



<b>Military Leave</b>			
<b>CITY OF APPLETON POLICY</b>		<b>SECTION:</b>	Human Resources
<b>ISSUE DATE:</b>	September 2003	<b>LAST UPDATE:</b>	August 2024
<b>POLICY SOURCE:</b>	Human Resources Department		
<b>POLICY AUDIENCE:</b>	All employees serving in the military forces of the United States of America and all employee who are members of the Wisconsin Civil Air Patrol		

**I. PURPOSE**

To outline for employees who are members of the military forces of the United States of America, either on active duty, in the Reserves or members of the National Guard, their responsibilities and rights as City of Appleton employees, as well as the procedures for compliance with the Uniformed Services Employment and Reemployment Rights Act (USERRA).

This policy also outlines the rights and responsibilities of employees who are members of the Wisconsin Civil Air Patrol.

**II. POLICY**

It is the policy of the City of Appleton to allow military leave to all employees who temporarily leave the service of the City to join the military forces of the United States. Such leave will be without pay for all regular part-time, seasonal, temporary and grant-funded non-represented employees. Regular full-time employees shall be granted a leave of absence from their position without loss of pay for a period not to exceed two consecutive calendar weeks in any calendar year. The City will pay such an employee for time lost in the amount equaling the difference between the military pay and their normal City pay.

The City of Appleton will allow Wisconsin Civil Air Patrol members unpaid leave for up to five consecutive days per incident, not to exceed a total of 15 days of leave in a year.

NOTE: For exigency leave please refer to the City of Appleton FMLA policy.

**III. DEFINITIONS**

- A. *Escalator position.* This is established by the principle that the returning Service member is entitled to the position of civilian employment that the Service member would have attained had the Service member remained continuously employed by that civilian employer. This may be a position of greater or lesser responsibilities, to include a layoff status, when compared to the employees of the same seniority and status employed by the company.
- B. *Impossible or unreasonable.* For the purpose of determining when providing advance notice of uniformed service to an employer is impossible or unreasonable, the unavailability of an employer or employer representative to whom notification can be given, an order by competent military authority to report for uniformed service within forty-eight hours of notification, or other circumstances that the Office of the Assistant Secretary of Defense for Reserve Affairs may determine are impossible or unreasonable are sufficient justification for not providing advance notice of pending uniformed service to an employer.
- C. *Military necessity.* For the purpose of determining when providing advance notice of uniformed service is not required, 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 is sufficient justification for not providing advance notice to an employer.

- D. *Uniformed service.* Performance of duty on a voluntary or involuntary basis in the Armed Forces, the Army National Guard and the Air National Guard, 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, when engaged in 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 such duty, and funeral honors duty performed by members of a Reserve component.

#### **IV. PROCEDURES**

All employees requesting military or Civil Air Patrol leave, whether full or part-time, shall complete the Military Leave Notification form (Exhibit 1). This form shall be completed prior to said leave or the employee will be considered on an unpaid leave, unless precluded by military necessity.

Any regular, full-time employee who, by reason of membership in the United States Military Reserve is ordered by the appropriate authorities to attend a training or encampment under the supervision of the United States Armed Forces or by reason of membership in the National Guard is required by the authority thereof to do so, shall be granted a leave of absence from their position without loss of pay for a period not to exceed two consecutive calendar weeks in any calendar year. The City will pay such an employee for time lost in the amount equaling the difference, if any, between the military pay and their normal City pay.

For a regular, full-time employee to receive the difference between the military pay and their normal City pay, the employee must complete the Military Leave Notification form prior to said leave unless precluded by military necessity. Upon return from said leave, the employee shall submit to the City the pay records from the military substantiating the pay they received during that time. For employees not contributing towards the Wisconsin Retirement System (WRS), the City shall then pay the difference in the two rates of pay, and contribute the full amount of the costs of the employee's portion of the Wisconsin Retirement Fund, but not to exceed the employee contribution rates for the period of the leave. For employees who are contributing towards the WRS, the state provides that the employee is responsible for making the WRS employee required contributions. Upon returning from unpaid military leave, the employee has the choice whether to make up all, some or none of the total WRS employee required contributions dating to the employee's military leave of absence (Exhibits 2 & 3).

