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Clackamas County Policy

Name of Policy	Military Leave	Policy #	EPP 7
Policy Owner Name	Evelyn Minor-Lawrence	Effective Date	6/6/24
Policy Owner Position	Human Resources Director	Approved Date	6/10/24
Approved By	Gary Schmidt, County Administrator	Next Review Date	6/1/27

I. PURPOSE AND SCOPE

This policy describes federal and state laws, and county practices regarding military leaves of absence. This policy applies to all eligible employees.

II. AUTHORITY

This policy is established by the County Administrator’s administrative rule-making authority pursuant to County Code 2.09.060.E.

III. POLICY

The County provides military leave and reinstatement rights to employees in compliance with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and Oregon Revised Statutes. These laws establish the rights and responsibilities for persons in active branches of the Armed Services, National Guard, and Reserves, who, voluntarily or involuntarily, take a leave of absence for military service or training.

IV. DEFINITIONS

Uniformed Services: 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, the commissioned officer corps of the National Oceanic and Atmospheric Administration, System members of the National Urban Search and Rescue Response System during a period of appointment into Federal service under section 327 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, intermittent personnel who are appointed into Federal Emergency Management Agency service under section 306(b)(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5149(b)(1)) or to train for such service, and any other category of persons designated by the President in time of war or national emergency. 38 U.S.C.A. § 4303.

Service in the Uniformed Services: The performance of duty on a voluntary or involuntary basis in one of the Uniformed Services, including:

- Active duty and active duty for training
- 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 above types of duty
- Funeral honors duty performed by National Guard or Reserve members
- Duty performed by intermittent employees of the National Disaster Medical System (NDMS), which is part of the Department of Health and Human Services

Services, when activated for a public health emergency, and approved training to prepare for such service.

- Any other service set forth in 38 U.S.C.A. § 4303(13).

Decompression time: The applicable period after military service during which the employee is entitled to request reemployment under USERRA.

Escalator principle: Requires each returning military service member be reemployed in the position the person would have occupied with reasonable certainty if the person had remained continuously employed, with full seniority. The position may not necessarily be the same job the person previously held. For example, if the person would have been promoted with reasonable certainty had the person not been absent, the person would be entitled to that promotion upon reinstatement. On the other hand, depending on the economic circumstances, reorganizations, layoffs, etc., the position could be at a lower level than the one previously held, it could be a different job, or it could conceivably be in layoff status. In other words, the escalator can move up or down.

Military necessity: 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.

Veteran: A person who served in the active military, naval, or air service and who was discharged or released under conditions other than dishonorable.

V. POLICY GUIDELINES

Veterans Day Leave

Veterans, as defined in ORS 408.225, may be entitled to time off for Veterans Day. Veterans Day (November 11th) is a paid County holiday. However, due to the nature of some work not all County departments are able to close on County holidays. For employees who work in those departments, are Veterans, and wish to take Veterans Day off, the employee shall request the leave through their supervisor.

To be eligible an employee must:

- Be otherwise required to work on that day;
- Provide the County with at least 21 calendar days' notice that the employee intends to take time off for Veterans Day; and
- Provide their supervisor with documents to show that the employee is a veteran as it is defined in ORS 408.225.

If the County determines that providing time off on Veterans Day would cause the County significant economic or operational disruption or undue hardship, the request for leave may be denied.

Federal and State Military Leave

Federal and state law provide reemployment rights, protection from discrimination or retaliation against individuals based upon a service obligation, military status or the taking of military leave, and health insurance protection during military leave. The policy notes where state law differs from federal law.

State Military Leave

Annual Active Duty or Training Leave with Pay under ORS 408.290

1. Eligible employees called to annual active duty for training or active duty in lieu of training shall be granted military training leave with pay for all regular workdays that fall within a period not to exceed 21 work days in any federal training year (October 1 through September 30).
2. To be eligible for annual active duty for training leave with pay under ORS 408.290, an employee must:
 - a. Have been employed with Clackamas County for six months or more immediately preceding the need for military leave.
 - b. Be a member of the: National Guard, National Guard Reserve, a reserve component of the Armed Forces of the United States, the U.S. Public Health Service or another category as designated by the President of the United States in a time of war or national emergency.
 - c. Provide advance written or verbal notice of the absence except in instances involving "military necessity" or where giving notice is otherwise impossible or unreasonable.
3. Employees shall be allowed to use paid military leave for travel to and from their place of duty and for the time spent on militarily obligated status or military duty regardless of the length of their military status or duty.
4. An employee's insurance benefits will not be interrupted during, or due to, annual training leave.

