

**CITY OF PORTSMOUTH**  
**ADMINISTRATIVE POLICY**

**#36**

**March 2010**

**SUBJECT: Military Leave and Re-employment Rights**

**I. GENERAL:** All employees, other than those employed for a brief, non-recurrent period and there is no reasonable expectation that such employment will continue indefinitely or for a significant period, will be granted military leave in accordance with this policy. Re-employment rights will be granted to such employees, if such re-employment does not impose an undue hardship on the City, as determined in accordance with the provisions of the Uniformed Services Employment and Re-employment Rights Act of 1994 (USERRA). For purposes of this Administrative Policy Directive, the following definitions will apply:

- A.** The term "service" in the uniformed services 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 duty, and a period for which a person is absent from a position of employment for the purpose of an examination to determine their fitness to perform any such duty and a period for which a person is absent from employment for funeral honors duty.
- B.** The term "uniformed services" means the Armed Forces, 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 emergency.
- C.** Satisfactory completion of military services is discharge or release from duty that is honorable, or under honorable conditions, as defined in the USERRA.
- D.** The term "qualified," with respect to an employment position, means having the ability to perform the essential tasks of the position.
- E.** The term "reasonable efforts" means actions, including training provided by the City, that do not place an undue hardship on the City.
- F.** A "service connected disability" is a disability which was incurred in or aggravated during service in the uniformed services.
- G.** The term "undue hardship," in the case of actions taken by an employer, means actions requiring significant difficulty or expense, when considered in light of the overall resources of the City including, but not limited to, financial resources or the impact otherwise of such action upon the operation of the facility as defined in USERRA. (See 38 U.S.C. 4303 et seq.)

**II. LEAVES OF ABSENCE:** Any employee who is a member of a reserve component of the Armed Forces of the United States or a member of the National Guard and is under orders to be placed on Active Duty for federally funded military duty, to include training duty, will be given leave with pay. This paid leave is limited to 15 working days per federal fiscal year, i.e., October 1 to September 30. Employees' requests for additional time away from work for military training will be honored with no loss of benefits; however, this will be on a military leave of absence without pay. Employees, at their request, may use annual leave for this period of time. (See Code of Virginia: Sec. 44-93)

### **III. RE-EMPLOYMENT RIGHTS FOR SERVICE IN THE UNIFORMED SERVICES**

Eligible employees who are absent from their positions because of service in the uniformed services are entitled to Re-employment rights and other benefits so long as:

- A. They give advance written or verbal notice of such service to their supervisor unless precluded by military necessity, or it is impossible or unreasonable to do so;
- B. The cumulative length of the absence and of all previous absences due to service in the uniformed services does not exceed five years, except periods covered under 38 U.S.C. 4312, of USERRA, which include periods of initial service and required training for active duty or reserve and National Guard members, and, situations where mobilized by the President or the Congress.
- C. The employee reports to or submits an application for re-employment to the City in accordance with the following provisions:
  1. An employee whose period of service in the uniformed services was less than 31 days must report to his/her supervisor not later than the beginning of the first full regularly scheduled work period on the first full calendar day following the completion of service and the expiration of eight hours afterward allowing for the safe transportation of the employee from the place of service to their residence, or as soon as possible after the expiration of this eight-hour period if reporting within the specified period is impossible or unreasonable through no fault of theirs.
  2. An employee who is absent for a period of any length for the purpose of an examination to determine his/her fitness to perform service in the uniformed services must report in accordance with the requirements as stated for employees whose period of service was less than 31 days.
  3. An employee whose period of service is more than 30 days but less than 181 days, by submitting an application for re-employment not later than 14 days after the completion of the period of service. If submitting within such period is impossible or unreasonable through no fault of the employee, then application may be submitted the next full calendar day when it is possible.
  4. An employee whose period of service is for more than 180 days, by submitting an application for re-employment not later than 90 days after the completion of the period of service in the uniformed services.
  5. An employee who has been hospitalized for, or convalescing from an illness or injury incurred in, or aggravated during the performance of service in the uniformed services, must report to the City or submit an application for re-employment at the end of the period necessary to recover from such illness or injury. This period of recovery may not exceed two years, except in cases where circumstances beyond the employee's control make reporting within the specified period impossible or unreasonable. In such cases, the two-year period will be extended by the minimum time required to accommodate these circumstances.
  6. An employee who fails to report or apply for re-employment within the appropriate time period(s) specified in this section will be subject to the City's Standards of Conduct rules pertaining to discipline with respect to absence from scheduled work.

