



WASHOE COUNTY

MILITARY LEAVE POLICY

Approved by the Board of County Commissioners on February 25, 2003

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I. POLICY

Washoe County supports employees who serve as members of the uniformed services. Employees who are absent from work to perform uniformed service are entitled to (1) take a military leave of absence, (2) certain benefits while on leave and (3) reemployment rights upon return from duty. Employer obligations and employee rights will be administered in accordance with the law¹.

A. Eligibility. Employees absent from work due to “service in the uniformed services” are eligible for military leave. “Service in the uniformed services” includes:

1. Member of Armed Forces (Army, Navy, Air Force and Marines), the Army National Guard, the Air National Guard, full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category designated by the President in time of war or national emergency. 38 U.S.C. §4303(16); 20 C.F.R. §1002.5(o)
2. Active member of the United States Army Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Air Force Reserve or the Nevada National Guard. NRS 281.145 (1)

B. Reasons for Taking Leave. Performance of the following duties on an involuntary or voluntary basis constitutes “service in the uniformed services” and qualifies as military leave:

1. Active duty,
2. Active and inactive duty for training,

¹ This policy is a summary of federal and state law related to military leave. It references the Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994 found at 42 U.S.C. §§2000e et seq., the Code of Federal Regulations at 29 C.F.R. §§1600-1609, N.R.S. 281.145 (military duty compensation), N.R.S. 412.139 (employment may not be terminated for service in Nev. Nat’l Guard), N.R.S. 412.606 (no discrimination against member of the Nev. Nat’l Guard), and N.R.S. Chapter 613 (unlawful employment practices). Washoe County shall provide military leave in accordance with the law. This policy is not meant to be an exhaustive statement of the County’s or its employees’ rights and duties. Collective bargaining agreements may affect the application of this policy.

When an individual is covered under more than one provision (i.e., USERRA and NRS), Washoe County will provide the individual with the greater applicable benefit(s). However, keep in mind that this determination is not of coverage under USERRA or the NRS but instead between each benefit (e.g., leave time before returning to work, reemployment position) the individual is entitled to receive.

*Board guidelines adopted in 2003, extended on September 26, 2005, and revised again on September 22, 2008.

3. Full-time National Guard duty under Federal statute,
4. Absence for an examination to determine the fitness of the person to perform military duty,
5. Absence to perform funeral honors duty as authorized by law,
6. Service in the National Disaster Medical System and the Commissioned Corps of the Public Health Service is included.

10 U.S.C. 12503; 32 U.S.C. 115; 20 C.F.R. §1002.(l)

C. Duration of Leave. Leave for service may be as long as required, but generally not to exceed 5 years.

II. MILITARY LEAVE PROCESS

A. Advance Notice of Leave and Verification

1. *Advance Notice Required.* Employees who are called to military service must comply with their department's usual and customary requirements for requesting leave unless giving notice is impossible, unreasonable, or precluded by military necessity. 20 CFR §1002.85
2. *Verification Required to be provided to Department HR Representative.* Verification (i.e. Orders) shall be provided to the Department HR Representative. The Department HR Representative is responsible for forwarding the information in a timely manner to both HR and Payroll for their records. The officer of the military branch who issued the verification may be contacted for verification.
3. Leave shall be charged as leave without pay (LWOP) until verification is received from employee. Once verification is received, LWOP will be changed to either Military Pay or Military LWOP based on eligibility.
4. Unless included in the order, travel time to and from service is not treated as military leave.

