

## Military Leave

## 4.2.2

### PURPOSE

This section describes the policies and procedures related to the use of military leave by City employees.

### AUTHORITIES

Federal: Uniformed Services Employment & Reemployment Rights Act (USERRA) 38 U.S.C. § 4301-4335 ensures that persons who serve or have served in the Armed Forces, Reserves, National Guard or other “uniformed services:” (1) are not disadvantaged in their civilian careers because of their service; (2) are promptly reemployed in their civilian jobs upon their return from duty; and (3) are not discriminated against in employment based on past, present, or future military service.

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

City: Resolutions 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 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.

### POLICY

Officers and employees of the City of San José are entitled to benefits for military service in accordance with applicable laws of the State of California and the Federal Government. Benefits in addition to these laws have been provided by Resolution of the City Council and are described in this policy. Direction regarding allowance of military leave for individual cases may be obtained by contacting Human Resources.

#### 1. Qualifying Employee

Any City employee who is a member of the Reserve Corps of the Armed Forces of the United States, the National Guard, or the Naval Militia shall be entitled to a military leave of absence while engaged in military duty. For purposes of this policy, Military Leave consists of:

- Temporary military leave means a leave of absence from City employment to engage in ordered military duty for a period not to exceed 180 calendar days, including time spent traveling to and from such duty, for purposes of active military training, encampment, naval cruises, special exercises or like activity as a member of the reserve corps or force of the armed forces of the United States, or the National Guard, or the Naval Militia.

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- Extended military leave means when an employee enlists or 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 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.

**2. Transition Period to Return to City Service**

The time that eligible employees must return to City service is dependent on the duration of their Military Leave:

- For absences of up to 30 consecutive days, the service member is entitled to safe travel time from place of duty to their residence plus eight hours of rest. The service member must "report" to work at the beginning of the first normal shift on the full calendar day following this period.
- For absences of 31 to 180 days, the service member must return to work not later than 14 days after completing service.
- For absences of 181 days or longer, the service member must return for work not later than 90 days after completing service.

Employees are not eligible for pay during the Transition Period, but can use their available and applicable time balances, or be unpaid. Employees will accrue seniority, sick leave, vacation leave, and other benefits they would have received had they not been absent, during this Transition Period, whether paid or unpaid. During the Transition Period, employees will be eligible to 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, 401(a) Plan, or applicable retirement plan, regardless of whether they use their available and applicable time balances or not. If choosing to pay employee retirement contributions, the employee can take up to three times the length of military service to pay, but the payment period must not exceed five years and payment must be concluded prior to the employee's retirement.

**3. Compensation and Benefits During the First 30 Days of a Military Leave of Absence under California law**

Employees with at least one year of City service or combined Military/City service who are on temporary military leave (i.e., active duty for training, encampment, naval cruises, special exercises or like activity) 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)]. Eligible employees shall receive the same vacation, sick leave, seniority and other benefits they would have received had

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they not been absent. 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, 401(a) Plan, or applicable retirement plan. Eligible employees may receive MLT pay for up to 30 calendar days per fiscal year, regardless of whether they were involved in a single tour or multiple tours.

Employees with at least one year of City service on active duty for other than temporary military leave, may be eligible for MLT for the first 30 calendar days [MVC § 395.02]. Eligible employees shall receive the same vacation, sick leave, seniority and other benefits they would have received had they not been absent. 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, 401(a) Plan, or applicable retirement plan.

National Guard members are entitled to 30 days of MLT regardless of length of City service [MVC § 395.05]. Eligible employees shall receive the same vacation, sick leave, seniority and other benefits they would have received had they not been absent. 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, 401(a) Plan, or applicable retirement plan.

#### 4. Inactive Duty Training

Employees on inactive duty training (e.g., drills, Battle Assembly, Unit Training Assembly, etc.) are not entitled to salary continuation and benefits for any period of such training [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, as paid military leave is not available for this purpose. However, employees may utilize their own applicable paid time, such as vacation, compensatory time, or personal/executive leave to minimize the financial impact.

