

SCHOOL DISTRICT OF PITTSVILLE BOARD POLICY

PERSONNEL

PROFESSIONAL STAFF POLICIES

UNIFORMED SERVICE LEAVE AND OTHER RIGHTS OF SERVICEMEMBERS 532.42-RULE

Overview and Scope

These guidelines and procedures cover the implementation of certain aspects of the federal Uniformed Services Employment and Reemployment Rights Act (USERRA) within the District. While USERRA applies to most types of service within the “uniformed services”, these guidelines and procedures are not intended to diminish any additional rights and benefits provided under other laws, including state laws. Further, in limited situations where USERRA may not be applicable (e.g., for certain state callups of the National Guard), other laws and/or District policies may apply and provide the employee with particular rights and benefits.

These guidelines and procedures do not cover all employer and employee rights, benefits, and obligations under USERRA. For purposes of USERRA, the “uniformed services” include the following:

1. Army, Navy, Marine Corps, Air Force and Coast Guard
2. Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve, and Coast Guard Reserve
3. 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
4. Commissioned Corps of the Public Health Service
5. Any other category of persons designated by the President in time of war or emergency

National Guard service under authority of state law (i.e., certain “state callups”) and service performed in the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA), the Civil Air Patrol, and the Coast Guard Auxiliary are not protected by USERRA. If any employee is in any of these non-USERRA situations, the District will look to any other applicable provisions of federal or state law (e.g., within Chapter 321 of the state statutes) or District policy.

Leave from Employment and Reemployment

Generally, Leave and reemployment rights under the USERRA extend to otherwise-qualifying persons who have been absent from a position of District employment because of “service in the uniformed services.” An employee is entitled to the protection of certain benefits during any qualifying period of leave.

“Service in the uniformed services” means the performance of duty under federal authority, on a voluntary or involuntary basis, in a uniformed service, including all of the following:

1. Active duty and active duty for training
2. Initial active duty for training
3. Inactive duty training
4. Full-time National Guard duty
5. Absence from work for an examination to determine a person’s fitness for any of the above types of duty
6. Funeral honors duty performed by National Guard or Reserve members
7. Duty performed by intermittent employees of the National Disaster Medical System (NDMS), which is part of the U.S. Department of Health and Human Services, when federally activated for a public health emergency, and approved training to prepare for such service.

Notice of Need for Uniformed Services Leave. With limited exceptions, the employee, or an appropriate officer of the uniformed service in which his/her service is to be performed, must notify the District that the employee intends to leave the employment position to perform service in the uniformed services. The notice may be given either verbally or in writing and shall be submitted to the District Administrator.

The employee is required to give the notice of service in advance unless giving such notice is (1) prevented by military necessity, or (2) otherwise impossible or unreasonable under all the circumstances. An employee is expected to provide the notice as far in advance as is reasonable under the circumstances. When it is feasible to give at least 30-days advance notice prior to leaving employment, the District will consider at least 30-days notice to be reasonable. Whenever possible, the request should be accompanied by a copy of applicable military orders.

Length of Service during Uniformed Services Leave. Employees shall continue to accrue length of service for wage/salary increments, if applicable, and all other purposes where length of service is a factor. The employee's absence shall not be construed as a break in service for such purposes.

Returning to Work after a Uniformed Services Leave. Eligible employees returning from uniformed services leave will be promptly reemployed to an appropriate position, as required and determined under applicable law. As a general rule, an eligible employee is entitled to reemployment in the job position that he/she would have attained with reasonable certainty if not for the leave of absence due to uniformed service – i.e., a position that reflects with reasonable certainty the pay, benefits, seniority, and other job perquisites that he/she would have attained had they not been absent for the military service. However, depending upon the specific circumstances (the length of leave, the employee's qualifications, any disability, etc.), the District may have the option, or be required, to reemploy the employee in a different position. Further, depending on the circumstances, the applicable criteria may cause an employee to be reemployed in a higher or lower position, in a different shift or location, laid off, or even terminated.

