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26 U.S.C. 3401
20 C.F.R. 1002

MILITARY LEAVE

I. INTRODUCTION

The City of Boise ("city") is covered under the federal Uniformed Services Employment and Reemployment Rights Act (USERRA) and complies with all USERRA requirements and related federal and state military leave requirements. This regulation addresses military leave and reinstatement rights under USERRA for eligible employees who leave employment to fulfill military service obligations.

Military leave and reinstatement protections extend to employees who are regular full-time, part-time, or probationary. The benefits in this regulation do not apply to seasonal or temporary employees that have no realistic expectation of ongoing employment.

II. ELIGIBILITY

Employees who perform service in the uniformed services are eligible to take military leave. "Service in the uniformed services" means performance of duty on a voluntary or involuntary basis and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty, and a period for which a person is absent from employment for the purpose of performing funeral honors duty as authorized by Section 12503 of Title 10 or Section 115 of Title 32.

III. MILITARY ACTIVATION NOTIFICATION REQUIREMENTS

Employees shall provide 14-day advance notice of the need for military activation leave, along with a copy of their military orders or other government issued proof of activation, to their supervisor and HR in writing unless relevant circumstances make such notice unreasonable, impossible, or prevented by military necessity.

IV. REINSTATEMENT ELIGIBILITY

Employees who return to work for the city from military leave are eligible for reinstatement if:

- A. They give advance written and/or verbal notice to the city of the need for leave,
- B. They report to or submit applications for reemployment in a timely manner,
- C. They are honorably discharged from military service, and
- D. The current military leave of absence combined with all previous military leaves of absence does not exceed five years. Please note there are eight exceptions to the five-year service limitation. For more information regarding exceptions please refer to 38 U.S.C. § 4312.

Employees do not have reemployment rights with the city after leave for military service if employees are:

- A. Not honorably discharged from military service;
- B. Commissioned officers who are dismissed by court-martial or order of the president; or
- C. Commissioned officers who are dropped from military service rolls because of unauthorized absences of three months or more, confinement related to a court-martial, or imprisonment in a federal or state correctional institution.

The city also does not reemploy employees who return from military leave if:

- A. The city's circumstances have changed as to make reemployment impossible or unreasonable;
- B. Reemployment priorities would create undue hardship; or
- C. The job employees held before taking military leave was for a brief, non-recurrent period, and there is no expectation that the employment would continue indefinitely or for a significant period.

V. APPLYING FOR REINSTATEMENT

After completing military service, employees can request reinstatement from the city by reporting to or applying for reemployment with the city within the following time frames:

For military service of 30 days or less or for a period of any length if leave is taken for fitness examinations. Employees must report to the city no later than the beginning of the next regularly scheduled workday following the end of service and safe transportation home, plus an eight-hour rest period, or as soon as possible

after the end of the eight-hour rest period if earlier reporting is impossible through no fault of employees.

For military service of 31 days to 180 days. Employees must apply for reemployment with the city within 14 days of completing service. If applying for reemployment within that time frame is impossible, through no fault of the employee, they must apply as soon as possible thereafter.

For military service of 181 days or more. Employees must apply for reemployment with the city within 90 days after completing service.

For employees who are hospitalized or convalescing from injuries that are received during military service, the period of their military leave is extended until their recovery or two years, whichever is shorter. The two-year period can be extended to accommodate circumstances beyond employees' control that make timely reporting impossible or unreasonable.

Employees who fail to notify the city of their intent to return to work within these time frames are treated as other employees who are absent without leave according to city policies and regulations on leaves of absence.

Employees who apply for reemployment with the city after military leave and who were absent for military service for more than 30 days must provide the city with documentation that:

- A. Their applications are timely,
- B. They have not exceeded the service limit period, and
- C. They were honorably discharged from military service.

Documents that satisfy the reemployment eligibility requirement for such military leave include:

- A. Federal Department of Defense certificates of release or discharge from active duty;
- B. Copies of duty orders that are prepared by the facility where the orders were fulfilled and indicate that service was completed;
- C. Letters from commanding officers of a Personnel Support Activity or persons of comparable authority;
- D. Certificates of completion from military training school; discharge certificates showing character of service (for example, whether discharge from service is honorable); and
- E. Copies of extracts from payroll documents that show periods of military service.

The city does not deny or delay reemployment or attempt to avoid reemployment obligations by demanding documentation from returning service members that does not exist or is not readily available at the time of reemployment.

Employees who are reemployed by the city after military leave and were absent for military service for more than 90 days must provide documentation of reemployment eligibility to the city to ensure that no break in service occurs for calculating benefits.

VI. RE-EMPLOYMENT PRIORITIES

After satisfying the reinstatement application procedures, employees will be reinstated to employment with the city according to the following military service time frames:

For military service of fewer than 91 days. Employees who serve fewer than 91 days are reemployed by the city with the pay, benefits, and seniority, if applicable, to the position that they would have attained with reasonable certainty if they did not take military leave. Employees must be qualified for the position; the city will make reasonable efforts to help employees returning from military service become qualified to perform their job. If employees are not qualified for the job, even after reasonable efforts by the city to help them become qualified, the city will work with them for a reasonable time to attempt to find them another open position close to the position that they would have attained with reasonable certainty if they did not take military leave.

