

Military Leave

1041.1 PURPOSE AND SCOPE

This policy provides general guidance regarding leave to perform military service as a member of the Reserves or National Guard or active duty in the U.S. Armed Forces (California Military and Veteran's Code § 389, et seq., Uniformed Services Employment and Reemployment Rights Act (USERRA) and 38 USC § 4301, et seq.).

This policy does not address every situation or circumstance that may arise when an employee is performing military service or ordered to active duty. As military leave situations arise, supervisors should consult with the Administration or legal counsel to obtain specific guidance regarding military leave rights.

1041.2 POLICY

The Fresno County Fire Protection District supports employees who may be called or who volunteer to serve in the military. The District will comply with USERRA and state laws relating to military leave.

1041.3 MILITARY LEAVE

Generally, employees on military leave are entitled to the same rights and benefits not determined by seniority, that are provided to employees having similar seniority, status and pay who are on furlough or leave of absence (38 USC § 4316(b)(1)).

1041.3.1 LENGTH OF LEAVE

Employees are entitled to military leave of absence for up to a maximum of five years (38 USC § 4312(a)(2)). Military leave is available for both voluntary and mandatory service (38 USC § 4303(13) and 38 USC § 4312(a)).

There are exceptions to the five-year cumulative total, including inactive duty training (drills), annual training, involuntary recall or retention in support of war, national emergency, certain operational missions, or training or retraining requirements (38 USC § 4312(c)).

1041.3.2 TEMPORARY MILITARY DUTY LEAVE OF ABSENCE

Employees are entitled to temporary military leave for a period not to exceed 180 days per period of ordered duty. This includes travel time, active military training, encampment, naval cruises, special exercises or similar activities (Military and Veterans Code § 389).

An employee who is a member of the California State Military Reserve is entitled to temporary military leave not to exceed 15 days per year for training, drills, unit training assemblies or similar inactive duties (Military and Veterans Code § 395.9).

1041.4 PROCEDURES AND RESPONSIBILITIES

Employees requesting military leave shall:

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- (a) Provide as much advance notice of the pending service as reasonably possible (38 USC § 4312(a) and (b)).
- (b) Provide copies of official orders or other official documentation.
- (c) Select the benefit options desired during absence, if applicable
- (d) Retain copies of all submitted documents.

Upon receipt of a request, the Fresno County Fire Protection District will determine eligibility for military leave and notify the employee in writing of the determination.

1041.5 COORDINATION WITH CONTRACTS, PRACTICES AND OTHER RULES

Wherever USERRA has more generous protections and benefits than state or local law, any applicable collective bargaining agreement or local policy or practice, the district will apply the more beneficial right or benefit (38 USC § 4302).

1041.6 LEAVE ACCRUALS

Employees on military leave are not required to use accrued leave while on military leave. However, employees may choose to use accrued annual leave or earned compensatory time, at their discretion (38 USC § 4316).

Employees will not accrue sick days or and paid time-off days during any period of military leave without pay. However, upon return, military leave time will be included in determining leave accruals. For example, if vacation accrual increases from two weeks to three weeks upon completion of five years of service, then a person who works for two years, serves two years on active duty and then returns, would be entitled to three weeks of vacation one year after reemployment.

1041.7 COMPENSATION

During approved military leave, employees are entitled to compensation as follows:

- (a) An employee whose combined Fresno County Fire Protection District employment and military service is less than one year is eligible for unpaid temporary military leave.
- (b) An employee with one or more years of combined military service and Fresno County Fire Protection District employment is entitled receive his/her regular salary and compensation as an employee for the first 30 calendar days in any fiscal year while on temporary military leave (Military and Veterans Code § 395.01).
- (c) An employee of the Fresno County Fire Protection District with one or more years of Fresno County Fire Protection District employment is entitled to receive his/her regular salary and compensation as an employee for the first 30 days in any fiscal year (Military and Veterans Code § 395.02).
- (d) An employee called to active military duty as a member of the National Guard during a state of extreme emergency, as declared by the Governor, is entitled to receive his/

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her regular salary and compensation as an employee for 30 days, regardless of the length of prior employment with the Fresno County Fire Protection District (Military and Veterans Code § 395.04).

1041.7.1 HEALTH CARE BENEFITS

Employees on approved military leave may elect to purchase continuing health care coverage for a period of time that is the lesser of:

- (a) The 24-month period beginning on the first day of the employee's absence for military leave.
- (b) The period beginning on the first day of the employee's absence for military leave and ending on the date that he/she fails to return from service or apply for reemployment.

If the duration of an employee's approved military service is less than 31 days, the employee may purchase continuing health care coverage under the district's health plan for no more than the regular employee share. If the approved military service is 31 days or more, the District will charge the employee for no more than 102 percent of the full premium of the health care plan (38 USC § 4317).

1041.8 RETURN FROM DUTY

Employees returning from approved military leave of absence must report to work as follows:

- (a) Employees returning from an approved military duty leave during time of war or national emergency must report to work no later than six months following the separation from military service or no later than six months after the end of the war or emergency, absent unusual circumstances. The right to reemployment does not extend to an employee who fails to return within 12 months after the first date he/she could terminate active military service (Military and Veterans Code § 395.1).
- (b) For periods of service less than 31 days, employees must report back to work no later than the beginning of the first shift that begins on the first full day that follows the end of the employee's service period, plus a reasonable time to travel to the employee's residence, plus eight hours. If reporting within this period is impossible or unreasonable through no fault of the employee, the employee must return as soon as possible after expiration of the eight-hour period (38 USC § 4312(e)(1)(A)).
- (c) For periods of service of more than 30 days but less than 181 days, employees must submit an application for reemployment no later than 14 days after completing service, or, if impossible or unreasonable to do so through no fault of the employee, no later than the next first full calendar day when it is possible to do so (38 USC § 4312(e)(1)(C)).