Any employee who has been employed by the County for six (6) months preceding notification of military leave is entitled to a leave of absence with pay and benefits "for up to 21 work days in any one training year." (ORS 408.290).

Such 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, time away from work may be credited towards vacation or leave without pay, employee's choice.

Employees should refer to the section of their union contract regarding military leaves, for specific language that may add to this policy.

Service Accruals During Military Leave

All military leave must be reported to your supervisor. All time spent on military leave counts towards continuous employment with the County. Military leave outside the annual entitlement for paid leave is considered unpaid leave and therefore employees do not receive regular pay, or additional payments, such as longevity or incentive pay. Except as provided under applicable law,

upon their return to the County the employee is entitled to begin at the seniority, salary step, level of leave accrual and additional payments as the employee would have achieved had they not left on military leave. If the employee had not completed the probationary period prior to entering the military the employee will be required to complete the remainder of the probationary period upon return to County service.

Benefits During Military Leave

During annual military training leave (with or without pay), all employee benefits will continue, subject to Federal and state laws, rules, and regulations and in accordance with employee benefits provider contracts.

Under Federal law members who are called to active-duty service (including activated Guard/Reserve members) are required to enroll in a military health insurance plan and cannot be enrolled in other health insurance.

During extended military leave (without pay), County-paid health benefits for enrolled family members of employees called to active-duty service will be continued up to a maximum of twenty-four (24) months (or longer if required under the Affordable Care Act and related rules and regulations). No employee contributions will be required for the following benefits during this time: medical, dental, vision, EAP, HRA VEBA, Wellness, Group Term Life (for 3 months) and Benefits Admin Fee.

The subject of military leave is sufficiently complex to warrant careful consideration of any situation in which an employee provides notification of military training or service. If you have any questions, please contact Leave Administration.

Vacation Donation Program for Military Leave

The Vacation Donation Program is intended to provide a means to assist employees on military leave whose rate of pay on active duty is less than what they earn in base wages as a County employee for a period of up to six months. Recipients of donated vacation may not receive more compensation under this program than they would have earned had they not been on military leave. This program does not apply to routine training or other similar activities of the National Guard or the military reserves.

During the six-month eligibility period and so long as donated hours are available, recipients will receive a salary payment on their regularly scheduled pay day for an amount up to the difference between their military gross pay and their regular base pay, less any normal payroll deductions and withholdings. All payments made will be treated as wages and will be reported as such to all appropriate taxing authorities.

Threatening or coercing employees concerning the vacation donation program, including but not limited to, pressuring another employee to donate vacation hours is prohibited.

Reemployment Rights

Returning service members will be promptly reemployed, which means as soon as is practicable under the circumstances. Application for reemployment means the returning service member communicates to the County that they are a former employee returning from military duty.

- A. State Active Duty: A public employee who leaves their position, voluntarily or involuntarily, to perform military duty shall be considered absent on leave until their release from active duty to resume the duties of their office or position. ORS 408.240. To be eligible, the employee must, upon termination of military duty, be qualified to perform the duties of the office or position and apply within 90 days after the employee is relieved from military duty or from hospitalization continuing after discharge for a period of not more than one year.

If the officer or employee is not qualified to perform the duties of the office or position but is qualified to perform the duties of any other public position the officer or employee will be employed in the other position that provides the most like seniority, status and pay consistent with the circumstances. This section does not apply if the total military duty exceeds five years.

This section does not apply to public employees on temporary active duty for initial active duty for training and annual training, under ORS 408.290.

- B. State Active Duty for the State: For employees who are members of the Oregon militia and are called into active service of the state by the governor under ORS 399.065 and 399.075.
- 1) To be eligible for reemployment, an employee shall report back to work within seven calendar days from the last day of state active duty.
 - 2) Upon meeting the requirement for reemployment, the employee shall be restored to the employee's position or an equivalent position without loss of seniority or other benefits.
- C. Federal Active Duty: Other than Federal Annual Active Duty for Training under ORS 408.290.

