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26 U.S.C. 3401
20 C.F.R. 1002

MILITARY LEAVE

I. INTRODUCTION

The City of Boise is covered under the federal Uniformed Services Employment and Reemployment Rights Act (USERRA) and complies with all USERRA requirements and related federal and state military leave requirements. This regulation addresses military leave and reinstatement rights under USERRA for eligible employees who leave employment to fulfill military service obligations.

Military leave and reinstatement protections extend to employees who are regular full-time, part-time, or probationary. The benefits in this regulation do not apply to seasonal or temporary employees that have no realistic expectation of ongoing employment.

II. ELIGIBILITY

Employees who perform service in the uniformed services are eligible to take military leave. "Service in the uniformed services" means performance of duty on a voluntary or involuntary basis and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty, and a period for which a person is absent from employment for the purpose of performing funeral honors duty as authorized by Section 12503 of Title 10 or Section 115 of Title 32.

III. EMPLOYEE NOTIFICATION REQUIREMENTS

Employees must provide advance notice of the need for military leave to the City of Boise verbally and/or in writing unless relevant circumstances make such notice unreasonable, impossible, or prevented by military necessity.

IV. REINSTATEMENT ELIGIBILITY

Employees who return to work for the City of Boise from military leave are eligible for reinstatement if:

- A. They give advance written and/or verbal notice to the City of the need for leave,
- B. They report to or submit applications for reemployment in a timely manner,
- C. They are honorably discharged from military service, and
- D. The current military leave of absence combined with all previous military leaves of absence does not exceed five years. Please note there are eight exceptions to the five-year service limitation. For more information regarding exceptions please refer to 38 U.S.C. § 4312.

Employees do not have reemployment rights with the City of Boise after leave for military service if employees are:

- A. Not honorably discharged from military service;
- B. Commissioned officers who are dismissed by court-martial or order of the president; or
- C. Commissioned officers who are dropped from military service rolls because of unauthorized absences of three months or more, confinement related to a court-martial, or imprisonment in a federal or state correctional institution.

The City of Boise also does not reemploy employees who return from military leave if:

- A. The City's circumstances have changed as to make reemployment impossible or unreasonable;
- B. Reemployment priorities would create undue hardship; or
- C. The job employees held before taking military leave was for a brief, non-recurrent period, and there is no expectation that the employment would continue indefinitely or for a significant period.

V. APPLYING FOR REINSTATEMENT

After completing military service, employees can request reinstatement from the City by reporting to or applying for reemployment with the City within the following time frames:

For military service of 30 days or less or for a period of any length if leave is taken for fitness examinations. Employees must report to the City no later than the beginning of the next regularly scheduled work day following the end of service and safe transportation home, plus an eight-hour rest period, or as soon as possible after the end of the eight-hour rest period if earlier reporting is impossible through no fault of employees.

For military service of 31 days to 180 days. Employees must apply for reemployment with the City within 14 days of completing service. If applying for

reemployment within that time frame is impossible, through no fault of the employee, he or she must apply as soon as possible thereafter.

For military service of 181 days or more. Employees must apply for reemployment with the City within 90 days after completing service.

For employees who are hospitalized or convalescing from injuries that are received during military service, the period of their military leave is extended until their recovery or two years, whichever is shorter. The two-year period can be extended to accommodate circumstances beyond employees' control that make timely reporting impossible or unreasonable.

Employees who fail to notify the City of their intent to return to work within these time frames are treated as other employees who are absent without leave according to the City of Boise's policy and regulation on leaves of absence.

Employees who apply for reemployment with the City of Boise after military leave and who were absent for military service for more than 30 days must provide the City with documentation that:

- A. Their applications are timely,
- B. They have not exceeded the service limit period, and
- C. They were honorably discharged from military service.

Documents that satisfy the reemployment eligibility requirement for such military leave include:

- A. Federal Department of Defense certificates of release or discharge from active duty;
- B. Copies of duty orders that are prepared by the facility where the orders were fulfilled and indicate that service was completed;
- C. Letters from commanding officers of a Personnel Support Activity or persons of comparable authority;
- D. Certificates of completion from military training school; discharge certificates showing character of service (for example, whether discharge from service is honorable); and
- E. Copies of extracts from payroll documents that show periods of military service.

The City of Boise does not deny or delay reemployment or attempt to avoid reemployment obligations by demanding documentation from returning service members that does not exist or is not readily available at the time of reemployment.

Employees who are reemployed by the City after military leave and were absent for military service for more than 90 days must provide documentation of reemployment eligibility to the City to ensure that no break in service occurs for calculating benefits.

VI. RE-EMPLOYMENT PRIORITIES

After satisfying the reinstatement application procedures, employees will be reinstated to employment with the City of Boise according to the following military service time frames:

For military service of fewer than 91 days. Employees who serve fewer than 91 days are reemployed by the City with the pay, benefits, and seniority, if applicable, to the position that they would have attained with reasonable certainty if they did not take military leave. Employees must be qualified for the position; the City will make reasonable efforts to help employees returning from military service become qualified to perform their job. If employees are not qualified for the job, even after reasonable efforts by the City to help them become qualified, the City will work with them for a reasonable time to attempt to find them another open position close to the position that they would have attained with reasonable certainty if they did not take military leave.