To be eligible for such reemployment, all of the following requirements normally apply:

1. The District received advanced notice of the leave, to the extent specified in federal law and in these procedures.
2. Subject to limited exceptions specified in federal law, the employee has no more than five years of cumulative uniformed service away from the District.
3. The employee establishes eligibility for reemployment, including:
 - a. The employee must not have received a disqualifying discharge or other-than-honorable separation from service; and
 - b. If requested by the District in connection with a period of service exceeding 30 days, and provided such documentation is readily available, documentation that establishes the employee's entitlement to reemployment.
4. The employee must return to work or apply for reemployment. Whether the employee is required to report to work or submit a timely application for reemployment depends upon the length of service, as follows:
 - a. For leaves of one to 30 days, the employee must return to work no later than the beginning of the first regularly scheduled work period that begins on the next calendar day following completion of service, after allowance for safe travel home from the military duty location and an 8-hour rest period.
 - b. For leaves of 31 to 180 days, the employee must submit an application for reemployment (written or verbal) with the employer not later than 14 days after completing service. If it is impossible or unreasonable for the employee to apply within 14 days through no fault of his/her own, he/she must submit the application not later than the next full calendar day after it becomes possible to do so.
 - c. For leaves of more than 180 days, the employee must submit an application for reemployment (written or verbal) not later than 90 days after completing service.

The reporting or application deadlines identified above are extended for up to two years for employees who are hospitalized or convalescing because of an injury or illness incurred or aggravated during the performance of military service.

The employee's reemployment rights are not automatically forfeited if he/she fails to report to work or to apply for reemployment within the required time limits. In such cases, the employee will be subject to the District's rules governing absences from scheduled work (unexcused or excused, as applicable).

Wages/Salary during Uniformed Services Leave

The administration shall determine whether each instance of USERRA-qualifying leave is paid, paid in part, or unpaid pursuant to the requirements of USERRA and any other applicable state or federal laws. If any employee disagrees with any initial determination regarding the availability of paid leave or regarding the amount of wages

or salary to be paid (if any), the employee may submit a written appeal to the District Administrator that identifies the alleged error. The District Administrator shall reconsider the initial determination and provide a response to the employee.

Benefits during Uniformed Services Leave

1. **Health Benefits:** Eligible employees with coverage under a District health benefit plan who are on a uniformed service leave of absence of 30 days or less will continue to receive the plan benefits, with the employee contributing no more than he/she would have paid if still employed. For leaves exceeding 30 days, employees with coverage under a District health benefit plan may elect to continue coverage for up to 24 months. Employees electing to continue coverage will be required to pay 102% of the cost of the applicable health benefit plan. Employees returning from leave who did not continue their health benefits or who took leave for more than 24 months have the right to be reinstated in the applicable health plan(s) upon reemployment, generally without any waiting periods or exclusions (e.g., pre-existing condition exclusions) except for any service-connected illnesses or injuries.
 - a. If the District provides employment-based health coverage to an employee who leaves employment for uniformed service **without** giving advance notice of service, the District may cancel the employee's health plan coverage upon the employee's departure from employment. However, if the failure to give notice of the leave is determined to be excused under USERRA (e.g., due to military necessity), the District will retroactively reinstate coverage upon the employee's election to continue coverage and payment of all unpaid amounts due.
 - b. If the District provides employment-based health coverage to an employee who leaves employment for uniformed service **with** appropriate notice of the service, the District shall notify the employee of his/her right to elect continuation coverage. Before cancelling coverage, the District shall provide the employee with the same amount of time to make his/her election as the District provides to qualifying employees who are permitted to make an election for continuing coverage under COBRA.
 - c. If an employee elects continuation coverage, the District shall permit the employee to make premium payments by the same methods and by the same deadlines that apply to employees who pay for plan coverage during a period of continuation coverage under COBRA, or by any method and timing voluntarily agreed upon by the employee and the District.
 - d. If an employee elects continuation coverage but fails to make timely payment, the District may cancel coverage. The District will cancel coverage for nonpayment following the same procedures that the District would apply to an employee who is covered under COBRA and who fails to make timely payment.
2. **Wisconsin Retirement System:** Employees may receive service credit and Wisconsin Retirement System (WRS) contributions related to uniformed services leave when an employee leaves a WRS-covered position with the District for active military duty and returns to work for the District within the applicable time-frame after completing uniformed service (as specified above).
 - a. Upon reemployment, the employee is responsible for paying any missed WRS Employee-Required Contributions (EERC). The employee has the choice to make all, some, or none of the make-up EERC related to the military leave. USERRA allows for make-up EERC to the WRS to be made beginning with the date of reemployment and ending on the earlier of three times the period of military service or five years, provided the employee continues to be employed by the District.
 - b. The District will submit WRS Employer-Required Contributions (ERRC) to match the EERC the employee chooses to make. The District will also fund any additional obligations, including interest that would have accrued on the ERRC and EERC, once those contributions are remitted.
 - c. The amount of the available WRS contributions is based on the earnings the employee would have made had the employee not been absent from work to fulfill obligations in the uniformed services.

First Reading

June 14, 2021

Second Reading/Approval

July 12, 2021