For periods of service of more than 180 days, employees must submit an application for reemployment no later than 90 days after completion of service (38 USC § 4312(e)(1)(D)).

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Employees who are recovering from an illness or injury incurred in or aggravated during military service, must report to the District or apply for reemployment as provided in this policy at the end of the period necessary to recover from such illness or injury. The recovery period may not exceed two years, except when circumstances beyond the employee's control exist (38 USC § 4312(e)(2)(A)).

An employee who fails to report or apply for reemployment in a timely manner will be subject to the district's rules of conduct and established policies covering absence from scheduled work.

1041.9 REEMPLOYMENT RIGHTS

An employee returning from an approved temporary military duty leave of absence is generally entitled to reinstatement to the position and benefits he/she would have attained if not absent for military duty or, in some cases, a comparable job.

1041.9.1 FORMER POSITION

If such position no longer exists, the employee is entitled to reinstatement to a position in the same class with like seniority status and pay or a comparable vacant position for which the employee is qualified (Military and Veterans Code § 395).

An employee returning from approved regular active military leave is entitled to reinstatement in the position that he/she would have attained had the employee not taken leave. If the leave exceeded 90 days, the employee is also entitled to a position of like seniority, status and pay (38 USC § 4313(a)(1) and (2)).

If an employee returning from approved military leave is not able to perform the essential duties of the position the employee would have attained, the District will make reasonable efforts to help the employee become qualified (20 CFR 1002.198). If the employee remains unable to perform the essential duties of the position after the district's reasonable efforts, the employee is entitled to his/her previously held position at the time of departure or, in the case the leave exceeded 90 days, a position of like seniority, status and pay (38 USC § 4313(a)(2)). Where an employee remains unqualified for both of these positions after reasonable efforts by the District, the employee is entitled to the nearest approximation to these positions (38 USC § 4313(a)(4)).

When a returning employee cannot become qualified because of a disability incurred in or aggravated during uniformed service, the District, after making reasonable accommodations, must find a position of equivalent seniority, status and pay for which the employee is qualified, or the nearest equivalent (38 USC § 4313(a)(3) and 20 CFR 1002.198).

1041.9.2 COMPENSATION AND BENEFITS

Upon return from regular active military duty, an employee is entitled to seniority and seniority-based rights and benefits, including, but not limited to:

- (a) Receiving credit for the time spent in uniformed service under honorable conditions for purposes of seniority, retirement, promotion and merit salary increases (20 CFR 1002.210).

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- (b) Receiving credit for time spent on approved military leave for purposes of calculating eligibility for leave under the Family and Medical Leave Act and the California Family Rights Act (20 CFR 1002.210).
- (c) Returning to the level in the salary range that the employee would have attained had he/she not left on approved military leave (20 CFR 1002.236).
- (d) Receiving the same contribution to retirement benefits upon reemployment that the District would have contributed had he/she not taken leave (20 CFR 1002.261).
- (e) Being treated as not having a break in service for purposes of participation, vesting and accrual of pension benefits (38 USC § 4316; 38 USC § 4318(a)).
- (f) Reenrolling in district health benefits without any waiting period.
- (g) Restoring benefits that were elected by the employee and his/her dependents at the time military service began, as well as to any other benefits that began during the leave for which the employee would reasonably have become eligible.

1041.9.3 EMPLOYEE REEMPLOYMENT RESPONSIBILITIES

An employee returning from approved regular active military leave is entitled to reinstatement rights only if he/she 38 USC § 4312:

- (a) Has given advance written or verbal notice of such service, unless precluded by military necessity.
- (b) Has served in the uniformed service for no more than five years cumulatively while employed at the Fresno County Fire Protection District, except as provided in 38 USC § 4312(c).
- (c) Has been issued a discharge under honorable conditions.
- (d) Reports to the Fresno County Fire Protection District or applies for reemployment in a timely manner as provided in this policy.
- (e) In the case that the approved military leave exceeds 30 days, submits documentation showing:
 - 1. The application for reemployment is timely.
 - 2. The employee has not exceeded the cumulative five-year limit of service in the uniformed services, except as provided in 38 USC § 4312(c).

1041.9.4 DISTRICT REEMPLOYMENT RESPONSIBILITIES

The District shall promptly reinstate employees entitled to reinstatement but no later than 14 days after a request for reinstatement. In the case of unusual circumstances, the District shall reinstate employees as soon as practicable (20 CFR 1002.181).

The District is not required to reemploy a person after approved military leave if any of the following conditions exist (38 USC § 4312(d)):

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- (a) The district's circumstances have so changed as to make such reemployment impossible or unreasonable.
- (b) Such reemployment would impose an undue hardship upon the District.
- (c) The person held a non-recurrent job for a brief period of time and had no reasonable expectation that such employment would continue.

Supervisors should consult with the Administration or legal counsel before determining whether any of these conditions exist.

1041.10 RETENTION

An employee who is reinstated after returning from approved military leave may not be discharged, except for cause (38 USC § 4316(c) and 20 CFR 1002.247):

- (a) For 180 days after the date of reemployment if the most recent period of military service was more than 30 days and less than 181 days.
- (b) For one year after the date of reemployment if the most recent period of military service was more than 180 days.

1041.11 DISCRIMINATION AND RETALIATION PROHIBITED

Discrimination or retaliation against any employee for participation in military service is prohibited, whether the employee volunteers or is ordered to active military service (38 USC § 4311 and Military and Veterans Code § 394).