or "active duty" includes any period while on military service during which a person is absent from duty on account of sickness, wounds, authorized leave or other lawful cause.

"Period of active military service" is the time between the date of induction into active duty and shall terminate with death, or a date thirty (30) days immediately next succeeding the date of release or discharge from active military service, or upon return from active military service, whichever shall occur first.

"Service" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes: active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard, and any period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the employee for the purpose of performing funeral honors duty.

"Benefit", "benefit of employment", or "rights and benefits" means any advantage, profit, privilege, gain, status, account or interest (other than wages or salary for work performed) that accrues by reason of an employment contract or an employer policy, plan or practice and includes rights and benefits under a pension plan, a health plan, insurance coverage and awards, bonuses, severance pay, supplemental unemployment benefits, and vacations.

"Seniority" means longevity in employment, together with any benefits of employment that accrue with, or are determined by, longevity in employment.

Discrimination against persons who serve in the uniformed services and acts of reprisal for such service is prohibited. Complaints of such discrimination are taken seriously and will be investigated and appropriate action taken.