

## **Military Leave**

### **Purpose**

This policy is adopted to implement the requirements of the Uniformed Services Employment and Reemployment Rights Act (USERRA), [United States Code Title 38, Chapter 43](#).

### **Definitions—**

“Service in the uniformed services” means all categories of federal military training and service, including voluntary and involuntary service, National Guard or reserve service, active components of the United States armed forces, and other functions as specified in the applicable regulations.

[20 CFR 1002.5\(l\), \(o\)](#)  
[20 CFR 1002.6](#)

### **Military Leave—**

An employee is entitled to unpaid leave of absence from employment with the District to engage in service in the uniformed services and to return to employment or to be promptly reemployed by the District as provided by USERRA and this policy.

[20 CFR 1002.32](#)  
[20 CFR 1002.180](#)  
[Utah Code § 71A-8-105\(1\) \(2024\)](#)

The employee is entitled to all the rights and benefits that accompany an unpaid leave of absence taken from the District for other reasons. However, if during the period of service the employee knowingly provides the District with written notice of intent not to return to employment, the employee is not entitled to those benefits (although the employee still would be entitled to reemployment)

[20 CFR 1002.149](#)  
[20 CFR 1002.152](#)

Upon reemployment following service in the uniformed services, the employee will be placed in the position that the employee would have attained with reasonable certainty if not for the absence for military service, including the seniority, status, and rate of pay that the employee would have in that position, subject to the specific implementing regulations regarding determination of the position.

[20 CFR 1002.191](#)  
[20 CFR 1002.193\(a\)](#)  
[20 CFR 1002.194](#)  
[20 CFR 1002.195](#)  
[20 CFR 1002.196](#)  
[20 CFR 1002.197](#)  
[20 CFR 1002.198](#)  
[20 CFR 1002.199](#)  
[20 CFR 1002.225](#)

As set forth in applicable regulations, an employee is not entitled to reemployment with the District if the District demonstrates that the District's circumstances have changed so as to make reemployment impossible, or that reemploying the employee would impose an undue hardship on the District, or that the position the employee left was employment for a brief, nonrecurrent period without any reasonable expectation that it would continue indefinitely or for a significant period.

[20 CFR 1002.139](#)

An employee who has returned from a leave of absence for military service longer than 30 days can only be discharged for cause for 180 days after reemployment (if the leave period was between 31 and 180 days) or for one year after reemployment (if the leave period was more than 180 days).

[20 CFR 1002.247](#)

While military leave is unpaid leave, an employee may choose to use accrued vacation or annual leave to receive pay during the period of military leave. Because sick leave may only be used for illness under District policy, the employee may not use paid sick leave during military leave.

[20 CFR 1002.153](#)

Consistent with District policy that employees do not accrue vacation or annual leave during an unpaid leave of absence for other purposes, employees on leave for military service do not accrue leave during the period of absence.

[20 CFR 1002.150\(c\)](#)

If the employee has health insurance coverage through the District, the employee may elect to continue that coverage for the period which is the shorter of either (1) 24 months from the beginning of absence for service or (2) the period from the beginning of absence for service until the employee is required to return to service or apply for reemployment. (If the employee does not already have health insurance coverage, the employee is not entitled to start new coverage when taking military leave. If the employee is receiving in lieu payments from the District based on having health insurance coverage with another insurance provider, those payments will be discontinued during the period the employee is on leave longer than 30 days.) If the period of absence for military service is 30 days or less, the employee will only be responsible for paying the regular employee share for insurance coverage. If the period of absence for military service is 31 days or longer, the employee will be required to pay 102% of the full premium for the coverage. An employee's coverage may be cancelled (subject to certain conditions) for failure to give the District advance notice of the leave, failing to elect coverage when the leave is for more than 30 days, or failing to pay the required premiums. If the employee's health insurance coverage is terminated in connection with military leave, it will be reinstated when the employee returns to employment.

