

CITY OF APPLETON POLICY	TITLE: MILITARY LEAVE	
ISSUE DATE:	LAST UPDATE: March 7, 2005 August 2010 July 2012 October 2015 <u>February 2021</u>	SECTION: Human Resources
POLICY SOURCE: Human Resources Department	AUDIENCE: 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	TOTAL PAGES: 10
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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

~~All definitions are taken from 32 CFR 104.03 (USERRA).~~

~~A. Critical mission. An operational mission that requires the skills or resources available in a Reserve component or components.~~

~~B. Critical requirement. A requirement in which the incumbent possesses unique knowledge, extensive experience, and specialty skill training to successfully fulfill the duties or responsibilities in support of the mission, operation or exercise. Also, a requirement in which the incumbent must gain the necessary experience to qualify for key senior leadership positions within his or her Reserve component.~~

~~C.A. Escalator position.~~ This is established by the principle that the returning ~~S~~service member is entitled to the position of civilian employment that ~~the Service member~~~~he or she~~ would have attained had ~~he or she~~~~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.

~~D.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.

~~E.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.

~~F.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 ~~Army, the Navy, the Air Force, the Marine Corps or the Coast Guard, including their Reserve components, when the Service member is engaged in active duty, active duty for special work, active duty for training, initial active duty for training, inactive duty training, annual training or full-time National Guard duty, and, for purposes of this part,~~ 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 helps determine how to pay the employee while on leave, whether their military leave will be paid or unpaid by the City.~~ 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 ~~Wisconsin Retirement System~~ WRS, the state provides that the employee is responsible for making the ~~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 (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/or~~ 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 ~~a~~Armed ~~f~~Force or dropped from the rolls of any ~~a~~Armed ~~f~~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 ~~S~~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. ~~Inactive duty training; annual training; ordered to active duty for unsatisfactory participation; active duty by National Guardsmen for encampments, maneuvers, field operations or coastal defense; or to fulfill additional training requirements, as determined by the Secretary concerned, for professional skill development, or to complete skill training or retraining~~ 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 ~~or rebellion~~, 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 not later than the beginning of the first full regularly scheduled work period on the first full next calendar day following ~~the~~ completion of service or the examination, after allowing for an eight-hour rest period following safe transportation ~~to their residence~~ 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 not 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 not later than 90 days after ~~the~~ 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 ~~to the escalator or equivalent position.~~
- 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 ~~on leave of absence~~ 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 ~~continued~~ 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 ~~his or her~~ 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-forfeiture of accrued benefits and accrual of benefits. The City is liable ~~to the plan~~ 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 uniformed 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 uniformed 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.

Exhibit 1

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. (ie – 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.

EMPLOYEE SIGNATURE:

DATE:

SUPERVISOR:

DATE:

HUMAN RESOURCES GENERALIST:

DATE:

| Cc: Payroll Coordinator (including ETF form); Human Resources Benefits Coordinator; Supervisor

Uniformed Services Employment and Reemployment Rights Act (USERRA) Certification Form Instructions

Please read instructions before completing this form. Make a copy for your records, and then submit this form to your employer.

Important Considerations:

To qualify for Wisconsin Retirement System pension rights under USERRA, the employee must meet all of the following criteria:

1. The employee must notify his or her employer that the employee is leaving his or her job to perform service in the uniformed services.
2. Once the employee's period of active military duty ends, the employee must return to his or her pre-military service employment with the employee's WRS employer in a timely manner.
3. The employee's cumulative period of service must not have exceeded five years, with certain exceptions. (For more information on exceptions to the five-year limit, please visit the U.S. Department of Labor website at www.dol.gov/vets or contact the Wisconsin Department of Employee Trust Funds (ETF) at toll free 1-877-533-5020.
4. The employee must not have been separated from military service with a disqualifying discharge or under other than honorable conditions.
5. The employee must submit this form to his or her employer for certification.
6. The employee must have the employer submit this form to ETF.

Employee Instructions:

The employee is responsible for filling out Section A. Please read through Section A, then fill in the member information, including name, address and phone number. Next, sign and date the form, then submit it to the employer with a copy of your DD-214, or, if you did not receive a DD-214 based on the length of service, a copy of your military orders or any other military-issued paperwork reflecting your entry and discharge dates and that your service was other than disqualifying under 38 U.S.C. 4304.

Employer Instructions:

The employer is responsible for filling out Sections B and C. Employers, please:

- Review the certification form to ensure the employee has completed Section A.
- Sign and date the form in the employer certification section, Section B. By signing, the employer certifies that the employee has met all of the qualifications for reemployment under USERRA.
- List the USERRA-qualifying time period in Section C.
- Fill in the employee's deemed hours and earnings for each year that the employee was on a military leave of absence in Section C. If additional space is needed, attach an extra sheet with the employee's deemed hours and earnings for each additional year. Do not include the actual hours and earnings worked. Deemed hours and earnings are the hours of service and the earnings that the employee would have received had they'd been actively employed instead of being out on their active military leave of absence. Be sure to include any pay increases or other WRS-reportable earnings the employee would have been entitled to receive during their active military leave of absence.
- Submit form via mail, secure fax or email to ETF:

Wisconsin Department of Employee Trust Funds
P.O. Box 7931
Madison, Wisconsin 53707-7931

Employer Communications fax number: 608-266-5801

Email: ETFSMBEmployerWRS@etf.wi.gov

Department of Employee Trust Funds
PO Box 7931
Madison, WI 53707-7931

USERRA Certification

Section A: Employee Information

Employee Name		Social Security Number
Mailing Address		ETF ID Number
City, State, ZIP code	Email (Optional)	Phone Number
<p>I understand that I have the option of paying back all, some or none of the Wisconsin Retirement System employee-required contributions dating to the military leave of absence for which I am electing my rights under USERRA. If I choose to make up some or all of the employee-required contributions, I understand that I will need to contact my employer to arrange to have employee make up contributions deducted from my payroll.</p> <p>Yes No</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) 38 U.S.C. 4301-4333.</i></p>			
Yes	No	<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	Phone	Ext.

Section C: Qualifying Time Period

Fill out one row for each qualifying calendar year. Based on 2011 Wisconsin Act 10, for calendar year 2011, please complete two rows. The first row should include pre-Act 10 employee category information, and deemed hours and earnings. The second row should include post-Act 10 employee category information and deemed hours and earnings. Do not include the actual hours and earnings worked. See ER instructions for additional information.

Leave Date: _____ Return Date: _____

Employee Category	Last date of employment or paid leave prior to USERRA-qualifying time (MM/DD/YYYY)	First date of employment or paid leave following 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. You may request help by calling 1-877-533-5020 or 608-266-3285 local to Madison.