Unpaid leave during inactive duty training does not constitute a break in service with the City of San José. Employees will accrue seniority, sick leave, vacation leave, and other benefits they would have received had they not been absent, during inactive duty training, whether paid or unpaid. Employees on inactive duty training will be eligible to 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, 401(a) Plan, or applicable retirement plan, regardless of whether they use their available and applicable time balances or not. Employees must pay the remaining balance of retirement contributions upon their return to City service. Employees can take up to three times the length of military service to pay, but the payment period must not exceed five years and payment must be concluded prior to the employee's retirement.

Employees serving a probationary period during inactive duty training shall be subject to the Probationary Period Policy and Civil Service Rules.

#### 5. Voluntary 457 Deferred Compensation

Upon return to service with the City of San José following Qualified Military Service as defined by the Internal Revenue Service (26 U.S.C. Section 414(u)(5)), employees may make additional

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deferrals to a voluntary 457 deferred compensation account, not to exceed the maximum they would have been eligible to contribute had their employment not been interrupted by qualified military service. The right to make additional deferrals is limited to the five year period immediately following the return to City service or, if sooner, a period immediately following the return to City service that is equal to three times the length of the military service, and the additional deferral payments must be concluded prior to the employee's retirement or separation.

6. Definition of One (1) Year

For purposes of Military Leave, the one (1) year period will be based upon the City's fiscal year, which begins on July 1 and ends on June 30.

7. Optional Supplemental Military Pay and Benefits Program ("Program")

The San José City Council has authorized additional paid leave and benefits to military reservists called to active duty beyond the thirty (30) days of leave as specified above. Eligible City employees called to active military duty may elect 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. Employees participating in the Program are required to allow the City to receive their electronic Department of Defense salary records. In addition, employees participating in the Program must return to City service and remain active employees for at least six (6) months following their return to City service. Participating employees will be required to sign an agreement which provides for supplemental pay and benefits in consideration for promising to return to City service and promising to repay the City of such supplemental pay and benefits 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. Employees who participate in the Program will be eligible to 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, 401(a) Plan, or applicable retirement plan. Employees must pay the remaining balance of retirement contributions upon their return to City service. Employees can take up to three times the length of military service to pay, but the payment period must not exceed five years and payment must be concluded prior to the employee's retirement.

- Flat Rate Program – An employee participating in the 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<sup>1</sup>, 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

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<sup>1</sup> City pay is subject to adjustment pursuant to the applicable Memorandum of Agreement (positively or negatively) as if the employee had remained in uninterrupted City service.

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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 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 them 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 them 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 Program, employees 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 premiums. Employees will have billing options to repay the employee portion of the health benefit premiums upon return to work, if needed.
- Leave Accruals and Seniority – While on leave under the Program, employees will continue to accrue sick leave, vacation leave, and seniority as if the employee had remained in uninterrupted City service. Applicable caps on vacation leave accrual remain in place during the employee's military service, pursuant to any applicable Memorandum of Agreement.
- Retirement Service Credit – If an employee returns to service with the City of San José following military service, the entire "period of absence from employment due to or necessitated by" military service is treated as continuous employment for the purpose of determining pension benefits under 20 C.F.R. § 1002.259; see also 38 U.S.C. § 4318(a)(2). While on leave under the Supplemental Military Pay and Benefits Program, an employee will continue to 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, 401(a) Plan, or applicable retirement plan. If the employee's supplemental pay is not sufficient to cover their retirement contributions while on Military Leave, the employee must pay the remaining balance of retirement contributions upon their return to City service. Employees can take up to three times the length of military service to pay, but the payment period must not exceed five years and payment must be concluded prior to the employee's retirement.
- Voluntary 457 Deferred Compensation – Upon return to service with the City of San José following Qualified Military Service, employees may make additional deferrals to a voluntary 457 deferred compensation account, not to exceed the maximum they would have been eligible to contribute had their employment not been interrupted by Qualified Military Service. The right to make additional deferrals is limited to the five year period immediately following the return to City service or, if sooner, a period immediately following the return to City service

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that is equal to three times the length of the military service and the additional deferral payments must be concluded prior to the employee's retirement or separation.

