

The following questions (**Q**) and answers (**A**) attempt to clarify some of the complex laws on military leave for City employees. If any answers are found to conflict with the laws, the laws are controlling. Employees may be entitled to additional rights and benefits and/or required to meet additional conditions that are not included in the answers below.

As soon as employees know when they will be on military leave they must notify their supervisor and contact Human Resources to ensure that they receive the benefits they deserve for serving our country.

Q1. What laws and policies apply to City employees on military leave?

A1. The Federal, State and City laws and policies as cited below apply to City employees on military leave.

Federal: Uniformed Services Employment & Reemployment Rights Act (USERRA) 38 U.S.C. § 4301 - 4335.

State: Military & Veteran's Code (MVC) §§ 389 - 399.5.

City:

- Ordinance No. 29321 and No. 29332;
- Resolution No. 73180 and No. 74180;
- City Auditor's Audit Report 11-05 (Supplemental Military Pay and Benefits) accepted with modifications by the City Council on August 9, 2011;
- Direction from City Council dated December 5, 2006 (Item 3.11 of City Council Agenda dated December 5, 2006), direction from City Council dated August 5, 2011 (Item 3.5 of City Council Agenda dated August 9, 2011), and City Supplemental Military Pay Payment Process Analysis memo dated November 10, 2011 and accepted by the City Council on December 6, 2011;
- City Policy Manual Section 4.2.2 (Military Leave).

Q2. What are the definitions of "temporary military leave," "extended military leave," "emergency National Guard leave," and "inactive duty training"?

A2. Temporary Military Leave means when an employee is ordered to full-time active military duty for training, encampment, naval cruises, special exercises or like activity, for a period not to exceed 180 calendar days, including time spent traveling to and from such duty.

Extended Military Leave means when an employee is ordered into active-duty service of any length or active-duty training in excess of 180 days or when an employee is ordered into active Federal military duty as a member of the National Guard or Naval Militia. In addition, leave shall be granted for a period of up to 6 months from the date of release from duty.

Emergency National Guard Leave means when an employee who as a member of the National Guard is called to active duty by proclamation of the Governor during a state of emergency. An employee who as a member of the National Guard is called to active Federal military duty at the request of the President of the United States is not eligible for emergency National Guard leave, but shall be granted extended military leave.

Inactive Duty Training (IDT) means authorized regularly scheduled or periodic training, such as weekend drills, training assemblies, etc., performed by a reservist who is not on active duty and whose military status does not change to active during participation in such training.

Q3. Do employees on military leave receive their salaries?

A3. The City's obligation under state law to pay an employee's salary depends upon the type of leave as described below. See answer to question 2 for definitions of the various types of military leaves used below.

Employees with at least one year of City service or combined military/City service who are on Temporary Military Leave are entitled to receive Military Pay (MLT) from the City, which is equivalent to their full City pay for the first 30 calendar days of a military tour [MVC § 395.01(a)].

Employees with at least one year of City service who are on active duty for other than Temporary Military Leave may be eligible for MLT pay for the first 30 calendar days of a military tour [MVC § 395.02].

National Guard members are entitled to 30 days of pay for the first 30 calendar days of a military tour regardless of length of City service [MVC § 395.05].

Employees on Inactive Duty Training are not entitled to salary continuation and benefits for any period of such training, but may use their own applicable paid time, such as vacation, compensatory time, personal/executive leave to minimize the financial impact [MVC § 395.01(b)]. Departments will work with employees attending Inactive Duty Training to revise work schedules to allow for as little financial impact as possible to the employee.

Q4. If an employee has received paid military leave for the first 30 calendar days and remains on military leave into the following fiscal year, is the employee entitled to another 30 days of paid leave for the following fiscal year?

A4. Yes. Eligible employees may receive MLT pay for up to 30 calendar days *per fiscal year* (July 1 to June 30), regardless of whether they were involved in a single tour or multiple tours.