For military service of 91 days or more. Employees who serve 91 days or more are reemployed by the City with the pay, benefits, and seniority, if applicable, to the position that they would have attained with reasonable certainty if they did not take military leave or a position of similar seniority, status, and pay. If employees are not qualified for the job, even after reasonable efforts by the City to help them become qualified, the City will work with them for a reasonable time to attempt to find them another open position close to the position that they would have attained with reasonable certainty if they did not take military leave.

If the City of Boise must reinstate two employees to the same position, the employee who left the position first has priority for the position. The other employee is reinstated by the City to a job of similar status and pay.

VII. MILITARY ACTIVATION PROGRAM (MAP)

Although not required by law, an extension of benefits and pay differential will be provided to eligible employees who have completed one year of employment with Boise City. For any activation period exceeding thirty (30) days that is not designated as training leave, an employee who is involuntarily called to active service by the United States Government will receive the following considerations for a period not to exceed one year from date of activation:

- A. If the military pay (total of base pay, housing allowance, special duty pay, etc. excluding combat pay) is less than the employee's regular rate of pay, the City will make up the difference, less applicable payroll deductions. For an hourly employee, the regular rate of pay will be determined by computing the employee's average hours worked for the 13 weeks preceding the military leave, up to a maximum of 40 hours per week. Premium pay items such as overtime, bonus pay, shift differential, etc. are not included as a part of the regular rate of pay for salaried or hourly employees. The employee will be asked to provide documentation

of military pay sufficient to satisfy the City's review for this benefit. Note: Under section 105(a) of the Heroes Earning Assistance and Relief Tax (HEART) Act, if an individual is on active duty for more than 30 days and is receiving military differential payments, those payments are considered wages and are subject to income tax withholding, but not to social security, Medicare (FICA), or unemployment tax (FUTA) withholding.

- B. An employee may use any and all hours of accrued leave including sick leave, in increments necessary to maintain current voluntary deductions, including but not limited to health, Life, LTD, 457, etc.
- C. The City of Boise will continue to subsidize an employee's group health/dental care benefits for the first 30 days of active service. Employees who are on military leave for 31 days or longer are eligible for health benefit coverage from the military. For employees with family coverage, the City will continue health/dental care coverage for eligible dependents during the active duty period including payroll periods without pay. Employees with employee-only coverage may voluntarily discontinue coverage after the first 30 days of active duty, or the City will discontinue coverage automatically after all leave accruals have been exhausted. If coverage is discontinued, employees can elect to purchase up to 24 months of continued coverage in accordance with the Uniformed Services Employment and Reemployment Rights Act (USERRA) 38 U.S.C. § 4301.
- D. To provide continuous support to activated reservists and their family members, questions regarding benefits, compensation and other needs should be directed to Human Resources who will attempt to answer questions and/or direct calls to the appropriate person.

VIII. BENEFITS CONTINUATION

Benefits, excluding wages for work performed, are restored to employees who are reemployed with the City of Boise after military leave just as they would have had by remaining continuously employed. Employees returning from military leave do not receive benefits beyond what they would have had if they had remained continuously employed.

Note: Except for wages or salary for work performed, seniority and other rights and benefits determined by seniority for contract employees under a collective labor agreement are restored to employees who are reemployed with the City of Boise after military leave as employees would have had by remaining continuously employed. They do not receive benefits beyond what they would have had if they had remained continuously employed.

If an employee provides written notice to City of Boise of their intent not to return to their job after military service, they may forfeit benefits ordinarily given to other employees on similar leaves of absence.

IX. TRAINING LEAVE

Employees who serve in the uniform services may be required to attend training on an annual basis. Boise firefighters who normally work 24-hour shifts and who are required to attend military training are eligible to receive composite pay for up to 144 hours per calendar year. Other City employees required to attend military training are eligible to be paid their regular rate of pay not to exceed 88 hours per calendar year. For military training that exceeds 88 hours per calendar year, or 144 hours for firefighters, employees may choose one of the following options:

- A. Use accrued compensatory time for regularly scheduled hours; or
- B. Use annual leave for regularly scheduled hours; or
- C. Choose to take leave without pay.

Employees also have the option of interspersing their accrued vacation and/or comp time with military training leave. Firefighters may also use trades and Kelly days.

For an employee to receive compensation for military training leave, he or she shall:

- A. Provide fourteen (14) days written notice of such absence to his or her supervisor with the dates, times and purposes; and
- B. Provide a copy of military orders or other written proof for the time; and
- C. Have been scheduled to work during the period of military training leave requested.

The employee shall notify his or her supervisor as soon as he or she is aware of the training schedule and advise the supervisor of any conflicts with his or her work schedule.