#### **IV. RE-EMPLOYMENT POSITIONS**

Employees entitled to re-employment under this policy will be promptly re-employed as provided in 38 U.S.C. 4313 et. seq., upon a satisfactory showing of completion of military service, under honorable conditions, as follows:

- A. An employee whose period of service in the uniformed services was for less than 91 days will be placed in the position in which he/she would have been employed if their continuous employment had not been interrupted by such service, for which they are qualified. In the event the employee is not qualified to perform the duties of this position after the City's reasonable efforts to qualify them, he/she will be placed in the position in which he/she was employed at the commencement of their service in the uniformed services.
- B. An employee whose period of service in the uniformed services was for more than 90 days will be placed in the position in which he/she would have been employed if their continuous employment had not been interrupted by such service, or a position of like seniority, status, and pay for which he/she is qualified. In the event the employee is not qualified to perform the duties of such position after the City's reasonable efforts to qualify them, he/she will be placed in the position in which he/she was employed at the commencement of their service in the uniformed services, or a position of like seniority, status, and pay for which he/she is qualified.
- C. An employee who is not qualified to perform the duties of the position in which he/she would have been employed if continuous employment had not been interrupted as a result of a service connected disability, (after reasonable efforts to accommodate), will be placed in a position which is equivalent in seniority, status, and pay for which he/she qualifies or could become qualified with reasonable efforts by the City. If not qualified, employee will be placed in a position which is the nearest approximation in terms of seniority, status, and pay.
- D. An employee who is not qualified to be placed in the position which he/she would have been employed in if their continuous employment had not been interrupted or in the position in which he/she was employed on the date of commencement of service for any reason (other than service connected disability) and who cannot become qualified with reasonable efforts by the City, may be placed in another position of lesser status and pay with full seniority, for which he/she is qualified.
- E. If two or more employees are entitled to re-employment under this policy in the same position of employment, the employee who left the position first will have the prior right to re-employment in that position. Any employee entitled to re-employment under this policy who is not re-employed in a position of employment as a result of a prior right of employment may be placed in another position that provides similar status and pay with full seniority, for which they qualify. If the employee has a service-connected disability that requires reasonable accommodation in order to perform, he/she may be placed in another position of employment that provides similar status and pay with full seniority consistent with their circumstances.

#### **V. BENEFITS, SENIORITY/LONGEVITY**

An employee who is re-employed under this policy is entitled to the seniority and other rights and benefits determined by seniority that he/she had on the date of commencement of their service in the uniformed services plus the additional seniority, rights, and benefits he/she would have attained had their employment not been interrupted. An example of these benefits is longevity as it applies to the accrual rate for annual leave.

Any employee absent from his/her position of employment in the City as a result of service in the uniformed services will be considered to be on authorized leave of absence while performing such service. He/she will be entitled to such other rights and benefits not determined by seniority such as Health Care coverage. The employee has the option to continue under the City's group Health Care Plan for a period of 18 months beginning on the date on which the employee's absence begins or the day after the date on which the employee fails to apply for or return to employment with the City, whichever is less. Employees who elect to exercise this option will be required to pay 100 percent of the total premium cost. In the case of an employee who performs service in the uniformed services for less than 31 days, the amount required of the employee will be the employee share of the total premium costs. All employees on military leave will be required to submit a completed, timely Election Form to the Finance Department, Attn: Payroll, in order to continue and/or cancel any of their health insurance coverage for the duration of their military leave.

Life insurance under the City's plan or Virginia Retirement System (VRS) will terminate when the employee is no longer employed with the City, except for retirees. Retirement benefits under the Portsmouth Supplemental Retirement System and Fire and Police Retirement System continue to accrue during the period of service in the uniformed services and will count as creditable service if the employee re-applies for his/her job within the time period outlined under Section #III. A member of the Virginia Retirement System must apply for service credit by completing VRS Form 26 after return to covered employment, along with a copy of their military discharge papers (DD-214, Certificate of Release or Discharge from Active Service).

An employee re-employed by the City under this policy will not be terminated from his/her position except for cause within one year after their re-employment date if the period of service before re-employment was more than 180 days. If his/her period of service was more than 30 days but less than 181 days, he/she will not be terminated within 180 days after his/her re-employment except for cause.

An employee will be permitted, upon request, to use any accumulated annual or compensatory leave during a period of service in the uniformed services which was accrued/ earned prior to such service. Leave for exempt employees will be handled in accordance with the Fair Labor Standards Act (FLSA) regulations. Assistance for employees and their families will be available through the Employee Assistance Program.

#### **VI. VIRGINIA NATIONAL GUARD**

Should the Governor call the Virginia National Guard for a state emergency (i.e., snow, riots, hurricanes, etc.), the City will continue the employee's wages. Should the National Guard be called for a federal mobilization, the employee is to be treated the same as other employees commencing service in the uniformed services and placed on an authorized military leave of absence without pay with re-employment rights as defined in this policy.

#### **VII. NOTIFICATION**

Any employee who will be serving in the uniformed services is required to give advance written or verbal notice of his/her leaving unless such notice is precluded by military necessity or is otherwise impossible or unreasonable.

#### **VIII. SUMMARY**

These re-employment rights protect employees for 5 cumulative years of service in the uniformed services. Receipt of the rights and benefits explained in this policy are contingent upon compliance with the provisions of the policy including satisfactory completion of service in the uniformed services. When requested, an employee who submits an application for re-employment under this policy will provide the City documentation that the application is timely; that the time period of service limitation has not been exceeded; that the discharge or release from duty is honorable or under honorable conditions as evidenced by a copy of form DD-214.