If called to active duty, the employee should follow the instructions in the procedures section below, and contact Human Resources at 408-535-1285 or email [HRbenefits@sanjoseca.gov](mailto:HRbenefits@sanjoseca.gov) as soon as possible to speak with a Human Resources staff member to determine if the employee's active duty assignment qualifies for the Supplemental Military Pay and Benefits Program.

**8. Benefits Available to Employees Who Do Not Participate in the Supplemental Military Pay and Benefits Program**

If an employee is not eligible to receive Military Pay (MLT) from the City, or has already received the maximum amount of MLT for the current fiscal year, the employee may use their own applicable paid time, such as vacation, compensatory time, or personal/executive leave.

Health Benefits – While on Military Leave, employees 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 premiums. Employees will have billing options to repay the employee portion of the health benefit premiums upon return to work, if needed.

Leave Accruals and Seniority – While on Military Leave, employees will continue to accrue sick leave, vacation leave, seniority, and other benefits as if the employee had remained in uninterrupted City service, whether paid or unpaid. Note that applicable caps on vacation leave accrual will remain in place during the employee's military service, pursuant to any applicable Memorandum of Agreement.

Retirement Service Credit – If an employee returns to service with the City of San José following military service, the entire "period of absence from employment due to or necessitated by" military service is treated as continuous employment for the purpose of determining pension benefits under 20 C.F.R. § 1002.259; see also 38 U.S.C. § 4318(a)(2). If an employee uses their own applicable paid time, such as vacation, compensatory time, or personal/executive leave while on Military Leave, they may choose to continue to 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, 401(a) Plan, or applicable retirement plan.

If an employee chooses not to use or runs out of applicable paid time, they will still have the option to pay the remaining balance of their share of retirement contributions upon their return to City service. Employees can take up to three times the length of military service to pay, but the payment period must not exceed five years and payment must be concluded prior to the employee's retirement.

Voluntary 457 Deferred Compensation – Upon return to service with the City of San José following Qualified Military Service, employees may make additional deferrals to a voluntary 457 deferred compensation account, not to exceed the maximum they would have been eligible to contribute had their employment not been interrupted by Qualified Military Service. The right to make additional deferrals is limited to the five year period immediately following the return to City service or, if sooner, a period immediately following the return to City service that is equal to three times the length of the

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military service, and the additional deferral payments must be concluded prior to the employee's retirement or separation.

9. Reserve Income Replacement Program (RIRP)

Similar to the City's Supplemental Military Pay and Benefits Program, the Department of Defense offers members of the National Guard and Reserve additional payment to those who are involuntarily serving on active duty and who are experiencing a monthly active duty income differential of more than \$50. If a City employee participates in the City's Supplemental Military Pay and Benefits Program and the RIRP, the employee must disclose their payments from RIRP and the income received through the RIRP would offset the City's supplemental military pay under the Program.

10. Military Leave Questions

Answers to many frequently asked questions related to military leave can be found in the "Human Resources Q&A on Military Leave" document:

<https://www.sanjoseca.gov/home/showpublisheddocument/55170/637196190832670000>

The Human Resources Department's Benefits staff members are available to help resolve any questions or concerns employees may have regarding Military Leave, benefits, and timekeeping. In addition, each Department's Human Resources Liaison(s) are available to help answer questions or concerns regarding Military Leave.

**PROCEDURES****REQUEST FOR TEMPORARY MILITARY LEAVE**

- Employee
1. Receives Notification and/or Written Orders.
  2. Requests military leave by completing "Human Resources Leave of Absence (LOA) Application" form available at:  
<https://www.sanjoseca.gov/home/showpublisheddocument/55156/638091904464030000>
  3. In the event of receiving verbal orders, which require reporting to duty within twenty-four (24) to forty-eight (48) hours, the employee should notify their supervisor and/or department and fill out the Leave of Absence form and provide orders to Human Resources as soon as possible. In the event it is impossible to provide orders to Human Resources, upon return from military service the employee should institute all normal procedures for requesting military leave.
  3. Contact Human Resources, (408) 535-1285 and ask to speak to an Employee Benefits staff member or email [HRbenefits@sanjoseca.gov](mailto:HRbenefits@sanjoseca.gov) to

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make supplemental pay and benefit elections if the military leave will result in the employee exceeding 30 calendar days in a fiscal year.

