

<b>CITY OF VIRGINIA BEACH</b>  <b>MILITARY LEAVE POLICY AND</b> <b>PROCEDURE</b>	<b>Policy Number:</b>	<b>3.09</b>
	<b>Date of Adoption:</b>	<b>June 24, 1987</b>
	<b>Date of Prior Revision:</b>	<b>May 2, 2018</b>
	<b>Date of Current Revision:</b>	<b>September 26, 2022</b>
		<b>Page 1 of 11</b>

## **1.0 PURPOSE:**

The Uniformed Service Employment and Reemployment Rights Act of 1994 (USERRA) prohibits employers from discriminating against employees who fulfill non-career military obligations in the Uniformed Services and requires employers to provide a leave of absence to allow employees to perform military obligations. The purpose of this policy is to provide military leave as required by law and to comply with the other relevant provisions of USERRA.

## **2.0 DEFINITIONS:**

For the purposes of this policy, the terms set forth herein shall be defined as follows:

- 2.1 BENEFIT:** Benefit of Employment, Rights and Benefits or any variation of these terms means any advantage, profit, privilege, gain, status, account or interest (other than wages or salary for work performed) that accrues by reason of employment. These terms include, but are not limited to, pension plan(s), health plan(s), other types of insurance coverage, awards, paid leave, title, work schedule, commission, and clothing allowance.
- 2.2 FEDERAL FISCAL YEAR:** October 1 through September 30 of each year.
- 2.3 MILITARY LEAVE WITH PAY:** A period of approved absence, no more than twenty-one (21) working days per Federal Fiscal Year, during which employees are paid their regular rate of compensation while performing military service.
- 2.4 MILITARY LEAVE WITHOUT PAY:** A period of approved absence during which employees do not receive compensation while performing military service.
- 2.5 MILITARY SERVICE:** The performance of military duty on a voluntary or involuntary basis in a uniformed service. It includes: active duty; active duty for training; initial active duty for training; inactive duty training; full-time

National Guard duty; time spent undergoing an examination to determine fitness to perform military duty; and a period for which an employee is absent to perform funeral honors authorized by 10 U.S.C. 12503 or 32 U.S.C. 115.

- 2.6 QUALIFIED OR QUALITY:** With respect to an employment position, means having the ability to perform the essential tasks of the position.
- 2.7 REASONABLE EFFORTS:** In the case of actions required of an employer pursuant to USERRA, means actions, including training provided by the City, that do not place an undue hardship on the City.
- 2.8 SENIORITY:** Longevity in employment, together with any benefit(s) that accrue(s) with or is determined by longevity.
- 2.9 UNDUE HARDSHIP:** In the case of actions taken by an employer, means requiring significant difficulty or expense when considered in light of:
  - A. The nature and cost of the action required;
  - B. The overall financial resources; AND
  - C. The effect on expenses and resources as set forth in USERRA.
- 2.10 UNIFORMED SERVICE(S):** The Armed Forces (U.S. Army, Navy, Marine Corps, Air Force, and Coast Guard); the reserve components of the Armed Forces; the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty; the commissioned corps of the Public Health Service; and any other category of service designated by the President of the United States in time of war or national emergency.
- 2.11 WORKING DAY(S):** A working day for a full-time employee shall mean eight (8) or ten (10) hours a day or other alternate workday for a forty (40) hour workweek employee, or eleven and two-tenths (11.2) hours a day for a fifty-six (56) hour workweek employee.

### **3.0 APPLICABILITY:**

This policy applies to all full-time and part-time employees of the City who are also members, or intend to become members, of one of the Uniformed Services.

