

ADMINISTRATIVE POLICY NO. 06-03

**Uniformed Services Employment and Reemployment Rights Act
(USERRA)**

1. PURPOSE AND POLICY

The purpose of this policy is to provide for the administration of requirements of USERRA and Alaska law for employees requesting a military leave of absence.

2. POLICY GUIDELINES

A. Eligibility for Military Leave of Absence

CBJ employees who perform service in the uniformed services are entitled to a military leave of absence from their CBJ positions, subject to the limitations and restrictions set forth in federal and state laws and CBJ policy.

B. Covered Service Branches

Uniformed Services includes the Army, Navy, Marine Corps, Air Force, Coast Guard, and the commissioned corps of the Public Health Service. This includes the Reserve components of these services and the Army National Guard and Air National Guard as well as persons who serve as Intermittent Disaster Response Appointees (IDRAs) of the National Disaster Medical System.

C. Uniformed Service

Active duty, active duty for training, initial active duty training, inactive duty training, full-time National Guard duty, absence from work for fitness for duty examinations, certain funeral honors duty, and attendance at the U.S. Military Academy (West Point), the U.S. Naval Academy, the U.S. Air Force Academy and the U.S. Coast Guard Academy all fall within the umbrella of uniformed service under USERRA.

D. Eligibility

Individuals who are covered by the USERRA must meet the following conditions for reemployment:

1. The service member must have been employed by the City and Borough of Juneau in a full-time, part-time, seasonal or time-limited position. Temporary, emergency and intern positions are not of a recurrent nature with reasonable expectation of continuation for a

significant period of time and therefore would not qualify as an employee for coverage under USERRA.

2. The employee (or an appropriate officer of the uniformed service) should provide their supervisor with as much advance notice of uniformed service as possible (30 days). The notice should be in writing and include copies of orders. Advance notice is not required in those rare cases where advance notice is precluded by military necessity or otherwise impossible or unreasonable.
3. The length of uniformed service that causes the employee's absence from their position may not exceed five years. Such absences may be intermittent but cumulatively, may not exceed five years.
4. The employee must have completed the period of service without having received a punitive or other than honorable discharge or having been dismissed or dropped from the rolls of the uniformed service.
5. The employee must report back to their previous job in a timely manner or request reemployment within time limits established by law. See Section H of this policy.

(a) Requests for reinstatement must be made to CBJ either orally or in writing. The request should state that the employee is seeking reinstatement to his or her former position upon return from military service. In order to establish that the reemployment application is timely, the employee did not exceed the five-year service limitation and that the employee's separation from service was honorable, one of the following must be submitted with the application for reemployment:

- (1) Department of Defense Certificate of Release or Discharge from Active Duty;
- (2) duty orders prepared by the facility where the orders were fulfilled carrying an order of endorsement;
- (3) letter from the employee's commanding officer or someone of comparable authority;
- (4) military training school certificate of completion;
- (5) discharge certificate showing character of service with a copy of excerpts from payroll documents showing the periods of service; or
- (6) letter from the National Disaster Medical System team leader or administrative officer verifying dates and times of NDMS training of federal activation.

- (b) If the returning employee is unable to provide satisfactory documentation because it is not readily available or does not exist, he or she will be reemployed. If, after reemployment, documentation becomes available indicating that one or more of the reemployment requirements were not satisfied, the employee may be terminated.
- (c) The reporting or application deadlines are extended for up to two years for employees who are hospitalized or convalescing because of a disability incurred or aggravated during the period of military service.

E. Paid military leave entitlement

1. An employee who is a member of a reserve or auxiliary component of the United States Armed Forces and the Uniformed Services is entitled to a leave of absence without loss of pay for that time during which the employee is ordered to training duty, as distinguished from active duty, with troops or at field exercises, or for instruction, or when under direct military control in the performance of a search and rescue mission. An employee is entitled to 16.5 paid work days of military leave per year (January 1 through December 31).
2. If an employee is called to active duty by the governor, an employee otherwise qualified under (1) of this section is entitled to five (5) paid work days of military leave per year (January 1 through December 31).

