

		<b>Policy #</b> <b>832</b>
<b>Subject:</b> Military Leave Policy		
<b>Responsible Department:</b> Personnel Services		
<b>Effective Date:</b> 08/2018		<b>Revision Date:</b> N/A
<b>David Devine</b> <b>Director of Personnel Services</b>		<b>Navdeep S. Gill</b> <b>County Executive</b>

### 1. **Purpose**

To define and administer the policy with respect to granting time away from work to fulfill military duty obligations.

### 2. **Authority**

Title 38 of the United States Code  
Uniformed Services and Reemployment Rights Act (USERRA) of 1994  
Section 395 et seq. of the California Military and Veterans Code.

### 3. **Scope**

This policy applies to all County employees.

### **DEFINITIONS**

Uniformed Service of the United States – The Army, Navy, Marine Corps, Air Force and Coast Guard. It also includes the affiliated components of the National Guard/Reserve and the commissioned corps of the Public Health Service and the California National Guard or California state militia when mobilized by the President or Congress.

Uniformed Service Duty – 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.

Active Duty – Consists of full-time military duty, initiated by written or verbal orders directing the employee to report for active duty at a specified time to a particular location.

Inactive Duty – Usually consists of Reserve/Guard military service such as "drills" or inactive training duty periods.

#### **4. Policy**

It is the County's policy to provide military leave, appropriate benefits and compensation for employees called upon to serve in the military or reserve in compliance with all state and federal laws pertaining to military leave.

The leave applies to regular, temporary, and probationary employees regardless of years of service or number of hours worked.

The County will grant military leave up to five (5) years cumulatively, unless covered under special provisions of USERRA. This includes any and all periods of employment with the County. A break in service does not create a new five year leave entitlement.

Any employment action that constitutes discrimination based on past or present membership or participation in activities as a uniformed service member is prohibited. Employees (including temporary and probationary) cannot be required to perform any job duties that would preclude them from performing military duties.

### **STANDARDS OF APPLICATION**

#### **Eligibility**

Any regular, temporary or probationary employee who belongs to a uniformed service that has been called upon to serve in the military or reserve is eligible.

#### **Compensation**

##### Paid Military Leave

An eligible employee shall receive military leave pay during the first thirty (30) calendar days of military leave. No more than thirty (30) calendar days of paid military leave shall be allowed during one fiscal year. If the employee works a part-time schedule a prorated portion thereof will be authorized.

### Supplemental Military Pay

If an employee is on continuous military duty beyond the initial thirty (30) calendar days, he or she is eligible for supplemental military pay. Commencing with the first County-paid day after the paid military leave is exhausted, employees eligible for supplemental pay shall receive the difference between the amount of the employee's base military pay and the employee's County base salary (minus the employee's share of health care premiums and benefit costs). Such supplemental pay shall only apply if the County base salary is higher than the employee's military pay. In order for an employee on military leave to receive supplemental pay, after paid military leave has been exhausted, the employee must remit to the County the most recent pay stub from the military. This military pay stub will be used by the County to calculate the amount of supplemental pay to be paid to the employee.

### Travel Time

If travel time is required to reach a drill site, the travel time that occurs on a County paid day can be counted as qualifying military duty if it meets the criteria stated in the travel time provision in the County's travel policy. Routine Reserve/Guard "drills" that occur outside of the normal work schedule for the employee (i.e. weekend duty) shall not qualify as military leave and shall therefore not be paid.

## **Benefits**

### Accruals, Benefit Coverage and Eligibility, Retirement Contributions

In the first 30 calendar days of military leave, the employee will continue to receive his/her regular County benefits. After 30 calendar days:

- Vacation and Holiday In Lieu (HIL) will not accrue;
- If the employee is no longer receiving County compensation, the continuation of Life Insurance, Dental insurance and Employee Assistance Program (EAP) benefit coverage will cease unless the employee chooses to pay the cost of these benefits. Determination on whether the employer contribution for medical coverage will continue in order to comply with the Affordable Care Act will be made on a case-by-case basis. The employee must contact the Benefits Office to make arrangements for the continuation of these benefits;
- The employee will not be eligible for Wellness certificates; and
- Retirement contributions paid by the employee and the County will discontinue.

Family and Medical Leave Act (FMLA), California Family Rights Act (CFRA) leave and Pregnancy Disability Leave may be available upon return to work if eligibility requirements are met.

Parental Leave and Family Death Leave will be available if eligibility requirements are met. Leave cannot be taken during military leave, but will be deferred until the employee returns to work.

Please refer to individual leave policies for additional information.

Health Plan Payment-Benefits Coverage of up to 24 months, See the second bullet under Benefits

During the first 30 calendar days of military leave, employees are not required to pay more than his/her regular share for health insurance benefits. Employees who are on military leave beyond 30 calendar days, and are not receiving supplemental military pay or the employer contribution toward medical coverage must be given the option to continue benefits coverage for up to 24 months while on leave.

Health Plan Reinstatement

Upon return to work, no exclusion or waiting period will apply and the employee will be immediately covered upon re-enrollment.

**Return to Work**

Probationary Period

A probationary employee on military leave is required to complete his/her probationary period upon his/her return to work. The probationary period will be extended in accordance with County policy.

Requesting Return to Work After Military Leave

As a general practice, the County is required to return an employee to work after military leave at the employee's request. An employee is generally entitled to be placed in the position he/she would have been in if employment had not been interrupted by the employee's military service.

There are limited exceptions to returning the employee to work and is not required if any of the following conditions exist:

- It is impossible or unreasonable due to the employer's changed circumstances;
- Through participation in the Americans with Disabilities Act (ADA) and/or Fair Employment and Housing Act (FEHA) interactive process,

if it is determined that the employee has a disability which prevents the employee from performing the essential functions of the job, with or without a reasonable accommodation; or

- The employee is separated from military service by a dishonorable discharge or under other than honorable conditions.

Requesting Return to Work During Time of War or Other National Emergency

If an employee is returning from active duty after serving in a time of war or national emergency, he/she is entitled to return to work within six (6) months after termination of military service. To be eligible to return to work, County employees must return to County service within twelve (12) months after the first date upon which he/she could terminate active military service.

These deadlines to report to work or request reemployment can be extended up to two years to accommodate a period during which a person was hospitalized for or convalescing from an injury or illness that occurred or was aggravated during a period of military service.

Requesting Return to Work for Other Than a Time of War or National Emergency

If the service was less than 31 calendar days, the employee must report to the County by the beginning of his/her regularly scheduled work shift on the first full calendar day that begins at least eight (8) hours after the individual's return home.

After a period of military service of 31-180 consecutive calendar days, the employee must submit a written or verbal request to return to work with the County no later than 14 calendar days after the completion of active duty.

After a period of military service of 181 consecutive calendar days or more, the employee must submit a request, verbal or written, to return to work no later than 90 calendar days after the completion of active duty.

An employee returning from military service, for reasons other than war or national emergency, must receive approval from the County to use available leave balances for any additional time off beyond the military service commitment.

These deadlines to report to work or request reemployment can be extended up to two years to accommodate a period during which a person

was hospitalized for or convalescing from an injury or illness that occurred or was aggravated during a period of military service.

Resignation from Employment to Serve in the Military

An employee who resigns from the County to serve or to continue to serve in the armed forces of the United States may request reinstatement within six (6) months of termination of active service or no later than twelve (12) months after the first date he/she could terminate active military service. The County will return the employee to work unless it is impossible or unreasonable due to the employer's changed circumstances (i.e., reduction-in-force).

**5. Review**

To be reviewed every 5 years or as required by law.