- A. To preserve their rights under the Uniformed Services Employment and Reemployment Rights Act (USERRA), employees shall provide advance written or verbal notice to the City, unless precluded by military necessity or otherwise unreasonable or impossible. Reserve component members should provide notice at least 30 days in advance when it is feasible to do so. This notice requirement can be met by providing the City a copy of the unit annual training schedule and completing the Military Leave Notification form.
- B. Upon completion of service, in order to be re-employed by the City:
1. The employee's cumulative length of absences does not exceed 5 years;
  2. The employee reports to, or submits an application for reemployment to, the Human Resources Department within the specified period based on duration of services, as described in section F; and,
  3. The person's character of service was not disqualifying as described in sections C. 4 and C. 5 below.
- C. The City is not required to reemploy a person if:
1. The employment with the City was for a brief, non-recurrent period and there was no reasonable expectation that the employment would continue indefinitely or for a significant period.

2. The City's circumstances have so changed as to make reemployment impossible or unreasonable.
  3. The reemployment imposes an undue hardship on the City in the case of an individual who:
    - a) Has incurred a service connected disability; or,
    - b) Is not qualified for the escalator position or the position last held and cannot become qualified for any other position of lesser status and pay after a reasonable effort by the City to qualify the person for such positions.
  4. The Service member or former Service member was separated from a uniformed service with a dishonorable or bad conduct discharge, or separated from a uniformed service under other than honorable conditions.
  5. An officer dismissed from any armed force or dropped from the rolls of any armed force as prescribed under 10 U.S.C. 1161.
  6. The cumulative length of service exceeds five years and no portion of the cumulative five years of uniformed service falls within the exceptions described in section E.
- D. The City shall not deny initial employment, reemployment, retention in employment, promotion, or any employment benefit on the basis of membership, an application for membership, performance of service or an obligation for service in the uniformed services. No person, including a non-Service member, shall be subject to employment discrimination or any adverse employment action because they have taken an action to enforce a protection afforded a Service member, has testified or made a statement in or in connection with any proceeding concerning employment and reemployment rights of a Service member, has assisted or participated in an investigation, or has otherwise exercised any right provided by USERRA.
- E. In order to retain reemployment rights and benefits provided by this policy and federal law, the cumulative length of absences from the City cannot exceed 5 years. Not counted toward this limit is:
1. Service beyond 5 years if required to complete an initial service obligation;
  2. Service during which an individual was unable to obtain release orders before the expiration of the 5-year cumulative service limit through no fault of their own;
  3. Required training for Reservists and National Guard members;
  4. Involuntary order, call to active duty or retention on active duty;
  5. Ordered to or retained on active duty during a war or national emergency declared by the President or Congress;
  6. Ordered to active duty in support of an operational mission for which personnel have been involuntarily called to active duty;
  7. Performing service in support of a critical mission or requirement as determined by the Secretary concerned;
  8. Performing service in the National Guard when ordered to active duty by the President to suppress an insurrection, repel an invasion or execute the laws of the United States; and,
  9. Voluntary recall to active duty of retired regular Coast Guard officers or retired enlisted Coast Guard members.
- F. Applications For Reemployment:
1. For service of 30 days or less or for an absence for an examination to determine the individual's fitness to perform uniformed service, the Service member or applicant must report to work no later than the beginning of the first full regularly scheduled work period on the next calendar day following completion of service or the examination, after allowing for an eight-hour rest period following safe transportation home from the military duty location.
  2. For service of 31 days or more but less than 181 days, the Service member must submit an application for reemployment no later than 14 days after completion of service or by the next

full calendar day when submitting an application within the 14-day limit was impossible or unreasonable through no fault of the Service member.

3. For service of 181 days or more, the Service member must submit an application for reemployment no later than 90 days after completion of service.
  4. If hospitalized or convalescing from an illness or injury incurred or aggravated during service, the Service member must, at the end of the period necessary for recovery, follow the same procedures, based on length of service, as described in sections F. 1 through F. 3 above. The period of hospitalization or convalescence may not normally exceed 2 years.
  5. Anyone who fails to report or apply for reemployment within the specified period shall not automatically forfeit entitlement to reemployment rights and benefits, but is subject to the rules of conduct, established policies, general practices of the employer pertaining to explanations and discipline because of an absence from scheduled work.
- G. If service is for 31 days or more, a Service member must provide documentation, upon request, that establishes:
1. Application to return to work within the prescribed time period;
  2. Has not exceeded the 5-year cumulative service limit; and
  3. Reemployment rights were not terminated because of character of service as described in paragraphs C. 4 and C. 5 of this policy.

