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MILITARY LEAVE

I. POLICY

The intent of this policy is to comply with all applicable laws, rules and regulations and to provide support for employees who choose to serve as members of the United States Armed Forces, Armed Forces Reserves, and the National Guard.

II. PURPOSE

The Uniformed Services Employment and Reemployment Act (USERRA) requires employers to give employees job-protected leave without pay for a period of up to five years to serve in the United States Armed Forces. The primary purpose of USERRA is to protect the careers of those employees who serve the country by putting them in the same position with respect to seniority and benefits that they would have been if they not taken time off to serve in the military. This policy permits employees to take military leave for active duty in the armed services of the United States, and permits employees who are former and inactive members of the armed services, or current members of the reserve forces of any of the United States armed services or the National Defense Executive Reserve to take military leave in accordance with federal and state law.

III. PROCEDURE

A. Training

(1) Leave with Supplemental Pay for Fourteen (14) Days: Employees who are members of the Armed Forces Reserves or the National Guard are entitled to two (2) calendar weeks per year of military leave with supplemental pay for military training. If the military salary is less than would have been earned during the same period with the town, the employee shall receive supplemental pay to equal the difference. The effect will be to maintain the employee's salary at the normal level during this period. Employees must submit copies of his/her monthly military paystubs to the Finance Department to receive supplemental pay.

- a. **Military Salary:** All monies paid to active duty military personnel as defined in the Defense Finance and Accounting Service (DFAS) Military Pay table in effect for the requested period.
- b. **Supplemental Pay:** subject to all regulatory tax and retirement withholdings and is treated as regular pay for retirement plan purposes.

(2) Notification: Employees must notify their supervisor immediately upon receiving notification, or not less than thirty (30) days before their pending duty, whichever occurs first.

(3) After Fourteen (14) Days: Employees whose training extends beyond the fourteen (14) calendar days may use accrued vacation leave or be placed on unpaid military leave. Only seniority based benefits (longevity) will accrue if the employee is on unpaid military leave. Vacation and sick leave will not accrue during unpaid military leave and holidays will not be paid. While the employee is on unpaid military leave, health care coverage will continue as based on the provisions below.

B. Active Duty

(1) Leave without Pay for Five (5) Years: Employees are entitled to take military leave without pay for active military duty in accordance with state and federal laws for a cumulative maximum of five (5) years.

(2) Health Care Coverage: USERAA gives employees called up for military duty health insurance continuation rights similar to COBRA. Employees will be given the option of continuation of health coverage, at the employee's expense, for either twenty-four (24) months or until the employee returns to work (fails to return to work) whichever period is shorter. If the employee elects continuing coverage, the coverage may be cancelled upon non-payment of premiums by the employee. The employee should consult with Human Resources regarding health care insurance coverage.

As is the case with COBRA, an employee who elects to continue health-plan coverage under this paragraph may not be required to pay more than 102% of the full premium under the plan (that is, the employee's and the employer's share, plus 2% for administrative overhead costs), except that if the employee's military leave is for less than thirty-one (31) days, the employee may not be required to pay more than the employee share, if any, for such coverage.

(3) Promotional Opportunities: If a promotional opportunity presents itself while an employee is on active duty the following should be followed:

- a.** If the promotion is based solely on seniority or some other form of automatic progression the employee is entitled to the promotion when he/she returns from active duty. *A reemployed veteran claiming a right to a promotion or other benefit allegedly missed during military service must demonstrate that it was reasonably certain that he/she would have received the benefit if he/she had remained continuously employed.*
- b.** If the promotion is not simply on seniority or some other form of automatic progression but on an exercise of discretion on the part of the Town of Davidson the employee is not entitled to the promotion (or to a promotional process) when he/she returns from active duty.

C. Duty Verification

(1) Employees shall provide written verification of duty as soon as possible, but no later than their return to work. Verification is necessary in order to confirm military pay and the employee's reemployment rights. Verification may include, but is not limited to, orders, drill letters, training schedule and signed duty verification from the officer in charge.

D. Reemployment Rights

Upon returning from military leave, the employee is entitled to reemployment rights and maintenance of employment benefits if the employee meets all of the following criteria:

(1) The employee must have given advance notice (oral or written) to the town that he or she was leaving the job for service in the uniformed services;

(2) The employee must have been released from service under honorable conditions; and

(3) The employee must have reported back to the town as stipulated in the "Return to Work Notification" definition below.

E. Reemployment Position

(1) The position to which a returning employee is entitled depends on the length of military service.

- a. **Service of Ninety (90) Days or Less:** Returning employees whose military service was less than ninety-one (91) days are entitled to return to the position in which they were employed or would have been employed if their employment had not been interrupted.
- b. **Service of More Than Ninety 90 Days:** Returning employees whose military service was for more than ninety (90) days are entitled to return to the position in which they were employed, would have been employed, or a position of like seniority, status and pay, the duties of which the person is qualified to perform.

(2) **Return to Work Notification:** A returning employee's notification of intent to return to work must be promptly made following the completion of military service. Employees will be subject to departmental operating procedures and may need to complete required departmental training upon returning.

Time limits for returning to work depend on the length of a person's military service:

- a. **Military Service of One (1) to Thirty (30) Days:** Returning employees whose military service was less than thirty-one (31) days must report to the town either on the first day of the first regularly scheduled work period following completion of service, or as soon as possible.

- b. **Military Service of Thirty-One (31) to 180 Days:** Returning employees whose military service was more than thirty (30) days, but less than 181 days must contact the Human Resources Department no later than fourteen (14) days following the completion of military service.
- c. **Military Service of More than 180 Days:** Returning employees, whose military service is for more than 180 days, must contact the Human Resources Department no later than ninety (90) days from the completion of service.
- d. **Notice by Disabled Persons:** Employees who are hospitalized from injuries incurred by military service may apply for reemployment within two (2) years.
- e. **Failure to Give Timely Notice:** If a returning employee fails to notify the Human Resources Department or report to work within specified time limits, the employee will be subject to the town's rules governing unexcused absences, which may include termination.

IV. ADDITIONAL CONTACTS

Human Resources Department

V. SCOPE

As of October 23, 2017 this policy replaces and supersedes any previous policies or unwritten policies or practices covering the same subject.

VI. AUTHORIZATION



Jamie Justice
Town Manager