F. Unpaid military leave entitlement

1. An employee is entitled to leave without pay to serve in the Uniformed Services. The unpaid military leave entitlement is generally for the duration of the service, up to five years. Employees on military leave will be placed on military leave without pay (LWOP) and not separated from employment. If the employee does not return from service within five years, the employee will be separated.
2. Affected employees are not required to use annual leave in lieu of paid or unpaid military leave, however, they may elect to use accrued annual leave or earned compensatory time at their discretion.

G. Benefits During Military Leave without Pay

1. Leave: Employees do not accrue leave when they are in a leave without pay status but they will continue to earn city service credit

2. Health Insurance Benefits: Employees on unpaid military leave will have health and life benefits maintained for the first 30 days of military leave as if the employee was actively employed. The employee must continue to pay his or her portion of any benefit(s) premiums in order to keep the benefits active. For leave in excess of 30 days the employee may either waive insurance coverage or elect to continue health and life benefits for up to 24 months, however in accordance with 17PR 015 (c) CBJ will charge up to 102% of the full premium. If the employee does not return to work at the end of the military leave, the employee may be required to reimburse the CBJ for the cost of the benefit premiums paid by the CBJ for maintaining applicable coverage.

H. Reinstatement of Employment

1. An employee returning from uniformed service who meets the criteria set forth in section D above shall be entitled to prompt reinstatement of employment.

- (a) For periods of 1-30 Days of Service

If the employee's military service was less than 31 days, the employee must report for work no later than the next regularly scheduled work day following completion of service. This must also include the time reasonably required for safe transportation from the place of service to the individual's residence, and a period of eight hours (for rest). If reporting that next day is impossible or unreasonable because of factors beyond the individual's control (like an accident on the return trip), the individual is required to report for work as soon as reasonably possible thereafter.

- (b) For Periods of 31 to 180 Days of Service

If the period of service is greater than 30 days but less than 181 days, the employee must request reemployment within 14 days following completion of military service or "as soon as possible" if the failure to make timely application is through no fault of the returning employee. The employee must also provide documentation that the separation from military service was not disqualifying as defined in section 2 below.

- (c) For Periods of more than 180 Days of Service

If the period of service is greater than 180 days, the employee must request reemployment within 90 days following

completion of military service or “as soon as possible” if the failure to make timely application is through no fault of the returning employee. The employee must also provide documentation that the separation from military service was not disqualifying as defined in section 2 below.

2. Reinstatement rights are terminated if the service member is:
 - (a) separated from uniformed service with a dishonorable or bad conduct discharge;
 - (b) separated from uniformed service under other than honorable conditions, as characterized by uniformed service regulations;
 - (c) a commissioned officer dismissed in situations involving a court martial or by order of the president in time of war; or
 - (d) a commissioned officer who was absent without authority for at least three months or imprisoned by a civilian court.

I. Effects on Leave, Pay and Other Benefits

Benefits earned through the passing of time shall be credited to the employee as if he or she was regularly employed during the period of military service.

1. Leave: Leave does not accrue during unpaid military leave. Upon return to work the leave accrual rate is adjusted as though the employee had been continuously in pay status.
2. Merit Anniversary Date: When an employee incurs leave without pay due to military service, the employee’s review date and merit anniversary date is not advanced if it is determined that with reasonable certainty the employee would have been granted the merit increase had it not been for the military service.
3. Wage rate: The employee would be eligible for any across-the-board increase that may have been implemented in their absence.
4. PERS: Time spent on military leave (whether paid or unpaid) is not considered a break in employment for retirement benefit purposes. Upon reemployment, the employee may request to purchase retirement credit in PERS and once vested, pay whatever amount that would have contributed had he/she not been absent. The employee has up to 3 times the length of military leave (up to a maximum of 5 years) to make the retirement contribution payments he or she would have made to establish retirement credit. Deposits of the City’s contributions

toward PERS will be made once the employee has satisfied the PERS indebtedness.

5. Seniority: The employee accrues seniority as if he or she had been continuously employed.
6. Training or retraining: The returning employee is entitled to the training or retraining that he or she would have received if continuously employed.