Failure to provide documentation cannot serve as a basis for denying reemployment to the Service member, former Service member, or applicant if documentation does not exist or is not readily available at the time of the City's request. However, if after reemployment documentation becomes available that establishes that the Service member or former Service member does not meet one or more of the requirements contained in this policy, the City may immediately terminate the employment.

- H. Position To Which Entitled Upon Reemployment
1. Reemployment position for service of 90 days or less:
    - a) The position the person would have attained if continuously employed (the "escalator" position) and if qualified to perform the duties or can become qualified after reasonable efforts by the City; or,
    - b) The position in which the person was employed when they departed for uniformed service, but only if the person is not qualified to perform the duties of the escalator position, despite the City's reasonable efforts to qualify the person for the escalator position.
  2. Reemployment position for service of 91 days or more:
    - a) The escalator position or a position of like seniority, status and pay, the duties of which the person is qualified to perform or can become qualified after reasonable efforts by the City; or,
    - b) The position in which the person was employed when they departed for uniformed service or a position of like seniority, status and pay, the duties of which the person is qualified to perform, but only if the person is not qualified to perform the duties of the escalator position after the City has made a reasonable effort to qualify the person for the escalator position.
  3. If a person cannot become qualified, after reasonable efforts by the City to qualify the person, for either the escalator position or the position formerly occupied by the employee as provided in this section, for any reason (other than disability), the person must be employed in any other position of lesser status and pay that the person is qualified to perform, with full seniority.
- I. If a person who is disabled because of service cannot (after reasonable efforts by the City to accommodate the disability) be employed in the escalator position, they must be reemployed:

1. In any other position that is equivalent to the escalator position in terms of seniority, status, and pay that the person is qualified or can become qualified to perform with reasonable efforts by the City; or,
  2. In a position, consistent with the person's disability, that is the nearest approximation to the escalator or equivalent position in terms of seniority, status and pay.
- J. A person who is reemployed under USERRA is entitled to the seniority and other rights and benefits determined by seniority that the person had upon commencing uniformed service and any additional seniority and rights and benefits they would have attained if continuously employed. A person who is absent by reason of uniformed service shall be deemed to be on leave of absence from the City and is entitled to such other rights and benefits not determined by seniority as generally provided by the City to employees having similar seniority, status and pay who are also on leave of absence, as provided under the contract or policy in effect during the Service member's absence because of uniformed service, except vacation. Employees who are on an unpaid leave of absence for purposes of military leave shall not have their vacation prorated upon their return. However such employees shall not be entitled to more than one year of benefits upon their return. The individual may be required to pay the employee cost, if any, of any funded benefit to the same extent that other employees on leave of absence are required to pay.
- K. If, after being advised by the City of the specific rights and benefits to be lost, a Service member, former Service member or applicant of uniformed service knowingly provides written notice of intent not to seek reemployment after completion of uniformed service, they are no longer entitled to any non-seniority based rights and benefits. This includes all non-seniority based rights and benefits provided under any contract, plan, agreement or policy in effect at the time of entry into uniformed service or established while performing such service and which are generally provided by the employer to employees having similar seniority, status and pay who are on leave of absence.
- L. A person who is reemployed following uniformed service cannot be discharged from employment, except for cause, within 1 year after the date of reemployment if that person's service was 181 days or more; or within 180 days after the date of reemployment if such service was 31 days or more but less than 181 days.
- M. During any period of uniformed service, a person may, upon request, use any vacation, PTO, or similar leave with pay accrued before the commencement of that period of service.
- N. The City will allow the Service member to elect to continue personal health insurance coverage, and coverage for the Service member's dependents under the following circumstances:
1. The maximum period of coverage of a person and the person's dependents under such an election shall be the lesser of:
    - a) The 24 month period beginning on the date on which the person's absence begins; or
    - b) The day after the date on which the person was required to apply for or return to a position of employment as specified in this policy, and fails to do so.
  2. A person who elects to continue health plan coverage may be required to pay up to 102 percent of the full premium under the plan, except that a person on active duty for 30 days or less cannot be required to pay more than the employee's share, if any, for the coverage.
  3. An exclusion or waiting period may not be imposed in connection with the reinstatement of coverage upon reemployment if one would not have been imposed had coverage not been terminated because of service. However, an exclusion or waiting period may be imposed for coverage of any illness or injury determined by the Secretary of Veterans' Affairs to have been incurred in or aggravated during, the performance of uniformed service.
- O. A person reemployed after uniformed service shall be treated as if no break in service occurred, with the City maintaining the employee's pension benefit plan. Each period of uniformed service,

upon reemployment, shall be deemed to constitute service with the City for the purpose of determining the non-forfeitability of accrued benefits and accrual of benefits. The City is liable for funding any obligation attributable to the employer of the employee's pension benefit plan that would have been paid to the plan on behalf of that employee but for their absence during a period of ununiformed service. Upon reemployment, a person has three times the period of military service, but not to exceed five years after reemployment, within which to contribute the amount they would have contributed to the pension benefit plan if they had not been absent for ununiformed service. An employee is entitled to accrued benefits of the pension plan that are contingent on the making of or are derived from, employee contributions or elective deferrals only to the extent the person makes payment to the plan.