Q5. If an employee has received multiple military activations during the fiscal year, is the employee entitled to 30 days of paid leave for each of the activations?

A5. No. An employee who has received multiple military activations during a fiscal year is entitled to no more than 30 calendar days of paid leave during any one fiscal year [MVC § 395.03]. However, the first military activation during the next fiscal year restarts a new round of 30 calendar days of fully paid military leave.

Q6. Does the City provide pay and/or benefits beyond what is required by law?

A6. The City provides the following additional benefits for full-time employees that are called to active military duty under its Optional Supplemental Military Pay and Benefits Program. This Program allows eligible employees the option to continue City benefits and supplemental pay, which when combined with their military pay, will total the pay that they would have received if not on a military leave of absence.

Flat Rate Program: An employee participating in the City's Supplemental Military Pay and Benefits Program will receive a flat rate of supplemental military pay. The flat rate supplemental military pay monthly amount is the difference between the participating employee's City pay, which includes the employee's base pay and any additional pays that he or she is eligible for under any applicable Memorandum of Agreement, and the military salary received by the employee. The initial calculation of the flat rate supplemental military pay is determined by comparing the pay provided by the City in the month prior to the military leave of absence to the military salary received by the employee in the first month of the tour.

Salary Adjustments: Ninety (90) days after the commencement of the tour, the City's Finance/Payroll Department will re-review and compare the employee's supplemental military pay from the City and the employee's military salary to determine if there should be an adjustment to the supplemental military pay going forward. Thus, there may be instances where an employee receives more supplemental military pay than what is required to make him or her whole, but under the Flat Rate Program, the City will not attempt to collect the overpayment. On the other hand, there may be instances where an employee receives less supplemental military pay than what is required to make him or her whole, but under the Flat Rate Program, the City would not issue a reconciliation check. Additional reviews may be done on a quarterly basis for the remainder of the tour.

Health Benefits: While on leave under the City's Supplemental Military Pay and Benefits Program, reservists can elect to continue benefits including, but not limited to medical, dental, vision, and EAP. The City will pay the applicable Employer portion of the health benefit premium(s). If the reservist's City paycheck does not cover the applicable Employee portion of the health benefit premium(s), reservists will have billing options to repay the Employee portion of the health benefit premium(s) upon return to work.

Leave Accruals and Seniority: While on leave under the City's Supplemental Military Pay and Benefits Program, employees will continue to accrue sick leave, vacation leave and both City and Departmental seniority as if the employee had remained in uninterrupted City service.

Retirement Service Credit: While on leave under the City's Supplemental Military Pay and Benefits Program, an employee will continue to accrue retirement service credit so long as the employee pays his or her share of retirement contributions, in accordance with the Federated City Employees' Retirement System, the Police and Fire Department Retirement Plan, the PTC Plan, or 401(a) Plan, whichever retirement plan is applicable. If the employee's supplemental pay is not sufficient to cover his or her retirement contribution, the employee will need to pay the remaining balance upon return to City service.

Q7. What requirements are there for me to receive pay and/or benefits beyond what is required by state and/or federal law?

- A7.** Eligible City employees called to active military duty have the option to participate in the City's Supplemental Military Pay and Benefits Program. See A6 for details about the City's Optional Supplemental Military Pay and Benefits Program. Employees participating in this Program must:
- allow the City to receive their electronic Department of Defense salary records;
 - return to City service and remain active employees for at least six (6) months following their return to the City;
 - sign an agreement promising to repay the City supplemental pay and benefits received if the employee does not return to City service in accordance with the Program.

Participation in the City's Supplemental Military Pay and Benefits Program is optional and if an employee does not participate in the Program, the employee will still receive all rights afforded under applicable federal and state laws.

Q8. Can employees use their accrued paid leave benefits while on military leave?

