

City of St. Louis Department of Personnel Administrative Regulation NO. 138

I. PURPOSE

The purpose of this administrative regulation is to explain how the federal Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994, as amended, affects employment, reemployment, and retention in employment when employees serve or have served in the uniformed services. The act has been amended to include appointees of the National Disaster Medical System (NDMS). This regulation also includes rights employees are entitled to under Missouri Revised Statutes regarding military service.

II. DEFINITIONS

Application for Reemployment means upon completing service in the uniformed services, the employee must notify the pre-service employer of his or her intent to return to the employment position by either reporting to work or submitting a timely request (verbal or written) for reemployment. The method for reemployment will depend upon the length of service. It is recommended that verbal notice to return to work be followed-up in writing.

Employee means any person employed by the City of St. Louis, except contract employees.

Health plan means an insurance policy, insurance contract, medical or hospital service agreement, membership or subscription contract, or other arrangement under which health services for individuals are provided or the expenses of such services are paid.

National Disaster Medical System (NDMS) provides medical-related assistance to respond to the needs of victims of public health emergencies. Participants in the NDMS are volunteers who serve as intermittent Federal employees when activated. For purposes of USERRA coverage only, these persons are treated as members of the uniformed services when they are activated to provide assistance in response to a public health emergency or to be present for a short period of time when there is a risk of a public health emergency, or when they are participating in authorized training.

National Guard members may perform service under either Federal or State authority, but only Federal National Guard service is covered by USERRA. National Guard members who serve under State orders are covered by State laws.

Notice means any written or verbal notification of an obligation or intention to perform service in the uniformed services provided to an employer by an employee or from the uniformed service itself.

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

Service in the uniformed services means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority. This includes active duty, active and inactive duty for training, National Guard duty under Federal statute, and a period for which a person is absent from a position of employment for an examination to determine the fitness of the person to perform such duty; it also includes a period of absence from employment to perform funeral honors duty as authorized by law. Service as an intermittent disaster-response appointee upon activation of the National Disaster Medical System (NDMS) or as a participant in an authorized training program is deemed "service in the uniformed service."

Uniformed services means 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 national emergency. For purposes of USERRA coverage only, service as an intermittent disaster response appointee of the NDMS when federally activated or attending authorized training in support of their Federal mission is deemed "service in the uniformed services" although such appointee is not a member of the "uniformed services" as defined by USERRA.

III. NOTIFICATION AND COMPENSATION

A. Each appointing authority shall display the poster YOUR RIGHTS UNDER USERRA where they customarily place notices for employees. A copy of the poster is attached to this regulation.

B. Each employee is required to give advance notice (verbal or written) of service obligation or intention to perform services in the uniformed services, unless such notice is prevented by military necessity, as determined by a designated authority, or impossible or unreasonable under all of the circumstances. This notice can be provided by the employee or by the uniformed service in which the service is to be performed. If notice is given verbally, it is recommended to also submit information in writing. While no particular format is required, a sample letter for consideration to notify the employer of active duty is attached as a guide. Notice should be given as far in advance as is reasonable under the circumstances. It is recommended that advance notice to supervisors and appointing authorities be provided at least 30 days prior to departure for uniformed service when feasible.

C. Under the Missouri Revised Statutes, "public employees of this state who are or may become members of the national guard or of any reserve component of the armed forces of the United States, shall be entitled to leave of absence from their respective duties, without loss of time, pay, regular leave, impairment of efficiency rating, or of any other rights or benefits, to which otherwise entitled, for all periods of military services during which they are engaged in the performance of duty or training in the service of this state at the call of the governor and as ordered by the adjutant general without regard to length of time, and for all periods of military services during which they are engaged in the performance of duty in the service of the United States under competent orders for a period not to exceed a total of 120 hours in any federal fiscal year" (October 1 - September 30).

D. Any person entitled to military leave shall only be charged military leave for any hours which that person would otherwise have been required to work had it not been for such military leave. The minimum charge for military leave shall be one hour and additional charges for military leave shall be in multiples of the minimum charge.