# MILITARY LEAVE NOTIFICATION FORM

Employee: \_\_\_\_\_ Department: \_\_\_\_\_

The following serves as notification that I will be absent related to my duty in the National Guard/U.S. Reserve:

Date(s) of Leave: \_\_\_\_\_ (attach copy of your orders).

**Employees should contact the City Benefits Coordinator at (920) 832-6455 to discuss benefit impacts for leaves that extend beyond 30 days, which may result in proration of future benefits.**

- I choose to take paid leave time off to the extent such paid leave is available and will keep my pay from the military. (i.e., vacation, floating holiday, comp time, PTO)
- I choose to take an unpaid leave of absence and keep my military pay.
- I choose to take regular pay to the extent such paid leave is available pursuant to the Military Leave policy or the applicable collective bargaining agreement and will turn in my pay stubs from the military.

*Following provisions apply to all employees.*

The state provides that the employee is responsible for making Wisconsin Retirement System (WRS) employee required contributions. Upon returning from unpaid military leave, the employee has the choice whether to make up all, some or none of the total WRS employee required contributions dating to the employee's military leave of absence.

For leaves more than 31 days: Upon return from military leave, I will complete Section A: Employee Information of the ETF USERRA Certification (ET-4560) and hand in to my supervisor along with a copy of my DD-214 or a copy of my military orders or any other military issued paperwork reflecting that my service was other than disqualifying under 38 U.S.C. 4304. (A copy of the ETF form is attached to this form.)

USERRA allows for employee required contributions to WRS to be made beginning with the date of reemployment and ending on the earlier of: (1) three times the period of military service, or (2) five years. This provision is for employees not covered by a collective bargaining agreement under which the employer has agreed to pay the total WRS employee required contributions.

I elected unpaid military leave. My leave is less than 31 days, and I will not receive a DD-214. Upon my return I would like to make up \_\_\_\_\_% of the WRS employee required contributions. I understand that I have the option of paying back all, some or none of the WRS employee-required contributions dating to the military leave. I understand the employer is only required to make employer required contributions to match the contributions made by the employee.

## Signatures

Employee: \_\_\_\_\_ Date: \_\_\_\_\_

Supervisor: \_\_\_\_\_ Date: \_\_\_\_\_

HR Generalist: \_\_\_\_\_ Date: \_\_\_\_\_

cc: Payroll Coordinator (including ETF form), Benefits Coordinator, Supervisor

**Employer Instructions**

- Verify the employee meets all criteria listed on the previous page.
- Provide employee with a [Your Rights Under USERRA](#) notice.
- If the employee's leave is more than 30 consecutive days, complete a **P050 – LOA Military Union Leave** transaction on the [WRS Account Update](#) application.  

**Note:** If the employee's leave is less than 30 consecutive days (weekend trainings or similar short-term drills where the employee would have otherwise worked), report according to employer provisions to ensure employee receives full credit for military service. A **P050 – LOA Military Union Leave** transaction is not necessary under this circumstance. If the employer does not have provisions, contact your WRS Case Manager.
- Use the worksheet on page 3 to determine the employee's deemed hours, earnings, and contributions. The employer is responsible for submitting deemed hours, earnings, and contributions using the applicable transaction type. More details are on page 3.  

**Note for Employers With Differential Pay:** If the employee earns less in the military than they would earn in their position, they must receive differential pay. Differential pay is the difference between the employee's military earnings and employment earnings.  
 Retirement contributions come out of differential pay according to Federal law. The employer submits WRS employee-required contributions to ETF based on annual earnings of only the differential pay amount.
- Complete the USERRA Certification (ET-4560) form.
  1. Review the certification form to ensure the employee has completed **Section A**.
  2. Check the applicable boxes and complete all fields in **Section B**. By signing, the employer certifies that the employee has met all of the qualifications for reemployment under USERRA.
  3. List the leave date and return date in **Section C**. These dates must match the DD-214.
  4. Fill in the employee's deemed hours, earnings, and contributions for each year the employee was on military leave in **Section C**. If additional space is needed, attach an extra sheet with the employee's deemed hours and earnings for each additional year.
  5. Provide a copy of all pages of this form to the employee.
- Submit pages 3 and 4 of this form with a copy of the employee's DD-214 to ETF. If the DD-214 is not available, then a copy of military-issued papers reflecting the employee's entry and discharge dates must be submitted.  