#### **4.0 LEAVES OF ABSENCE FOR MILITARY SERVICE:**

- 4.1** Pursuant to USERRA (38 U.S.C. section 4301) and Virginia Code Section 44-93, an employee who is a former or current member of the uniformed service shall be entitled to paid leave for military service not to exceed twenty-one (21) working days per Federal Fiscal Year:
- A. Twenty-one (21) working days is equal to 168 hours for employees who normally work forty (40) hours in a pay week at a rate of eight (8) or ten (10) hours a day or other alternative workdays that is equal to forty (40) working hours within a pay week;
  - B. Twenty-one (21) working days is equal to 235.2 hours for employees who normally work fifty-six (56) hours in a pay week at a rate of 11.2 hours per day.
- 4.2** Eligible part-time employees shall receive military leave with pay for his or her normally scheduled working hours, not to exceed twenty-one (21) working days per Federal Fiscal Year, in accordance with Virginia Code §44-93.
- 4.3** Employees whose period of military service is 1-30 day(s) (or an absence of any length to have an examination to determine fitness for military service), are entitled to an eight (8) hour rest period after safely arriving home from the place of military service before the employee is required to return to work pursuant to the provisions of Section 9.1 of this policy and USERRA.
- 4.4** Where an employee returns from military service and the eight (8) hour rest period overlaps the employee's scheduled work shift; employees shall receive paid military leave to the extent of the overlap. For example, if an employee returns home Sunday at 2 a.m. and his or her regular work shift would normally begin Monday at 8 a.m., the eight (8) hour rest period would overlap the work schedule by two hours and the employee would receive his/her regular salary for that two (2) hour period.
- 4.5** Where leave(s) of absence for military service exceed the twenty-one (21) working days of paid military leave, employees shall be permitted, upon request, to use any accrued annual, compensatory, personal leave (for eligible part-time employees) or military leave without pay during the period of military service. However, unless extended specifically by the terms of USERRA military leave with and without pay shall not exceed five (5) years of cumulative military service.

- 4.6 An employee may also use flexible holidays in full workday increments towards leave(s) of absence for military service in excess of the twenty-one (21) working days of paid military leave.
- 4.7 An employee's Payroll and Leave Specialist shall maintain accurate payroll and leave records to document an employee's military leave with pay and/or military leave without pay in InSITE and VBTime, if applicable.
- 4.8 In accordance with the City's Overtime Policy, if an employee works for part of a work week but is absent for the other part because of military service, the hours charged to military leave shall be counted as hours worked in determining whether the employee is entitled to overtime pay for that week.

## **5.0 ADVANCE NOTICE:**

- 5.1 An employee who is leaving to perform military service shall provide advance written or verbal notice to his or her immediate supervisor of the need for a leave of absence (including the best approximation of the expected dates of the leave). However, advance notice is not required if precluded by military necessity or, under all relevant circumstances it is otherwise impossible or unreasonable to give notice. It is requested that employees provide a copy of their military orders, if available, to their supervisor, preferably before the leave is taken.
- 5.2 Employees shall submit leave requests in advance of the leave, indicating the type of leave the employee wants to take; i.e., military leave with pay (if the twenty-one (21) days has not been exhausted), military leave without pay, annual leave, personal leave, flexible holidays, compensatory leave, or an appropriate combination of leaves. Requests shall be submitted via VBTime, if applicable.

## **6.0 EMPLOYEE BENEFITS:**

- 6.1 During the twenty-one (21) day military leave with pay or when an employee requests to use another kind of paid leave (e.g., annual leave) to cover a period of military service, an employee shall receive the same benefits as if the employee remained continuously employed with the City.
- 6.2 An employee on military leave shall not be entitled to any benefits which he or she would not have received even if the employee remained continuously employed by the City.

- 6.3** If an employee on non-military leave of absence is required to pay the employee cost for any benefit, a person on a military leave of absence may be required to pay the employee cost for the same benefit.
- 6.4** An employee may request the use of his or her accrued annual, compensatory, or flexible holiday leave prior to beginning any period of military leave without pay. If the employee decides to keep all or any portion of his or her annual leave, the employee is still subject to the cap on accrual of annual leave hours.
- 6.5** Employees shall not accrue annual, sick, or personal leave while in a military leave without pay status for more than fourteen (14) consecutive calendar days.
- 6.6** Upon returning to City employment, an individual is entitled to the seniority the employee had on the date of the commencement of military service, together with the rights and benefits associated with seniority. The employee is also entitled to any additional seniority, rights and benefits he or she would have attained if the employee had remained continuously employed with the City. For example, this means that all periods of military leave will be counted towards an employee's months of service in determining:
- A. The rate of annual leave accrual,
  - B. Eligibility for service awards; AND
  - C. Eligibility for retirement.
- 6.7** An employee's sick leave balance shall be maintained until the individual returns to City employment.
- 6.8** An employee may maintain in abeyance any annual, compensatory, or personal leave balances until the employee returns to active City employment. If an employee does not return, he or she shall receive payment for any leave balances in accordance with the policies and procedures in effect when the employee separates from City employment. Separating employees shall not be paid for sick leave unless eligible for retirement.
- 6.9** Health care coverage options – An employee and his or her dependent(s) covered by a City health plan at the time the employee's period of military service begins may elect to continue coverage on the following conditions:

the maximum period of coverage for an employee and his or her covered dependent(s) will be the lesser of:

- A. The twenty-four (24) month period beginning on the date the employee's absence begins; OR
- B. The day after the date on which the employee fails to submit a written request for reemployment or fails to return to work within the prescribed time periods required by USERRA and set forth in Section 10 of this policy.
- C. An employee who performs military service for less than thirty (30) days may not be required to pay more than the employee's share, if any, of the health plan premium. An employee engaged in military service for thirty-one (31) days or more may be required to pay up to one hundred and two percent (102%) of the full health plan premium.