E. Military leave extending beyond the 120 hours per federal fiscal year shall be leave without pay. However, an employee must be permitted, upon request, to use any accrued vacation leave or compensatory time with pay during the period of service, in order to continue his or her civilian pay. If an employee desires to use paid vacation or compensatory time after their paid military leave expires, they must notify their payroll clerk, in writing, so that the appropriate paperwork can be completed. Time must be taken in a block, not intermittently. The

employer may not require the employee to use accrued vacation leave or compensatory time during a period of service in the uniformed service.

F. An employee does not continue to accrue vacation or sick leave while on periods of unpaid leave.

G. Appointing authorities are responsible for maintaining records of unpaid leave granted to their employees. Payroll clerks should submit an Employee Status Form to the Personnel Services Section of the Department of Personnel for all employees beginning unpaid service in the uniformed services.

H. Before any payment of salary is made covering the period of the leave the employee shall file with the appointing authority an official order from the appropriate military authority as evidence of such duty for which military leave pay is granted.

IV. REEMPLOYMENT RIGHTS

A. Upon completing service in the uniformed services, the employee must notify the pre-service appointing authority of his or her intent to return to his or her employment position by either reporting to work or submitting a timely (verbal or written) application for reemployment. If notice is given verbally, it is recommended to also submit information in writing. While no particular format is required, a sample letter for consideration to notify the employer is attached as a guide. Whether the employee is required to report to work or submit a timely request for reemployment depends on the length of service in the uniformed services, as follows:

1. Service of less than 31 days or for a period of any length for the purpose of a fitness examination:

An employee must submit an application for reemployment at the beginning of the first regularly scheduled work period on the first full calendar day following completion of the period of service, and the expiration of eight hours after a period allowing for safe transportation from the place of that service to the employee's residence.

2. Service of 31-180 days:

An employee must submit an application for reemployment (verbal or written) to his or her appointing authority not later than 14 days after completing service. If it is impossible or unreasonable for the employee to apply within 14 days through no fault of his or her own, he or she must submit the application not later than the next full calendar day after it becomes possible to do so.

3. Service of 181 days or more:

Employee must submit an application for reemployment (verbal or written) to his or her appointing authority not later than 90 days after the completion of service.

The appointing authority must consult with the Department of Personnel at or before this time to coordinate the return of the employee to the position for which he or she is eligible.

B. If the employee is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of uniformed service, he or she must report to or submit an application for reemployment at the end of the time period necessary for him or her to recover from the illness or injury. The period may not exceed two years from the date the employee completed service, except that it must be extended by the minimum time necessary to accommodate circumstances beyond the employee's control that make it impossible or unreasonable. This period for recuperation and recovery extends the time period for reporting to or submitting an application for reemployment to the employer, and is not applicable following reemployment.

C. Employees who fail to report for or apply for reemployment in a timely manner become subject to the rules and regulations of the City of St. Louis pertaining to an absence from scheduled work.

D. As a general rule, an employee will be reemployed in a position in accordance with the USERRA. The appointing authority should contact

Personnel Services for assistance in determining the position to which someone will be reemployed.

V. DOCUMENTS REQUIRED FOR ELIGIBILITY FOR REEMPLOYMENT

Appointing authorities shall request an employee to submit documentation in connection with his or her application for reemployment following periods of service exceeding 30 days. Documents that satisfy the requirements under USERRA include the following:

- A. Department of Defense 214 Certificate of Release or Discharge from Active Duty.
- B. Copy of duty orders prepared by the facility where the orders were fulfilled carrying an endorsement indicating completion of the described service.
- C. Letter from the commanding officer of a Personnel Support Activity or someone of comparable authority.
- D. Certificate of completion from military training school.
- E. Discharge certificate showing character of service.
- F. Copy of extracts from payroll documents showing periods of service.
- G. Letter from National Disaster Medical System (NDMS) Team Leader or Administrative Officer verifying dates and times of NDMS training or Federal activation.

Reemployment rights are terminated if the employee is:

- A. Separated from uniformed service with a dishonorable or bad conduct discharge.
- B. Separated from uniformed service under other than honorable conditions as characterized by regulations of the uniformed service.
- C. A commissioned officer is dismissed by sentence of a general court martial.

D. A commissioned officer dropped from the rolls due to absence without authority for at least three months; separation by reason of a sentence to confinement adjudged by a court-martial; or a sentence to confinement in Federal or State penitentiary or correctional institution.