Wisconsin Department of Employee Trust Funds  
 P.O. Box 7931  
 Madison, Wisconsin 53707-7931  
 Fax: 608-266-5801  
 Email: [ETFSMBEmployerWRS@etf.wi.gov](mailto:ETFSMBEmployerWRS@etf.wi.gov)
- If the employee is making up contributions, begin collecting make up contributions and report according to the instructions on the following page.

**For more information, refer to Chapter 22 of the [WRS Administration Manual \(ET-1127\)](#) or contact your WRS Case Manager.**





## USERRA Certification

Wisconsin Department  
of Employee Trust Funds  
PO Box 7931  
Madison WI 53707-7931  
1-877-533-5020 (toll free)  
Fax 608-266-5801  
etf.wi.gov

Section A: Employee Information		
Employee name	ETF Member ID or last four of SSN	
Mailing address		
City, state, ZIP code	Email (Optional)	Telephone, including area code
<p><b>I am electing my rights under USERRA to make up (select one):</b></p> <p><input type="checkbox"/> <b>ALL</b> employee-required contributions dating back to my military leave of absence.</p> <p><input type="checkbox"/> <b>SOME</b> employee-required contributions dating back to my military leave of absence.</p> <p><input type="checkbox"/> <b>NONE</b> of the employee-required contributions dating back to my military leave of absence.</p> <p><b>Yes No</b></p> <p><input type="checkbox"/> <input type="checkbox"/> I understand I will receive full service credit related to my military leave of absence even if I don't make up contributions.</p> <p><input type="checkbox"/> <input type="checkbox"/> I understand I may change my election at any time during the make-up period (three times the period of military service or five years, whichever is earlier) by completing a new USERRA Certification (this form) and providing it to my employer.</p> <p><input type="checkbox"/> <input type="checkbox"/> I have attached a copy of my DD-214 or other military paperwork</p> <p>Signature _____ Date: _____</p> <p><small>*ETF cannot predict what impact, if any, the making-up of missed WRS employee-required contributions may have on an individual's retirement benefits.</small></p>		

Section B: Employer Certification	
<p><i>I hereby certify that the employee above has met all of the qualifications for reemployment under the Uniformed Services Employment and Reemployment Act (USERRA) 38U.S.C.4301-4333.</i></p> <p><b>Yes No</b></p> <p><input type="checkbox"/> <input type="checkbox"/> This employee is subject to differential wage payments.</p> <p><input type="checkbox"/> <input type="checkbox"/> Employer and employee contributions were paid in full prior to submission of USERRA certification. (Applicable only when full contributions are paid under a collective bargaining agreement, differential pay, or within same or next monthly remittance.)</p>	
Employer number	Employer name
Certifying person's name	Title
Signature	Date
	Telephone, inc. area code Ext.

Section C: Qualifying Time Period							
<p>Using the deemed hours and earnings from the worksheet on page 3, fill out one row for each qualifying calendar year. <b>Do not include the actual earnings and hours worked.</b> See employer instructions on page 2 for additional information.</p> <p>Unpaid Military Leave Begin Date: _____ Unpaid Military Leave Return Date: _____</p>							
Employee Category	Reporting year for USERRA-qualifying time (MM/DD/YYYY)	Teachers/Judges/ Educational Support Personnel Only (January-June)			Calendar Year-to-Date (All Employees, including Teachers, Judges & Educational Support Personnel)		
		Fiscal Hours of Service	Fiscal Earnings	Employee-Required Contributions	Calendar Hours of Service	Calendar Earnings	Employee-Required Contributions

In compliance with the Americans with Disabilities Act, ETF will provide help filling out this form upon request. Contact ETF at 1-877-533-5020. The information requested on this form is authorized for collection by §40.03(2)(h) and will be used by ETF for the sole purpose of processing the request. Your providing of personally identifiable information, such as a Social Security number (SSN), is discretionary. Not providing all information requested on this form may result in a processing delay.