## **7.0 LOSS OF PROTECTION UNDER USERRA:**

An employee will lose the protections of USERRA, including reemployment rights, if the employee receives a dishonorable discharge or is separated from military service under other than honorable conditions. The City shall require an employee to present written documentation, such as a DD-214, to confirm the type of discharge received.

## **8.0 REEMPLOYMENT RIGHTS:**

- 8.1** An employee absent from City employment due to military service shall be entitled to reemployment rights and other benefits required by USERRA if:
  - A. The employee, or an appropriate officer of the uniformed services, has given advance written or verbal notice of the military service to the City. However, advance notice is not required if precluded by military necessity, or under all the relevant circumstances it is otherwise impossible or unreasonable to give notice;
  - B. The cumulative length of the absence and of all previous absences from employment with the City by reason of military service does not exceed five (5) years. There are certain limited circumstances in which the five (5) year limit may be extended, including, but not limited to, when the military service beyond five (5) years is required

to complete an initial period of obligated service or the employee was unable to obtain orders releasing him or her from service before the end of the five (5) year period and the inability to obtain such orders was not the employee's fault; OR

- C. The employee reports to or submits a written request for reemployment by the City in accordance with the time limits discussed in Section 9.1, below.

**8.2** The City is not required to reemploy a person if:

- A. Circumstances have changed to such an extent that reemployment is impossible or unreasonable;
- B. In certain situations, as outlined in USERRA, if employment would impose an undue hardship for the City; or
- C. The employee's job was for a brief, non-recurrent period, and there was no reasonable expectation that the job would continue indefinitely or for a significant period of time.

**9.0 RETURNING FROM MILITARY SERVICE:**

**9.1** Upon completion of the period of military service, employees shall report back to work or submit a written request for reemployment in accordance with the following criteria:

Length of Military Service	Employee's Obligation to Report or Submit Written Request
1-30 days (or an absence of any length to have an examination to determine fitness for military service)	(1) An employee shall report for work no later than the first full regularly scheduled work shift on the first full calendar day after the end of the calendar day of duty and the eight (8) hour rest period allowing for the safe transportation back to his or her home expired - OR -  (2) As soon as possible after the expiration of the eight (8) hour rest period, if, through no fault of the employee, it would be impossible or unreasonable to report within the time described in (1), above. Employees on military leave for less than 1 full day are not eligible for the eight (8) hour rest period, except if leave is for a fitness exam.
31-180 days	An employee shall submit a written request for

	reemployment no later than fourteen (14) calendar days after completion of the period of military service. If complying with this deadline is impossible or unreasonable through no fault of the employee, the request shall be submitted on the next first full calendar day when submitting the request becomes possible.
More than 180 days	An employee must submit a written request for reemployment within ninety (90) calendar days after completion of the period of military service.

- 9.2** An employee hospitalized for, or convalescing from, an illness or injury incurred in or aggravated during military service shall, at the end of the period necessary to recover from the illness or injury, which cannot exceed two (2) years, report for work or submit a written request to the City as described above. The two (2) year period for recovery from the illness or injury shall be extended by the minimum time required to accommodate circumstances beyond the employee’s control that make compliance with the reporting deadline impossible or unreasonable.
- 9.3** If an employee does not comply with the reporting deadlines, he or she does not automatically lose the right to reemployment. However, the employee may be disciplined in accordance with the City’s Absence Without Leave Policy and/or the Disciplinary Policy and Procedure. If discipline is imposed, the employee may appeal the action in accordance with the City’s grievance procedure in effect at the time of the discipline.
- 9.4** An employee entitled to reemployment upon completion of a period of military service, shall be promptly returned to a position as described in the following table:

Length of Military Service	The employee’s position will be determined in the following order of priority:
1 to 90 days	<p>(1) The position the employee would have been employed in, if the employee’s continuous employment had not been interrupted by military service , provided he or she is qualified to perform the duties of the position;</p> <p>(2) The position the employee had when he or she began the period of military service, only if he or she is not qualified to perform the duties of the position described in (1) after reasonable efforts by the City to qualify him or her;</p>

