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Leave for Uniformed Service Members or Their Spouses

A. General Policy and Definition.

The purpose of this policy is to reinforce the District’s commitment to military personnel and their families within the educational community. The policy describes certain leave and reemployment rights that apply under state and federal law for (1) employees who are members of the military, and (2) spouses of members of the military on active duty. This policy is intended to support military families by protecting their employment status during periods of military service and ensuring a smooth transition back into the workforce.

In accordance with applicable state statutes and the federal Uniformed Services Employment and Reemployment Rights Act (USERRA), as used in this policy “Uniformed Services” consist of members of the:

1. Army, Navy, Air Force, Marine Corps, Space Force, Coast Guard, including reservists, Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA), Commissioned Corps of the Public Health Service, Federal Emergency Management Agency (FEMA), National Disaster Medical System, and any other category of persons designated by the President of the United States in time of war or national emergency;
2. National Guard (regardless of the activation authority or location of service), and
3. Others as may be added by statute from time to time.

An administrator who receives a request for leave for a service position not described above, is encouraged to determine whether there has been an expansion of the classifications of personnel entitled to rights under USERRA or under RSA 110-C:1.

Employees of the District who are the spouse of a uniformed services member are also granted certain rights. These rights are explained in Section C.

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B. Provisions Applicable to Uniformed Service Members Only.

Uniformed service members employed by the District are eligible for service-related leave, re-employment and other rights in accordance with USERRA and applicable state law. Among other things, and subject to certain exceptions, returning employees must be treated as if they had never left, and retain all seniority-based rights and benefits as if continuously employed during their military leave.

The provisions below address the most common circumstances related to uniform service leave and reemployment following the leave. There are many other provisions of USERRA and related regulations that address special situations and which may alter the responsibilities of the District and/or the rights of the employee (e.g., injuries sustained during the service related leave, undue hardship to the district, cumulative service-related leave exceeding 5 years, dishonorable or “other than honorable” discharge, etc.). The Director of Human Resources and immediate supervisor should consult with counsel or contact the U.S. Department of Labor in such circumstances.

1. **Notice.** A uniformed service member employee is required to give advance notice to the Director of Human Resources and immediate supervisor before taking a service-related leave. Ideally, the notice will be given in writing as early as reasonably possible under the circumstances. Except in cases of emergency assignment or “military necessity”, a minimum of 30 days prior to deployment is expected.
2. **Salary and Wages.** The District will not pay salary or wages during the service-related leave, subject to any terms in collective bargaining agreements, or if the employee elects to use any accrued paid time off.
3. **Retirement System and other Retirement Benefits.** The entire period of the service-related leave is to be treated as continuous employment. However, the District is not required to make contributions during service-related leave except in accordance with the requirements of the New Hampshire Retirement Service System. Note that if the period of service-related leave straddles more than one fiscal year, the contribution rate may change based upon experience steps or other compensation increases between the two fiscal years to which the employee would have been entitled had the service not occurred.

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4. **Medical Insurance.** A uniform service member taking leave under URESSA may elect to continue participation (for themselves and their dependents) in the District's employer-sponsored health insurance during the leave for up to 24 months. If the employee's period of service is 30 days or less, the normal employee and employer contribution schedule and rates apply. If the service-related leave is 31 days or longer, the District has the discretion to charge the employee up to 102% of the entire premium, and the payment schedule will be dependent on the health plan's rules. The District will provide the employee with a USERRA continuation coverage notice at or before the commencement of the leave. If the employee elects not to continue coverage at the time of taking the leave or ceases coverage during the leave, reinstatement into the plan upon return to work must occur without a waiting period.

5. **Completion of Service-Related Leave.** Upon completion of service (no longer than five cumulative years), the employee shall give evidence of satisfactory discharge immediately thereafter. The employee shall be restored to his or her previous or similar position with the same status, pay, vacation leave, sick leave, bonus, advancement, and seniority. **Seniority shall continue to accrue during the period of absence.**

If the employee is unable to provide satisfactory evidence (documents, etc.) because they are not readily available or do not exist, the employee shall be reemployed despite this. However, if once the documentation becomes available it shows that one or more of the reemployment requirements were not met, the district may terminate the person and any rights or benefits that may have been granted.

6. **Return to Work/Reemployment After Completion of Service.**

If service is less than 31 days, an employee must return to work within the first day after duty ends, after a period for safe transportation and at least 8 hours of rest.

If service is between 31 days and 180 days, the employee must apply for re-employment, not later than 14 days after completion. Applications for re-employment submitted after 14 days, due to no fault of the employee, will be accepted.

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If service is greater than 180 days, the employee must apply for re-employment within 90 days of returning from service.

The reporting or application deadlines may be extended for up to two years for employees who are hospitalized or convalescing due to an injury or illness incurred during military service. If the employee was disabled on account of the service, or a pre-existing disability is aggravated by account of the service, the District will make reasonable efforts to accommodate the disability.

7. Reinstatement Rights. Employees returning from service-related leave will be reinstated to the position they would have attained had they remained continuously employed, unless doing so would impose an undue hardship on the District or impossible as defined by 20 CFR 1002.139. If the responsibilities for the same position that the employee held have changed since the employee began the service-related leave, and additional training is required, the District will make reasonable efforts to retrain the employee for their position.

C. Provisions Applicable to Employee Spouses of Uniformed Service Members

This section provides limited leave and other employment protections for employees who are legally married to uniformed service members (as defined above) when service members are involuntarily mobilized for up to one year and one day. The section applies only to District employees who work in a school or other District location with 50 or more full or part-time employees (whether assigned entirely or partially at that school/location).

1. Leave. The District will grant unpaid leave to an employee spouse of a uniformed service member, and will not discharge, refuse to hire or take any adverse employment action against the employee based on the involuntary mobilization of the employee's spouse **when such mobilization lasts at least one year and one day.**

In order to exercise leave and other rights under this Section C, the spouse employee must inform the Superintendent, Director of Human Resources, and immediate supervisor within 30 days of their spouse's receipt of the official notice of the involuntary mobilization. The District must then provide a written acknowledgment to the employee of the notice of deployment, explicitly confirming adherence to the terms of RSA 110-C:1-a and this policy.

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2. **Benefits.** Under RSA 110-C:1-a, II, except as otherwise provided in this Section C, a service member spouse shall be afforded the same privileges, benefits and protections as would a service member employee called to active duty as described in Section B above.

3. **Reemployment.** A spouse of an involuntarily mobilized uniformed service member has reemployment rights or the same duration that a uniformed service member would have under Section B.6, above. The service member spouse will be reemployed in the same position he or she held, or in a position of like seniority, status, and pay for which he or she is qualified. The District may choose not to reemploy the employee if the District certifies that its circumstances have so changed as to make reemployment impossible or unreasonable as defined by 20 C.F.R. Section 1002.139.

In order to exercise the reemployment right, the employee is required to report to work or submit a timely application for reemployment upon the spouse's completion of mobilization.