B. Notice of Return to Work

1. *Notice of Return to Work.* An employee whose military service has ended must return to work or inform Washoe County that he or she wants to be reinstated. An employee should provide notice as far in advance as is reasonable under the circumstances so that the County has enough time to prepare for the employee's return. 20 CFR §1002.115
2. *Time Limits for Employee to Return to Work.* Time limits for returning to work depend on the duration of a person's military service.
 - a. For a period of service less than 31 days or for a fitness examination, the employee must report back to work on the first regularly scheduled workday after completing military service, allowing for safe travel home from the military duty location and an 8-hour rest period. 20 CFR §1002.115(a)
 - b. Service of 31 to 180 days. A request for reemployment must be submitted no later than 14 days after a person's military service ends. If submission of a timely request is impossible or unreasonable through no fault of the person, the request must be submitted as soon as possible. 20 CFR §1002.115(b)
 - c. Service of 181 or more days. A request for reemployment must be submitted no later than 90 days after a person's military service ends. 20 CFR §1002.115(c)
3. *Employee must Notify Department.* The employee is responsible for notifying the Department HR Representative through the usual and customary requirements of their impending return to work date and by providing a copy of the applicable paperwork releasing them from military leave. 20 CFR §1002.115
4. *Department will Notify of Return to Work Date.* Returning service members may not return to the workplace until arrangements have been made with the Department and the appropriate paperwork has been submitted to the Department and forwarded to Human Resources and Payroll. The Department Head, Supervisor, Department HR Representative or designee will inform the employee when he or she may return to work.

III. REINSTATEMENT

- A. **Prompt Reinstatement.** Washoe County will promptly reemploy the employee when he or she returns from a period of service if the employee meets the conditions for reinstatement. 20 CFR §1002.180

B. Conditions for Reinstatement. Employees may be eligible for reinstatement only if all the following are verified:

1. The employee gave the employer notice before taking leave that the leave was for military service. If military necessity prevented the employee from giving notice, this requirement does not apply.
2. The employee spent no more than 5 years cumulatively on leave (paid and unpaid) for military service during their employ with Washoe County.
3. The employee was released from military service under honorable conditions – this should be documented on the release paperwork.
4. The employee reports back or requests a reinstatement within the specified time limits.

C. Return to Same Position. Upon verification, an employee serving 90 days or less of active military service, will be restored to the same position, at the same grade and pay level as if he or she had not had a break in service. 20 CFR §1002.196 An employee serving longer than 90 days, and up to five years, will be reemployed into their former position or a comparable position having seniority and a base pay rate equal to that which he or she would have earned had he or she not served in the military. 20 CFR §1002.197 An employee serving a probationary period will be required to complete the remaining portion of their probationary period. 20 CFR §1002.191

D. Exceptions. An employer does not have to reinstate an employee in any of the following situations:

1. The employer circumstances have changed so much that reemployment is impossible or unreasonable. 20 CFR § 1002.139(a)
2. The job was for a brief, non-recurrent period and the worker had no reasonable expectation that job would continue indefinitely or for a significant length of time. 20 CFR § 1002.139(c)
3. The employee is not qualified for the position and helping the employee qualify would impose an undue hardship on the employer. 20 CFR § 1002.139(b)

IV. EMPLOYEE BENEFITS

A. Up to 15 Days of Paid Military Leave Available. An employee may receive paid military leave of up to the number of hours equivalent to 15 working days in any 12-month period. The 12-month period is from January 1 through December 31. NRS 281.145(4)

B. Military Pay Differential

1. *When Available.* Military Pay Differential is available to an employee called to active service with the uniformed services after use of 15 consecutive working days of either paid or unpaid military leave.
2. *Military Pay Differential Purpose.* An employee whose County salary is higher than the military salary is eligible for Military Pay Differential. The differential pays the difference between the County's gross wages (regular reoccurring pay excluding overtime, holiday, callback and stand by pay) and the gross income as an active service member (as defined by the Internal Revenue Service).
3. *Employee must Request Military Pay Differential.* It is the employee's responsibility to contact the Department HR Representative to request to receive the Military Pay Differential. The following information is required from the employee for Payroll to process the Military Pay Differential:
 - a. A copy of the military orders to be sent to the Department HR Representative, who will forward to Human Resources and the Payroll Office.
 - b. A copy of the Leave Earnings Statement (LES) to be sent to the Comptroller's Payroll Office at payroll@washoecounty.us
Note: The Leave Earnings Statement (LES) must indicate "active duty".