	<p>(3) A position of like seniority, status and pay, if it exists, or any position he or she is qualified to perform that is the closest match to a position referred to in (1) or (2), if he or she cannot be qualified to perform the duties of either position described in (1) or (2); or the positions described in (1) and (2) have been abolished during the leave of absence or otherwise cease to exist.</p>
<p>91 days or more</p>	<p>(1) The position the employee would have been employed in if the employee's continuous employment had not been interrupted by military service or a position of like seniority, status, and pay, provided the employee is qualified to perform the duties of the position;</p> <p>(2) The position the employee had when he or she began the period of military service, or one of like seniority, status, and pay, provided he or she is qualified to perform the duties, but only if he or she is not qualified for the positions described in (1) after reasonable efforts by the City to qualify him or her;</p> <p>(3) Any position the employee is qualified to perform that is the closest match to a job referred to in (1) or (2), if he or she cannot be qualified for either of the positions described in (1) or (2); or the positions described in (1) and (2) have been abolished during the leave of absence or otherwise cease to exist.</p>

- 9.5** If an employee has a disability incurred in or aggravated during military service which disqualifies the employee from performing the job he or she would have had if continuously employed, despite reasonable efforts to accommodate the disability, the City will make every effort to assign the employee to one of the following:
- A. To another job of equivalent seniority, status, and pay, provided the employee is qualified or would become qualified with reasonable efforts by the City; or
  - B. To a position that is the closest match to a job described in (1) in terms of seniority, status and pay consistent with the circumstances of the employee's case, for which the employee is qualified.

**10.0 DOCUMENTATION TO SUBMIT WITH A WRITTEN REQUEST FOR REEMPLOYMENT:**

- 10.1** The City requests that every employee who submits a written request for reemployment provide written documentation (such as a copy of military orders, discharge papers, leave and earnings statement, endorsement orders, letter from proper military authority, and/or a DD-214) to show that

(a) the request is timely; (b) the cumulative length of the military service did not exceed the allowable limit; and (c) the employee's entitlement to benefits under USERRA has not been terminated; e.g., due to a dishonorable discharge.

**10.2** Pursuant to USERRA, all employees who submit a written request for reemployment shall simultaneously provide one or more the documents requested set forth in Section 10.1 above.

**10.3** The City shall not refuse to reemploy someone who does not provide this documentation, if the documentation does not exist or is not available at the time of the request. However, if documentation becomes available at a later time which shows that the employee was not entitled to be reemployed, the City may dismiss him or her and terminate any rights or benefits otherwise required by USERRA.

**11.0 CRITERIA FOR DISMISSAL AFTER REEMPLOYMENT:**

An employee who is reemployed shall not be dismissed from employment or administratively terminated, except for cause:

- A. Within one (1) year after the date of reemployment, if the period of military service before reemployment was more than one hundred and eighty (180) days; or
- B. Within one hundred and eighty (180) days after the date of reemployment, if the period of military service was more than thirty (30) days but less than one hundred and eighty-one (181) days.

**12.0 AUTOMATIC MODIFICATIONS REQUIRED BY LAW:**

If amendments to Federal, state, or local law establish greater rights and/or benefits for employees who perform military service, this policy will be deemed to automatically comply with the applicable amendments.

**13.0 RECOMMENDED CONSULTATION:**

Due to USERRA's complexities, the exact language of the statute is not always set forth or summarized in this policy. Employees are encouraged to consult with their military advisors or with the local office of the Department of Labor's Veterans' Employment and Training Service (also known as VETS) to familiarize themselves

with their rights and responsibilities under USERRA.

**14.0 REVISIONS:**

The City Manager, or designee, may revise this policy, or any portion thereof, at any time. However, such modifications shall not diminish or abolish any rights provided to employees by Federal, state, or local law.

Revision History

<b>Version</b>	<b>Revision Date</b>	<b>Description of Revision</b>
1	Upon Approval	Revision History tracking started this date. Changes to state code increased paid leave from fifteen (15) to (21) twenty-one days.

**Policy Title: Military Leave Policy and Procedure, 3.09**

**Date of Adoption: January 13, 2014**

**Date of Prior Revision: May 2, 2018**

**Policy Number: 3.09**

**Date of Revision: Upon Approval**

**Approved as  
to form and  
content:**

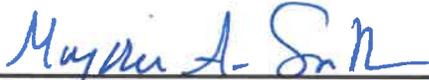


**Regina S. Hilliard, Director of Human Resources**

9/22/2022

**Date**

**Approved as  
to legal  
sufficiency:**



**Marjorie A. Smith, Senior City Attorney**

9/26/2022

**Date**

**Approved:**



**Patrick A. Duhaney, City Manager**

9/26/2022

**Date**