J. Reemployment Rights of the Disabled Service Member

When employees become disabled during military service and cannot perform duties of their previous positions, and reasonable accommodations are not possible without undue hardship to CBJ, efforts will be made to place them in the most closely comparable positions for which they qualify with no loss of seniority in accordance with 4PR 009 - Preferential Rights due to ADA Reassignment.

K. Probationary Period

When a probationary employee returns from military leave the employee's permanent status eligibility and merit anniversary dates will be advanced one pay period for every accumulation of 10 days of leave without pay. Once the employee successfully completes the probationary period, permanent status and the subsequent merit increase, if appropriate, shall be granted retroactive to the date the employee would have been eligible had it not been for military service.

L. Reinstatement of Health Insurance Coverage.

An employee returning from service, and who meets the USERRA eligibility criteria, is entitled to immediate reinstatement of health and life insurance coverage upon reemployment. This applies to coverage for the employee and for family members who would have been covered if the employee had been continuously employed. This includes children born or adopted during the employee's military-related absence from work. There must be no waiting period, and no exclusion of "pre-existing conditions" except for conditions that the U.S. Department of Veterans Affairs has determined to be service-connected.

M. Prohibition Against Discrimination.

CBJ prohibits discrimination against individuals on the basis of past, present or future military obligations. This prohibition includes initial employment, reemployment, retention, promotion or any benefits of employment.

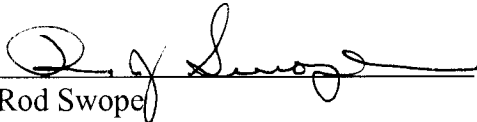
3. PERSONNEL RULE REFERENCES

1. 11PR 065
2. 11PR 090
3. 11PR 095
4. 11PR 105
5. 17PR 015 (c)

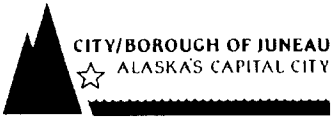
4. GENERAL PROVISIONS

- A. Scope: This policy applies to all agencies and employees of the City and Borough of Juneau, Alaska under the general direction of the City Manager.
- B. Authority to promulgate policy: The City Manager of the City and Borough of Juneau, Alaska, maintains the authority granted by the CBJ Charter to order policy and the guidelines for implementation.
- C. Effective Date: This policy will take effect on: December 11, 2006.

Dated at Juneau, Alaska, this 11th day of December, 2006.



Rod Swope
City and Borough Manager



**City & Borough of Juneau
Health Insurance payment options while on LWOP**

Employee Name: _____

Department: _____

Choose one of the following options:

- Use my leave bank to cover the cost of my insurance while on leave without pay.
- I will send Risk Management a personal check for the cost of my insurance while on leave with out pay.
- Set up a payroll deduction plan when I return from leave. (Normally not to exceed 4 pay periods).
- I am declining health/life insurance benefits pursuant to Administrative Policy 05-06. I understand that I can waive my rights to benefits if I have met the criteria in this policy. Upon return to work, I understand I have 3 days to reinstate my benefits. Failure to do so will result in the continued loss of benefits until the next open enrollment period.

Employee Signature

Date

Witness Signature

Date

Once completed, send to Payroll.



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Military Activation and Return to Duty Checklist



This checklist is designed to assist employees who are called to or returning from active duty military service. Employees who have questions about military leave or returning to employment from military leave should direct them to their supervisor or the Personnel Office.