C. Leave Use and Accumulation

1. *Use of Paid Leave.* An employee may use accrued annual leave or similar leave such as accrued comp time or personal leave if requested by the employee and approved by the Department before the commencement of military leave. Sick leave may not be used. However, the County will not require any

employee to use annual or similar leave during military service. *If an employee uses paid leave, the military pay differential does not apply and will not be paid.*
20 CFR §1002.153

2. *Accumulation of Leave.* If an employee is on paid status, annual and sick leave shall continue to accumulate. An employee on military leave without pay is not eligible for leave accruals. WCC 5.263 However, the time an employee is on a military leave (with or without pay) is considered as time worked for the purpose of qualifying for a higher accrual rate, and will not result in an adjusted leave anniversary date for such leave use upon the employee's return to Washoe County. 20 CFR §1002.149

D. Holiday Pay

An employee on military leave with or without pay is eligible to be paid for holiday pay and is exempt from having to be in a paid status both the day before and the day after a holiday. Holiday pay should be encoded in time entry by the Department or Payroll on the applicable Holiday as it occurs, using the employee's regular work schedule to determine the holiday hours (i.e. 4, 8, 10, or 12) as if the employee was at work, and not paid retro-actively upon return from leave. Holiday pay may affect the employee's eligibility for the military pay differential.

E. Longevity Pay

An employee eligible for longevity pay will continue to receive longevity pay as prescribed by contract or County Code during the military leave period. The time the employee spends on military leave is counted as time worked when calculating longevity pay and the longevity date will not be adjusted upon the employee's return to Washoe County.

F. Retirement

1. *No Break in Service.* An employee on military leave (with or without pay) does not incur a break in service for the purpose of retirement contributions and the military leave is considered service time for purposes of vesting or accruing retirement benefits. 20 CFR 1002.259
2. *Military Leave in Excess of 31 Consecutive Days.* While an employee is on military leave without pay for more than 31 consecutive days, the County does not make monthly contributions to PERS in the employee's name. The

Department HR Representative should complete a Termination from PERS Form noting "Military" in the "Leave Without Pay" section with the From/To dates of LWOP and submit the form to HR for processing. When the employee returns to County service, a new PERS member enrollment form is not required. Instead, the Department may submit a copy of the original PERS enrollment form on file and indicate the "Member Returned from LWOP" date and submit to HR for processing. The County will make any contributions on behalf of the employee's retirement benefit that the County would have made if the employee had not been absent for military service. Such contributions may be delayed if payroll does not receive the employee's release paperwork in a timely manner. 20 CFR §1002.262

G. Health Benefits. An employee who is absent from work due to military service is entitled to continued coverage under the health plan. 20 CFR §1002.164-171

1. *Military Service Less Than 30-Days:*

If the military service is for 30 days or less, the employee is responsible for paying any applicable health insurance premiums through the County.

2. *Military Service More Than 31-Days:*

i. Effective the day they are activated for military duty, an employee on military leave for 31 consecutive days or more is eligible to enroll themselves and their family in health care coverage provided by the military; or

ii. The employee is eligible to purchase continued health care coverage through the County for themselves and their families for up to 24 months in accordance with the provisions of USERRA.

iii. *Return from Military Service:* Upon returning from military service, employees will be provided immediate reinstatement to the County's health insurance coverage with no waiting period or pre-existing condition limitations. For additional information contact Washoe County Health Benefits at 775-328-2081.

3. **Merit Increase Date.** An employee will be given any merit increase due in the time period while the employee was absent due to services in the uniformed services. The time an employee is on a military leave (with or without pay) is considered as time worked for the purpose of qualifying for a merit increase, and will not result in an adjusted next merit increase date for such leave use upon the employee's return to Washoe County.

I. Other Information

If an employee is on military leave without pay and is participating in voluntary supplemental benefits (such as additional life insurance, short term disability), premiums will stop and coverage will lapse unless the employee makes other arrangements with the provider with guidance from Human Resources/Benefits. Additionally, pre-tax or post-tax contributions to the Deferred Compensation plan will cease for participants receiving insufficient pay for a contribution. Upon return from military leave, the employee may elect to make additional annual deferrals equal to the maximum annual deferrals that the employee could have elected during that period of leave for up to five years following the resumption of employment.

V. RELATED POLICIES AND FORMS

- A. Washoe County American with Disabilities Act Policy.** This policy provides process for accommodations for individuals with disabilities incurred and aggravated by Military Service.

- B. Washoe County Discrimination, Harassment and Retaliation Policy.** Washoe County does not discriminate, harass or retaliate against members of the armed services because of using leave or exercising their rights under this policy.

- C. Washoe County Family and Medical Leave Act Policy** outlines process for qualifying exigency leave and military caregiver leave.