

# Military Leave - Active Duty & USERRA

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## 1.0 POLICY

The Town of Carolina Beach grants time off for employees to serve on active duty in the uniformed services.

## 2.0 PURPOSE

The Town supports employees wishing to serve their country through participation in the uniformed services. The Town complies with the guidelines of the Uniformed Services Employment and Reemployment Rights Act (USERRA) and considers them to be minimum requirements. This policy explains how the Town fulfills its obligations under USERRA for employees who are serving on active duty in the uniformed services.

## 3.0 SCOPE

This policy applies to employees in all benefit-eligible positions. Other (not benefit-eligible) employees are not covered by the benefits outlined in this policy, but at all times the Town will be compliant with the requirements of USERRA.

## 4.0 DEFINITIONS

- **4.1 Active Duty** - Active Uniformed Services duty for which the employee has received reporting orders.
- **4.2 Benefit-Eligible** - Full time and part-time employees who are eligible for coverage and participation in the Town's benefit programs in addition to legally mandated coverage. See **Policy on Position Types**.
- **4.3 Other (not Benefit-Eligible) Employee** - An employee assigned to a position designated roster, seasonal temporary or special project who is eligible for salary and mandated benefits only. See **Policy on Position Types**.
- **4.4 Uniformed Services** - Uniformed service includes active duty, active duty for training, inactive duty training (such as drills), initial active duty training, and funeral honors duty performed by National Guard and reserve members, as well as the period for which a person is absent from a position of employment for the purpose of an examination to determine fitness to perform any such duty. The Uniformed Services consist of the following [20 CFR 1002.5 (o)]:
  - Army, Navy, Marine Corps, Air Force and Coast Guard
  - Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve and Coast Guard Reserve
  - Army National guard and Air National Guard
  - Commissioned Corps of the Public Health Service
  - Any other category of persons designated by the President in time of war or emergency

## 5.0 ORGANIZATIONAL RULES

- **5.1 USERRA** prohibits employment discrimination against a person on the basis of past military service, current military obligations, or intent to serve. The Town will

not deny initial employment, reemployment, retention in employment, promotion, or any benefit of employment to a person on the basis of a past, present, or future service obligation. In addition, the Town will not retaliate against a person because of an action taken to enforce or exercise any USERRA right or for assisting in an USERRA investigation.

- 5.2 USERRA provides that while an individual is performing military service, he is deemed to be on a leave of absence and is entitled to the non-seniority rights and benefits accorded other similarly situated individuals on non-military leaves of absence.
- 5.3 The Town must reemploy servicemembers returning from a period of service in the uniformed services if those servicemembers meet five criteria:
  1. The person must have been absent from their Town job on account of service in the uniformed services;
  2. The person must have given advance notice to the Town that he or she was leaving the job for service in the uniformed services, unless such notice was precluded by military necessity or otherwise impossible or unreasonable;
  3. The cumulative period of military service must not have exceeded five years;
  4. The person must not have been released from service under dishonorable or other punitive conditions; and
  5. The person must have reported back to their Town job in a timely manner or have submitted a timely application for reemployment, unless timely reporting back or application was impossible or unreasonable.
- 5.4 USERRA establishes a five-year cumulative total of military service with a single employer, with certain exceptions allowed for situations such as call-ups during emergencies, reserve drills, and annually scheduled active duty for training. USERRA also allows an employee to complete an initial period of active duty that exceeds five years.
- 5.5 USERRA provides that returning servicemembers are to be reemployed in the job that they would have attained had they not been absent for military service, (the "escalator" principle), with the same seniority, status and pay, as well as other rights and benefits determined by seniority. USERRA also requires that reasonable efforts (such as training or retraining) be made to enable returning servicemembers to qualify for reemployment. If the servicemember cannot qualify for the "escalator" position, he or she must be reemployed, if qualified, in any other position that is the nearest approximation to the escalator position and then to the pre-service position. The time limits for returning to work are as follows:
  - **Less than 31 days service:** By the beginning of the first regularly scheduled work period after the end of the calendar day of duty, plus time required to return home safely and an eight-hour rest period. If this is impossible or unreasonable, then as soon as possible.
  - **31 to 180 days:** The employee must apply for reemployment no later than 14 days after completion of military service. If this is impossible or unreasonable through no fault of the employee, then as soon as possible.
  - **181 days or more:** The employee must apply for reemployment no later than 90 days after completion of military service.
  - **Service-connected injury or illness:** Reporting or application deadlines are extended for up to two years for persons who are hospitalized or convalescing.