[20 CFR 1002.164](#)

[20 CFR 1002.166](#)

[20 CFR 1002.167](#)

[20 CFR 1002.168](#)

If the employee participates in state retirement through the District, upon reemployment the employee is treated as not having had a break in service. The District will make up the contributions that would have been required if the employee had not had a break in service. The employee is permitted, but is not required, to make up the employee's missed contributions or elective deferrals. However, if the employee does not make up the contributions or deferrals, then the District is not required to make up a match or benefit that was contingent on the contribution or deferral.

[20 CFR 1002.262](#)

### **Conditions and Limitations—**

The employee is required to give advance verbal or written notice of the leave unless giving notice is prevented by military necessity or is unreasonable under the circumstances.

[20 CFR 1002.32\(a\)\(1\)](#)

[20 CFR 1002.85](#)

[20 CFR 1002.86](#)

The maximum amount of military leave the employee is entitled to take from employment with the District is a total of 5 years. However, leave for periodic guard or reserve training does not count towards that total and there are other specific exclusions from this total as provided in the regulations.

[20 CFR 1002.32\(a\)\(2\)](#)

[20 CFR 1002.99](#)

[20 CFR 1002.103](#)

The employee must timely return to work or timely apply for reemployment following the leave for military service. If the employee fails to do so, the employee will be considered as absent without leave and will be subject to discipline in the same way that applies to other kinds of unexcused absences from work. If the leave period is less than 31 days or the leave was for a military fitness examination, the employee must report for work by the beginning of the first full regularly scheduled work period on the first full calendar day following the completion of the period of service plus the expiration of 8 hours for travel from the place of service to employee's residence. If the leave period is between 31 and 180 days, the employee must submit a verbal or written application for reemployment not less than 14 days after completion of the service; however, if it is impossible or unreasonable to do so through no fault of the employee, the employee must submit the application on the next full calendar day after it becomes possible to do so. If the leave period is more than 180 days, the employee must submit a verbal or written application for reemployment not less than 90 days after completion of the service; however, if it is impossible or unreasonable to do so through no fault of the employee, the employee must submit the application on the next full calendar day after it becomes possible to do so. The time for reporting or applying will also be extended if the employee is

hospitalized for or convalescing from an illness or injury incurred in or aggravated during performance of service.

[20 CFR 1002.115](#)  
[20 CFR 1002.116](#)  
[20 CFR 1002.117\(a\)](#)

The employee is not entitled to reemployment if the employee's discharge from service is a disqualifying discharge or under other than honorable conditions as defined by the applicable regulations. If the nature of the discharge is later changed by a military review board so as to no longer be disqualifying, the employee is entitled to reemployment but no back pay or benefits will be provided with respect to the time between the discharge and the change of the nature of the discharge.

[20 CFR 1002.32\(a\)\(4\)](#)  
[20 CFR 1002.137](#)  
[20 CFR 1002.138](#)

If the leave for military service is 31 days or longer, the employee must provide the District with documentation establishing that the reemployment application is timely, the employee has not exceeded the 5-year limit, and the employee's separation or dismissal from military service was not disqualifying. However, if the documentation does not exist or is not readily available, the employee will be reemployed subject to receiving the documentation and subject to dismissal if the documentation when received shows that the employee is not entitled to reemployment.

[20 CFR 1002.121](#)  
[20 CFR 1002.122](#)

### **Military Leave for State Duty—**

Members of the Utah National Guard or the State Defense Force, when ordered to state military service by the governor, have the same rights and protections as provided by USERRA for activation to federal military service for the duration of their state service not to exceed five years. General officers of the Utah National Guard or the State Defense Force or other officers appointed to a general officer position, when appointed to state employment by the governor or the adjutant general, have the same rights and protections as provided by USERRA for activation to federal military service for the duration of their state appointment, even if the state appointment exceeds five years. Upon satisfactory release from state or federal orders, or from hospitalization incidental to the orders, the member shall be permitted to return to the prior employment and have the same rights and protections as provided by USERRA for activation to federal military service as it pertains to seniority, status, pay, and vacation the member would have had as an employee if the member had not been absent for military purposes.

[Utah Code § 71A-8-105\(2\), \(3\), \(4\) \(2024\)](#)