For military service of 91 days or more. Employees who serve 91 days or more are reemployed by the city with the pay, benefits, and seniority, if applicable, to the position that they would have attained with reasonable certainty if they did not take military leave or a position of similar seniority, status, and pay. If employees are not qualified for the job, even after reasonable efforts by the city to help them become qualified, the city will work with them for a reasonable time to attempt to find them another open position close to the position that they would have attained with reasonable certainty if they did not take military leave.

If the city must reinstate two employees to the same position, the employee who left the position first has priority for the position. The other employee is reinstated by the city to a job of similar status and pay.

VII. MILITARY ACTIVATION PROGRAM (MAP)

Although not required by law, an extension of benefits and pay differential will be provided to eligible employees who have completed one year of employment with the city. For any activation period exceeding thirty (30) days that is **not for training** [see section IX], an employee who is **involuntarily** called to active service by the United States Government will receive the following considerations for a period not to exceed one year from date of activation:

- A. If the military pay (total of base pay, housing allowance, special duty pay, etc. excluding combat pay) is less than the employee's regular rate of pay, the city will make up the difference, less applicable payroll deductions. For an hourly employee, the regular rate of pay will be

determined by computing the employee's average hours worked for the 13 weeks preceding the military leave, up to a maximum of 40 hours per week. Premium pay items such as overtime, bonus pay, shift differential, etc. are not included as a part of the regular rate of pay for salaried or hourly employees.

The employee will be required to provide documentation of their military compensation to HR sufficient to satisfy the city's audit of this benefit.

Note: Under section 105(a) of the Heroes Earning Assistance and Relief Tax (HEART) Act, if an individual is on active duty for more than 30 days and is receiving military differential payments, those payments are considered wages and are subject to income tax withholding, but not to social security, Medicare (FICA), or unemployment tax (FUTA) withholding.

Employees who under report their military wages or fail to immediately notify the city of an increase to their military wages, directly or through a family member, shall reimburse the city for all overpayments. Further, the employee shall be subject to discipline up to and including termination of employment.

- B. An employee may use any and all hours of accrued leave including sick leave, in increments necessary to maintain current voluntary deductions, including but not limited to health, Life, LTD, 457, etc.
- C. The city will continue to subsidize an employee's group health/dental care benefits for the first 30 days of active service. Employees who are on military leave for 31 days or longer are eligible for health benefit coverage from the military. For employees with family coverage, the city will continue health/dental care coverage for eligible dependents during the active-duty period including payroll periods without pay. Employees with employee-only coverage may voluntarily discontinue coverage after the first 30 days of active duty, or the city will discontinue coverage automatically after all leave accruals have been exhausted. If coverage is discontinued, employees can elect to purchase up to 24 months of continued coverage in accordance with the Uniformed Services Employment and Reemployment Rights Act (USERRA) 38 U.S.C. § 4301.

To provide continuous support to activated Reservists and their family members, questions regarding benefits, compensation and other needs should be directed to HR.

VIII. BENEFITS CONTINUATION

Benefits, excluding wages for work performed, are restored to employees who are reemployed with the city after military activation. Employees returning from military activation do not receive benefits beyond what they would have had if they had not been part of a military activation.

Note: Except for wages or salary for work performed, seniority and other rights and benefits determined by seniority for contract employees under a collective labor agreement are restored to employees who are reemployed with the city after military activation. They do not receive benefits beyond what they would have had if they had not been part of a military activation.

If an employee provides written notice to city of their intent not to return to their job after military service, they may forfeit benefits ordinarily given to other employees on similar leaves of absence.

IX. MILITARY TRAINING LEAVE

The city provides the paid leave for authorized training performed by members of a Reserve component not on active duty and performed in connection with the prescribed activities of the Reserve component.

- A. Boise firefighters who normally work 48-hour shifts are eligible to receive composite pay **not to exceed** 144 hours per calendar year.
- B. Boise police contract employees are eligible to receive their regular rate of pay **not to exceed** 150 hours per calendar year.
- C. Other city employees are eligible to receive their regular rate of pay **not to exceed** 120 hours per calendar year.

If military training requirements exceed 120 hours per calendar year, or 144 hours for firefighters or 150 hours for police contract employees, employees shall choose one of the following options:

- A. Use accrued compensatory time for regularly scheduled hours; or
- B. Use accrued vacation leave for regularly scheduled hours; or
- C. Take leave without pay.

Employees also have the option of interspersing their accrued vacation and/or comp time with military training leave. Firefighters may also use trades and Kelly days.

For any employee to be eligible to receive paid military training leave, they shall submit a written request for the military training leave to their supervisor and to the HR at least fourteen (14) calendar days in advance, along with a copy of **military orders** or other government issued proof that the leave is for military Reserve training.

Employees who participate in multiple trainings per calendar year shall submit military orders for each training.

Employees shall notify their supervisor as soon as they are aware of their training schedule and notify the supervisor of any conflicts with their work schedule.