- 5.6 An employee returning to Town employment following active service must be able to perform the duties of his former position or position of like classification.
- 5.7 Provisions for Benefit-Eligible Employees:
  - A. Benefit-eligible employees will not earn vacation leave or accrue sick leave while in a leave without pay status.
  - B. An employee who has returned from active duty will be awarded holidays on a pro-rata basis, depending on when it is during the fiscal year the employee actually returns to work. For example, an employee returning to work in the month of October would NOT be eligible for Holiday pay for Labor Day, which was celebrated in September, prior to the employee's return to work.
  - C. Longevity pay for the current fiscal year will be paid at 100% when the employee returns to work if the employee returns to work in a month following when Longevity pay is normally awarded to eligible employees (November).
  - D. Salary increases will be tracked during the employee's absence so that re-entry to employment is at the appropriate pay rate. See Section 5.5.
  - E. The employee on active duty may choose to drop or continue participation in group insurance. The Town will contribute the same amount to the active-duty employee's insurance as when the employee was in a regular pay status with the Town. The employee's portion of any insurance benefits continued must be paid to the Town on a monthly basis.
  - F. The benefit-eligible employee may apply for service credit with the North Carolina Local Governmental Employees Retirement System after returning from military leave provided, he returns to work within the guidelines stated above in Section 5.5. In order to receive retirement service credit, **the returning employee must complete the necessary paperwork and furnish his military discharge form DD-214 to the North Carolina Local Governmental Employees Retirement System within the time guidelines specified by the Retirement System.**
- 5.8 If deployed for military service in time of war, the employee will be covered by the provisions of the Policy on **Military Leave - Deployment in Time of War.**

## 6.0 PROCEDURES

- 6.1 When an employee is notified of impending active duty, he must immediately notify his supervisor and provide the supervisor with a copy of the official set of activation orders. A benefit-eligible employee must also advise his supervisor if he wants to use any paid leave during the deployment period. At the end of any paid leave used, the employee will be placed on a leave without pay status.
- 6.2 Health and pension plan coverage for servicemembers is addressed by USERRA. Individuals performing military duty of more than 30 days may elect to continue employer sponsored health care for up to 24 months; however, they may be required to pay up to 102 percent of the full premium. For military service of less than 31 days, health care coverage is provided as if the servicemember had remained employed. USERRA pension protections apply to defined benefit plans and defined contribution plans as well as plans provided under Federal or state laws governing pension benefits for government employees. For purposes of pension plan participation, vesting, and accrual of benefits, USERRA treats military service as continuous service with the employer. See Section 5.7 (F).

- 6.3 Prior to deployment, the benefit-eligible employee should review his beneficiary status for retirement and deferred compensation plans (401(k) and 457) and make any desired changes.
- 6.4 If the employee receives notification of a deployment in support of a war effort of the United States while serving on active duty, he must notify his Town supervisor or Human Resources as soon as he is able. If deployed for military service in time of war, the provisions of the Town policy on **Military Leave - Deployment in Time of War** will apply.
- 6.5 Upon notification of impending release from active-duty service, the employee will notify his supervisor of the date for return to Town employment as specified in Section 5.5 of this policy.
- 6.6 Upon the benefit-eligible employee's return to work, the employee will provide Human Resources with a copy of his military discharge form DD-214, and the employee will be allowed to make any necessary adjustments to his insurance for the remainder of the current insurance enrollment period.
- 6.8 If the employee was injured while on active duty, and upon receipt of release orders from active duty service, the employee must schedule a return-to-work evaluation with the Town's Medical Services provider. This examination should be coordinated through the Human Resource Department. The exam components will be determined by the medical provider and are meant to ensure the employee's ability to perform the duties of the Town position to which the employee will be returning.

## **7.0 APPENDIX, APPENDICES**

- None