- A8.** Yes, employees, upon their request, may use any accrued vacation or similar paid leave (e.g., compensatory time, personal/executive leave) while on military leave. Employees cannot be required by the City to use their accrued paid leave during their military leave [38 U.S.C. § 4316(d)]. However, employees cannot receive both their accrued paid leave and the supplemental wage benefit at the same time.

Q9. Do employees continue to accrue paid leave benefits while on military leave?

A9. Yes, while on any type of military leave, employees will continue to accrue sick leave, vacation leave and both City and Departmental seniority as if the employee had remained in uninterrupted City service [38 U.S.C. § 4316(a)].

Q10. What is the accrual rate for vacation and sick leave for employees when they return from military leave?

A10. Employees who return from any type of military leave will begin earning vacation and sick leave at the same accrual rate they would have received if they had remained in uninterrupted City service [38 U.S.C. § 4316(a)].

Q11. What retirement benefits do employees receive when the employee returns from military leave?

A11. When an employee returns to employment from active duty military leave, in accordance with state law, the employee will be entitled to the retirement benefits the employee would have accrued had the employee not been absent on leave [MVC § 395 & 395.1]. Employees, however, must still pay their share of retirement contributions, in accordance with the Federated City Employees' Retirement System, the Police and Fire Department Retirement Plan, the PTC Plan, or the 401(a) Plan; whichever retirement plan is applicable. Action is required by both the employer and the employee to obtain retirement service credit for active duty military leave.

Employees must contact Human Resources and Finance-Payroll to arrange for payment of owed benefit plan premiums and retirement contributions to receive the retirement service credits when returning from an unpaid military leave (including military leave when receiving the supplemental wage benefit).

Q12. Do employees on military leave continue to accrue seniority in the classified service?

A12. Yes. An employee is entitled to the seniority and other rights and benefits determined by seniority that the employee had on the date of the commencement of military leave plus the additional seniority and rights and benefits that the employee would have attained if the employee had remained continuously employed [38 U.S.C. § 4316(a)]. See also A9 regarding accrual of seniority while on military leave.

Q13. If an employee is serving a probationary period (initial or promotional) when called to active duty, must that employee complete his/her probationary period upon returning from active duty?

A13. Yes. Military leave cannot be used to substitute for actual work time in meeting a probationary work period requirement. Probationary employees will be required to complete their probationary period when they return from active duty.

Q14. Are employees serving a probationary period (initial or promotional) who are called to active duty eligible to participate in the City's Supplemental Military Pay and Benefits Program?

A14. Yes, if an employee is serving a probationary period (initial or promotional) when called to active duty, the employee is eligible to receive supplemental pay and benefits under the City's Supplemental Military Pay and Benefits Program. Military leave or duty shall not count toward that employee's probationary period. The employee shall be required to complete said probationary period upon the employee's return to City service.