UPON NOTIFICATION OF ACTIVATION TO MILITARY SERVICE

- Promptly notify your supervisor or department director** – Provide as much detailed information as possible regarding your anticipated departure date, length of service and/or date of release from active duty. Provide a copy of your military orders.
- Making Your Leave of Absence Request** – When called to active duty, you are entitled to a military leave of absence without pay from your position with return rights that are specified by federal and state law.
 - **Military Leave of Absence** – Complete and submit a Leave Request Form. Attach copies of your military orders.
 - **Paid leave** – Determine whether you have paid military leave available (16.5 day maximum from January 1 – December 31 annually) and how much vacation leave and compensatory time you have, if any. Submit a Leave Request Form describing how you want your paid leave used during your absence. Attach copies of your military orders.
- Personal Information** – Review your personal and emergency contact information to ensure it is up to date. Address and emergency contact information can be updated through your department Secretary or by contacting the Payroll Office at 586-5213.
- Beneficiary Information** – Contact the Risk Management Office at 586-5302 to ensure that the names, addresses, and phone numbers of your beneficiaries are current. Employees may wish to seek legal counsel if they have questions/concerns regarding beneficiary designation. Legal assistance may be available through the Judge Advocate General's office assigned to your military unit.
- Compensation** – Except for paid military leave, during your active duty period, you will not receive compensation from the City unless you elect to use personal leave, personal holiday, compensatory time or donated leave (form required) for any portion of your active duty service.
- Maintaining your City benefits** – (medical, dental, vision, and life insurance) during your leave of absence. Your health and life benefits will be maintained for the first 30 days of military leave as if you were actively employed. You will still be responsible for your portion of any benefit(s) premiums in order to keep them active. For leave in excess of 30 days you may:
 1. Waive insurance coverage by filling out the Insurance Waiver Form; or
 2. Elect to continue health and life insurance benefits for up to 24 months. You must fill out the Health Insurance Payment Options While on LWOP Form to set up the payment plan.
- Retirement** – Your state retirement benefit (PERS) may be affected while you are on active duty. Please refer to your retirement booklet, to the PERS website: <http://www.state.ak.us/local/akpages/ADMIN/drb/home.htm>, or contact the Division of Retirement & Benefits at (907)465-4460 to determine your options if retirement is impacted.
- Deferred Compensation** – To cancel your contributions while not in pay status contact the Payroll Office at 586-5213. Note: Upon return to pay status, you need to reinstate your deferred compensation.

- Medical Reimbursement Accounts** – You may continue participation through the end of the plan year. The participant’s elected contributions for the period of leave must be collected either by lump sum pre-tax payroll deduction, or monthly on an after-tax basis by personal check. The employee may also elect to discontinue participation.
- Dependent Care Accounts** – Coverage will cease on the first day of the month after the employee begins leave without pay.

UPON COMPLETION OF ACTIVE DUTY

- Notify your supervisor or department director of your intent to return** – Provide notification of your intent to return to your position as soon as possible but in no case later than provided below:
 - **Activated less than 31 days** – you must report to your position on the beginning of your first regularly scheduled work period on the first calendar day following completion of the service plus the expiration of 8 hours.
 - **Activated 31 to 180 days** – you must submit an application to return to your position no later than 14 calendar days following completion of service.
 - **Activated more than 180 days** – you must submit an application for to return to your position no later than 90 days following completion of service.
- Discharge Documents** – For service in excess of 30 days, provide a copy of your discharge documents (receipt of honorable discharge, report of separation or certificate of satisfactory service or other proof of satisfactorily completed service).
- Reinstating your City benefits.** To reinstate any benefits not maintained while on active duty, you need to submit new enrollment forms within 31 days of your return from active duty. Contact the Risk Management Office upon your return to ensure the proper paperwork is submitted. Refer to your coverage booklets or http://www.juneau.org/risk_management/health.php for additional information.
- Reinstating your Deferred Compensation** – Upon return to pay status, you need to reinstate your deferred compensation deductions. Contact the Payroll Office at 586-5213 for additional information.
- Reinstating your Flexible Reimbursement Accounts** – Upon return to pay status, you may reinstate your contributions by contacting the Payroll Office at 586-5213.
- Retirement Military Service credit**– To determine if you are eligible to receive or purchase military service credit toward Public Employee Retirement System (PERS) service send an Application for Military Service Credit form (available from the Payroll Office or log onto <http://www.state.ak.us/drj/forms/02-1895.pdf>) along with documentation of your military service (DD214 form) to the State of Alaska, Division of Retirement & Benefits, PO Box 110203, Juneau, AK 99811-0203. Eligibility, time limits and cost are based on your retirement plan and military service obligation. You can also contact the Pre-Retirement Services Unit at (907) 465-4460, or by email at preretirementservices@admin.state.ak.us. For additional information log onto <http://www.state.ak.us/drj/pers/pers-military.shtml> .