- 1) To be eligible for reemployment an employee must meet the following:
 - i. Be absent from their job because of service in the uniformed services;
 - ii. Give proper advance notice of the military duty unless such notice was precluded by military necessity or was otherwise impossible or unreasonable under the circumstances;
 - iii. The cumulative length of the absence and of all previous absences from their job with the County for military service must not exceed five years (subject to some statutory exceptions);
 - iv. The person was not released from military service under dishonorable or other punitive conditions; and
 - v. Return or apply for reemployment within the applicable decompression time following release from military duty as follows:
 - Service of one to 30 days: The employee shall return to work at the beginning of the first regularly scheduled work period that begins on the next calendar day following completion of military

duty, after allowance for safe travel from the military duty location and an eight-hour rest period; or if returning at that time is impossible or unreasonable through no fault of the employee, then the employee shall return to work as soon as possible after the end of the eight-hour rest period.

- Service of 31 to 180 days: The employee shall apply for reinstatement within 14 days after release from military duty; or if making application for reinstatement within 14 days is impossible or unreasonable through no fault of the employee, then the employee shall make application on the next calendar day on which it is possible to do so; or
- Service of 181 or more days: The employee shall apply for reinstatement within 90 days after release from military duty.
- Service-connected injury or illness: 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.

VI. PROCESS AND PROCEDURES

Veterans Day Leave

An employee must provide their supervisor with at least 21 calendar days' notice that they intend to take time off for Veterans Day. They must also provide their supervisor with documents to show that they are a veteran as it is defined in ORS 408.225.

Supervisors must provide the employee with notice of leave approval at least 14 days prior to Veterans Day and inform the employee whether the time off will be paid or unpaid.

If the County determines that providing the leave would cause significant economic or operational disruption or an undue hardship to the department, the request for leave must be denied to any employee who requested such time off in that work unit, and the County must allow the employee to select an alternate day off within the year following the worked Veterans Day.

Any denials of leave requests for reasons of significant disruption or undue hardship must be reviewed and approved by Leave Administration.

Paid State Military Leave

Annual Active Duty or Training Leave with Pay under ORS 408.290

1. To receive pay for the annual active duty for training, the employee must provide before, during or after the leave, confirming documentation indicating that the call-up was for annual active duty for training or active duty in lieu of annual training. Confirming documentation includes military orders, training/drill schedule or other official documents for the absence. If the employee does not show proof of military service either in advance or upon return to work, time away from work may be charged against available paid leave accruals (except sick time) or taken as leave without pay if no accruals are available. Employees should refer to the section of their union contract regarding military leaves for specific language that may add to this policy.

2. If an eligible employee is called to active duty for a period longer than 21 calendar days, the employee will be paid for all regular workdays falling within the first 21 days, only if such time is served for the purpose of discharging an obligation of annual active duty for training as described above.
3. If the employee has been on military active duty for training leave for 21 days or less, the employee shall return to work at the beginning of the first regularly scheduled work period following completion of service, after allowance for safe travel home and an eight-hour rest period.

Vacation Donation Program for Military Leave

The employee going on military leave must provide written documentation of the rate of pay the employee will receive for the anticipated duration of the military leave, including any differentials or special pay, and the date the employee is expected to be released from active duty. If the employee receives more in military pay than his/her base pay, the employee is not eligible for the vacation donation program.

Employees may donate vacation time in whole hours only. The dollar value of the donated vacation hours will be calculated by multiplying the donor's hourly rate times the number of hours donated. The total dollar value will then be divided by the recipient's hourly rate to arrive at the corresponding number of hours of donated leave available for use by the recipient employee.

Donors must sign a declaration that the donation is voluntary, is intended as a gift, and has been made without coercion, compensation, or other consideration. Donations are irrevocable, even if the employee returns from military leave sooner than expected.

Reemployment

Upon reemployment the County may request that the employee provide documentation showing:

- The employee's application for reemployment is timely.
- The employee has not exceeded the five-year service limit or provide documentation of an exception under federal or state law; and
- The employee's separation from military duty was not a disqualifying discharge or under other than an honorable condition.

If after reemployment, documentation becomes available that shows one or more of the reemployment requirements were not met, the County may terminate the person and any rights or benefits that may have been granted to the person.

Except for persons who have a disability incurred in or aggravated by military service, upon meeting the requirements for reemployment, Clackamas County shall restore the employee to the job position that the employee would have attained with reasonable certainty if not for the absence due to military service (the escalator principle,) which means promotion, demotion, transfer or layoff, with the same seniority, status and pay, as well as other rights and benefits determined by seniority.

If the service member cannot qualify for the escalator position, they will be reemployed, if qualified, to any position that is the nearest approximation to the escalator position, and if that is not an option, to the pre-service position.