- Q15. What is considered to be the gross wages from the City when determining the supplemental wage benefit?**
- A15.** Gross wages from the City is the employee's adjusted hourly rate that includes the employee's base salary with all additional compensation paid on an hourly basis including hourly skill pays that the employee received prior to leaving for military leave. The adjusted hourly rate also includes any scheduled automatic step increases that the employee would have received had the employee not been absent. See Q19 related to merit (including probationary) increases. The adjusted hourly rate includes per diem skill pays or other similar special pays (e.g., Bomb Tech, Motorcycle Officer, Field Training Officer, Anti-Terrorism, POST).
- Q16. What can employees do when ordered into active military duty to reduce hardships for them and their families and enable them to receive any paid military leave benefits including supplemental wage benefits and health insurance coverage?**
- A16.** Employees are required to provide their department and Human Resources a copy of their official military orders as soon as possible to determine what benefits they are entitled to. Prior to their military leave, employees are encouraged to sign up for a direct deposit of their City paychecks and contact Human Resources to elect supplemental pay and benefits continuation.
- Q17. What happens to an employee's supplemental wage benefits if there are any subsequent military pay adjustments?**
- A17.** An employee who elects to participate in the City's Supplemental Military Pay and Benefits Program will receive a flat rate of supplemental military pay. The flat rate supplemental military pay monthly amount is the difference between a participating employee's City pay, which includes the employee's base pay and any additional pays he or she is eligible for under any applicable Memorandum of Agreement, and the employee's military salary. Any salary adjustments will occur ninety (90) days after the commencement of the military tour. Thus, there may be instances where an employee receives more supplemental military pay than what is required to make him or her whole. In those instances, the City will not attempt to collect the overpayment. Similarly, there may be instances where an employee receives less supplemental military pay than what is required to make him or her whole and the City will not issue a reconciliation check. See also A6 above for further detail about the Flat Rate Program and Salary Adjustments.
- Q18. Does an employee receive supplemental wage benefit and/or City-paid health insurance coverage during the period between separation from military service and return to work?**
- A18.** An employee does not receive the supplemental wage benefit during the period between separation from military service and return to work, but may elect to use his/her City accrued paid leave during this period. An employee will receive City-paid health insurance during the period between separation from military service and return to work only if the employee uses his/her City accrued paid leave during that period. An employee who chooses to take unpaid leave after separation from the military service must contact the Human Resources Department to arrange to pay both the City Employer portion and employee portion of health premiums to continue benefits coverage after separation from military service. In addition, employees need to notify their department and Human Resources when they plan to return to work so they can make arrangements for the City to start paying the applicable City Employer portion of premium for their benefits.
- Q19. Do employees on military leave receive step increases they would have received had they not been absent?**
- A19.** Employees who are eligible for automatic (not performance-based) step increases will have their pay rate adjusted to include any scheduled step increases they would have received had they not been absent on military leave [38 U.S.C. § 4316(a)].

Q20. How long can an employee returning from military service delay in seeking reinstatement to his or her previous position?

A20. An employee returning from active duty after serving in time of war or national emergency must seek reinstatement with the City within 6 months after completing his or her military service, but not later than 6 months after the end of the war, emergency, etc [MVC § 395.1].

An employee on military leave for reasons other than war or national emergency must seek reinstatement with the City within a manner and time frame that depends on the length of his or her military leave. The federal law provides that for a leave of 30 or less consecutive days, the employee must report to work at the beginning of the first regularly scheduled work period on the first full calendar day following completion of military service. For a leave of 31 to 180 days, the employee must return to work not later than 14 days after completing service. For absences of 181 days or longer, the employee must return to work not later than 90 days after completing service [38 U.S.C. § 4312(e)(1)]. Employees are not eligible for military pay from the City during this period, but can use their available and applicable time balances.

Q21. What if an employee elects to receive supplemental salary and/or benefits from the City and does not return to City employment after military service?

A21. In the event an employee has received supplemental salary and/or benefits from the City in excess of what is required by law, and does not return to City employment, the City will work out a payment arrangement for the employee to repay the City for the supplemental salary and/or benefits received.

Q22. What are the remedies for employees whose employers violate the MVC?

A22. MVC § 394(g) provides that it is a misdemeanor to discriminate against members of the military because of their membership in the military. Further, any person that discriminates against a member of the military is liable for actual damages and reasonable attorney's fees incurred by the injured party.

Q23. What government agencies can be contacted for advice about compliance with the above laws?

A23. USERRA is administered by the United States Department of Labor, through the Veterans' Employment and Training Service (VETS). VETS provides assistance to those persons experiencing service connected problems with their civilian employment, and provides information about USERRA to employers. To learn more information, go to the VETS website at <http://www.dol.gov/vets/> or contact VETS at (202) 693-4701 or 1-866-487-2365.

Employers and employees can also receive information by contacting the Employer Support of the Guard and Reserve (ESGR) at 1-800-336-4590, or at their website <http://www.esgr.mil/>. The ESGR promotes cooperation and understanding between military reservists and their employers and assists in the resolution of conflicts arising from an employee's military commitment.