VI. FIVE-YEAR LIMIT FOR REEMPLOYMENT

In general, employees may perform service in the uniformed services for a cumulative period of up to five years and retain reemployment rights with their employer. The five year period includes only the time an employee spends actually performing service in the uniformed services. A period of absence from employment before or after performing service in the uniformed services does not count against the five year limit.

The following service does not count against the USERRA's five-year service limit:

A. Service required beyond five years to complete an initial period of obligated service. (Some military specialties require an individual to serve more than five years because of the amount of time or expense involved in training.)

B. Employee was unable to obtain orders releasing him or her from service in the uniformed services before the expiration of the five-year period, and the inability was not the employee's fault.

C. Service performed to fulfill periodic National Guard and Reserve training requirements as prescribed by applicable federal statutes.

D. Service performed in a uniformed service if employee was ordered to or retained on active duty under certain circumstances: involuntary active duty by a military retiree, involuntary active duty in wartime, retention on active duty while in captive status, involuntary active duty during a national emergency for up to 24 months, involuntary active duty for an operational mission for up to 270 days, involuntary retention on active duty of a critical person during time of crisis or other specific conditions, involuntary/voluntary active duty by retired Coast Guard

officer, involuntary/voluntary active duty by retired Coast Guard enlisted member, involuntary retention of Coast Guard enlisted member on active duty, involuntary active duty by Coast Guard Reserve member for natural or man-made disasters.

E. Service performed in a uniformed service if the employee was ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress as determined by the Secretary.

F. Service performed in a uniformed service if the employee was ordered to active duty (other than for training) in support of an operational mission for which personnel have been ordered to active duty under 10 U.S.C. 12304, as determined by a proper military authority.

G. Service performed in a uniformed service if the employee was ordered to active duty in support of a critical mission or requirement of the uniformed services as determined by the Secretary of Labor or any person designated by the Secretary of Labor.

H. Service performed as a member of the National Guard if the employee was called to respond to an invasion, danger of invasion, rebellion, danger of rebellion, insurrection, or the inability of the President with regular forces to execute the laws of the United States.

I. Service performed to mitigate economic harm where the employee's employer is in violation of its employment or reemployment obligations to him or her.

VII. EXCUSED FROM OBLIGATION TO REEMPLOY

Even if the employee is otherwise eligible for reemployment benefits, the employer is not required to reemploy him or her in the following circumstances. Appointing authorities must contact the Personnel Services Section (622-3251) before denying reemployment to any employee.

A. The employer establishes that its circumstances have so changed as to make reemployment impossible or unreasonable. For example, there was a reduction in work force that would have included that employee. However, an employer cannot refuse to reemploy the employee on the basis that another employee was hired to fill the reemployment position during the employee's absence, even if reemployment might require the termination of that replacement employee.

B. The employer is not required to reemploy employee if it establishes that assisting the employee in becoming qualified for reemployment would impose an undue hardship as defined in USERRA.

C. The employer is not required to reemploy employee if it establishes that the employment position vacated by the employee in order to perform service in the uniformed services was for a brief, non-recurrent period and there was no reasonable expectation that the employment would continue indefinitely or for a significant period.

D. The employee is separated from service with a disqualifying discharge or under other than honorable conditions.

Appointing authorities must contact the Personnel Services Section (622-3251) before denying reemployment to any employee.

VIII. OTHER BENEFITS

Members of the uniformed services are accorded the right to be put on leave of absence status during service in the uniformed services. Such leave does not constitute a break in continuous service.

Family and Medical Leave Act of 1993, as amended - Under USERRA, a reemployed service member would be eligible for leave under the Family and Medical Leave Act of 1993, as amended, if the number of months and the number of hours for which the service member was employed by the City of St. Louis, together with the number of months and the number of hours of work for which the service member would

have been employed by the City of St. Louis during the period of uniformed service, meet FMLA eligibility requirements.

Also, the National Defense Authorization Act (NDAA) signed into law on January 28, 2008, amended the Family and Medical Leave Act of 1993 to provide eligible employees two important new leave rights related to military service:

1. **New Qualifying Reason for Leave:** Eligible employees are entitled to up to 12 weeks of leave because of "any qualifying exigency" arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty or has been notified of an impending call to active duty status.

2. **New Leave Entitlement:** An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member who is recovering from a serious illness or injury sustained in the line of duty on active duty is entitled to up to 26 weeks of leave in a single 12-month period to care for the service member.