If the employee has a disability incurred or aggravated during the performance of uniformed service, the County will make reasonable efforts to accommodate the disability and to help the employee become qualified to perform the duties of the reemployment position. If the disabled person cannot become qualified for the reemployment position despite reasonable efforts by the County to accommodate the employee and qualify them to perform the duties of the position, the employee must be reemployed in a position according to the following priority:

1. A position that is equivalent in seniority, status, and pay to the escalator position, or
2. A position that is the nearest approximation to the equivalent position, consistent with the circumstances of the employee's case. Such a position may be a higher or lower position, depending on the circumstances. The person must be qualified to perform the duties of this position or be able to become qualified to perform them with reasonable efforts by the County.

A person's reemployment rights are not automatically forfeited if the person fails to report to work or apply for reemployment within the required time limits. In such cases, the person will be subject to the County's rules governing unexcused absences.

Reemployment is excused if the County's circumstances have changed so that reemployment of the person would be impossible or unreasonable, such as a reduction-in-force that would have included the person.

The County is also excused from making efforts to qualify returning service members or from accommodating persons with service-connected disabilities when doing so would be of such difficulty or expense as to cause the County undue hardship.

The County is not required to reemploy a person if the pre-service position was for a brief or non-recurrent period and there was no reasonable expectation that employment would continue indefinitely or for a significant period.

For an employee reemployed after military leave, their vacation accrual rate, salary eligibility date, and service credits shall be treated as though the employee had remained continuously employed. An employee who has not completed the probationary period in the position at the time of leaving for military service shall, upon returning to such position, be required to serve the remainder of such probationary period notwithstanding the grant of continuous time credit for time served in the Uniformed Services.

Notice Requirement

An employee must give advance written or verbal notice to the County for any leave of absence for military service or training. Advance notice is referenced by USERRA as "as much advance notice as possible." The only circumstance in which advance notice is not required is "if the giving of such notice is precluded by military necessity or, under all of the relevant circumstances, the giving of such notice is otherwise impossible or unreasonable."

An example of "military necessity" for purposes of the notice exception is defined in regulations of the Secretary of Defense as "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."

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 do not count toward the cumulative five (5) year limit:

1. Service required beyond five years to complete initial period of obligated service.
2. Service from which a person, through no fault of the person, is unable to obtain a release within the five-year limit.
3. Required training for Reservists and National Guard members.
4. Ordered to involuntary service, or retained on active duty during domestic emergency or national security related situations.
5. Ordered to service, or to remain on active duty (other than for training) because of a war or national emergency declared by the President or Congress
6. Active duty (other than for training) by volunteers supporting "operational missions" for which Selected Reservists have been ordered to active duty without their consent.
7. Service by members who are ordered to active duty in support of a "critical mission or requirement" of the uniformed services as determined by the Secretary involved.
8. Federal service by members of the National Guard called into action by the President to suppress an insurrection, repel an invasion, or to execute the laws of the United States.
9. Otherwise excluded under applicable law (see, e.g. 38 U.S.C. 4312).

Returning to Work Following Service The time limits for returning to work or applying for reemployment after completion of the period of service are as follows:

- Less than 31 days service: By the beginning of the first regularly scheduled work period after the end of the calendar day of duty, plus time required to return home safely and an eight-hour rest period. If this is impossible or unreasonable, then as soon as possible.
- 31 to 180 days: The employee must apply for reemployment no later than 14 days after completion of military service. If this is impossible or unreasonable through no fault of the employee, then as soon as possible.
- 181 days or more: The employee must apply for re-employment no later than 90 days after completion of military service.
- Service-connected injury or illness. Reporting or application deadlines are extended for up to two years for persons who are hospitalized or convalescing.

When applying for reemployment the employee shall notify the County that they are a former employee returning from military service and not a new applicant. The notification need not be in writing, but the County requires documentation of service to establish that the application for reemployment is timely, to verify the service has not exceeded five (5) years, and to verify the person's separation from service was other than disqualifying under 38 U.S.C. § 4304.

If a person does not provide satisfactory documentation because it is not readily available or does not exist, the County is still required to promptly reemploy the person. However,

after reemployment, if documentation becomes available that shows one or more of the reemployment requirements were not met, the County may terminate the person and any rights or benefits that may have been granted.

VII. ACCESS TO POLICY

Access to this administrative policy shall be as follows:

- Filed in PowerDMS.
- Posted to the County's internet.

VIII. RESOURCES

US Department of Labor/Uniformed Services Employment and Reemployment Rights Act of 1994 as amended 12-19-05. (<http://www.dol.gov/vets>)