4. Submits the Leave of Absence form with orders attached from the appropriate military authority to their supervisor and the Department Director or designee for approval and sends a copy of the order to Human Resources.

Military orders must be on official letterhead, state reporting and release dates of duty, and be signed by a recognized authority.

If travel days are needed, the employee should request such travel days on the Request for Leave of Absence form. The travel days shall be included in the thirty (30) calendar days of paid military leave. If the employee requests more than one day of travel at the beginning and end of the leave, they will be required to use their own leave balances.

The employee and the Department Director or designee must sign the Leave of Absence form.

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| Department  | 5. Forwards the Leave of Absence form and the military orders to Human Resources, <a href="mailto:HRBenefits@sanjoseca.gov">HRBenefits@sanjoseca.gov</a> .   |
| Human Resources:<br>Employee Benefits<br>Division | 6. Reviews form for completeness, correctness, and legality; notifies employee's department if pay problems exist or changes are needed; authorizes leave on behalf of the Director of Human Resources or designee; records and distributes leave information to affected departments. |

If the employee has used over thirty (30) calendar days of military leave within the fiscal year, no additional MLT can be authorized and the employee's department is notified. The employee may be on military leave without pay, or may choose to use available leave. Depending on the reason for activation or training, the employee may be eligible to receive supplemental benefits beyond the initial thirty (30) days. The employee should contact Human Resources for further information.

**CHANGE OF ORDERS**

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| Employee | 7. In the event military orders are changed, notifies their department and Human Resources for resetting of authorized leave dates and submits new military orders. Failure to do so may be cause for disciplinary action and possible repayment of benefits. |
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**Military Leave****4.2.2****PAYROLL RECORDS WHILE ON APPROVED MILITARY LEAVE**

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| Department | 8. Notifies Human Resources that the employee is on Military Leave and sends the approved Leave of Absence form with copies of the military orders to Human Resources. Marks time sheet with regularly scheduled hours, and notes that the employee is on Military Leave. |
| Finance    | 9. Makes any necessary adjustments to payroll records in order to fulfill the objectives of this policy.  |

**RETURN FROM MILITARY LEAVE**

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| Employee | 10. If the absence is less than thirty (30) calendar days, no further action is necessary as leave is recorded on timesheets and logged in the Human Resources and Payroll System. If the absence is thirty (30) calendar days or more, notifies the department at least one (1) week in advance of return to work, and once received, submit a copy of Release from Military Duty document to Human Resources. |
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| Human Resources | 11. If the employee did not submit copies of military orders prior to the military leave due to immediate activation, the employee will receive a request from Human Resources to do so upon their return to work. |
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If copies of military orders are not received by the stated deadline, Human Resources will attempt to contact employee for confirmation on whether the employee would prefer to be unpaid or to use available vacation, compensatory, and/or personal or executive leave balances. If Human Resources is unable to contact employee, Human Resources will notify Finance that military leave time is not approved to be used.

To ensure that employees remain in uninterrupted paid status, Human Resources will instruct Finance that the employee's timecard should be adjusted using the employee's available vacation time. If the employee has no available vacation time, then they would be unpaid.

If the employee is later able to provide copies of military orders, a timecard adjustment would be completed to use paid military leave if the employee was otherwise eligible, and return any vacation time that was used to the employee's balance.

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| Department | 12. If over thirty (30) calendar days, advises Human Resources of employee's return date or return to job. |
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| Human Resources<br>Employee Benefits<br>Division | 13. Inputs return from leave in the Human Resources and Payroll System. |
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/s/ Jennifer Schembri

Deputy City Manager  
Acting Director City Manager's  
Office of Employee Relations/  
Human Resources Department

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January 24, 2025

Date

Approved:

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/s/ Jennifer A. Maguire

City Manager

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January 24, 2025

Date