Questions relating to the Family and Medical Leave Act should be referred to the Employee Relations Section of the Department of Personnel at 622-3563.

Health plan - It is the employee's responsibility to work with their payroll clerk and the Employee Benefits Section of the Department of Personnel (622-3200) regarding continuation of insurance (supplemental or dependent coverage) and to arrange for payments.

If the employee already has coverage under a health plan in connection with his or her employment, the plan must permit the employee to elect to continue coverage while performing service in the uniformed services for a period that is the shorter of the following two periods:

1. The 24-month period beginning on the date on which the employee's absence for the purpose of performing service begins; or,
2. The period beginning on the date on which the employee's absence for the purpose of performing service

begins and ending on the date on which the employee fails to return from service or apply for reemployment.

If the health care plan is terminated during the leave, but reinstated upon return of the employee to the former or comparable position, the employee will be accepted into the plan according to the guidelines of the USERRA.

Pension - Service in the uniformed service will not constitute a break in service for the employee pension plans.

Questions regarding Administrative Regulation No. 138 should be forwarded to the Classification and Compensation Section of the Department of Personnel at 622-3565.

DEPARTMENT OF PERSONNEL

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EMPLOYEE'S CHECKLIST

Military Leave and Reemployment (USERRA)

The following is a quick overview of the items needing attention before leaving/returning to employment with the City of St. Louis due to service in the uniformed services; this list is not inclusive.

Before Entering into Service

I have five years or less of cumulative service in the uniformed services since employed with the City of St. Louis.

I have given my appointing authority advance written or verbal notice of service dates.

I have given my appointing authority the date I will leave my employment.

I have contacted the Employee Benefits Section (622-3200) about my insurance coverage.

I have informed my appointing authority of my desire regarding paid leave options,

No vacation or compensatory time will be requested

Vacation leave forms have been filled out, if applicable, and submitted (time will be taken in a block, not intermittently, after my 120 hours of paid military leave, if applicable).

Compensatory time forms have been filled out, if applicable, and submitted (time will be taken in a block, not intermittently, after my 120 hours of paid military leave, if applicable).

Before Returning to Work

I have reviewed the reemployment timeframe in Administrative Regulation No.138 and know when I need to return to work based upon length of service.

I have obtained required documents for reemployment.

I have given my appointing authority advance verbal or written notice of my desire to return to work.

I have contacted the Employee Benefits Section to reestablish my insurance coverage.

Sample for Consideration

Absence Notification Letter to Appointing Authority

*Send by Certified Mail, Return Receipt Requested

[Employee's Home Address]

[Date]

[Appointing Authority's Name]

[Appointing Authority's Business Address]

Dear [Appointing Authority]:

I will perform service in the [**branch of service**] beginning on [date] and ending on [**date**]. My last day at work with you before I begin my service in the uniformed services will be [**date**].

I **{do}{do not}** desire to take ___ hours of **{paid vacation}{compensatory time}**. I understand that if I choose to use vacation or compensatory time, it will begin after

my 120 hours of paid military leave, if applicable, and it must be used in a block, not intermittently. I also understand I am not required to use vacation or compensatory time for absence from my workplace to perform service in the uniformed services.

I **{do}{do not}** desire to continue insurance coverage for me or my dependents. I understand that it is my responsibility to contact my payroll clerk and the Employee Benefits Section of the Department of Personnel to work out the details.

Sincerely,

[Signature of Employee]

[Name of Employee]

[Classification Title of
Employee]

Original Received for Appointing Authority by:

[Printed Name and Signature]

[Date Received]

Sample for Consideration

Return Notification Letter to Appointing Authority

*Send by Certified Mail, Return Receipt Requested

[Employee's Home Address]

[Date]

[Appointing Authority's Name]

[Appointing Authority's Business Address]

RE: Request for Reemployment

Dear Appointing Authority:

On **[date]**, I entered active duty with the **[branch of service]** and on **[date]**, I was released from active duty.

Please accept this letter as a request to be reemployed. Please call me at **[telephone number]** to discuss reemployment.

Sincerely,

[Signature of Employee]
[Name of Employee]
[Classification Title of
Employee]

Original Received for Appointing Authority by:

[Printed Name and Signature]

[Date Received]