

CITY OF VIRGINIA MILITARY LEAVE POLICY

The City of Virginia is committed to protecting the job rights of employees absent on military leave. In accordance with federal and state law, it is the City of Virginia's policy that no employee or prospective employee will be subjected to any form of discrimination on the basis of that person's membership in or obligation to perform service for any of the Uniformed Services of the United States. Specifically, no person will be denied employment, reemployment, promotion, or other benefit of employment on the basis of such membership. Furthermore, no person will be subjected to retaliation or adverse employment action because such person has exercised his or her rights under this policy. If any employee believes that he or she has been subjected to discrimination in violation of this policy, the employee should immediately contact the Human Resources Department or the employee's direct supervisor for assistance.

PROCEDURE/GUIDELINES:

- **SHORT TERM MILITARY LEAVE**

In addition to the rights and benefits provided to employees taking Extended Military Leave (as described in this policy), eligible employees who must be absent from their job for a period of not more than fifteen working days each year in order to participate in temporary military duty are entitled to as many as fifteen days paid military leave. An employee under 5 U.S.C. 6323(a) receives his or her full civilian salary, as well as military pay. All benefits will continue during an employee's temporary military leave.

- **ALL OTHER (EXTENDED) MILITARY LEAVE**

Employees who perform full-time military service as a result of a call or order to active duty in support of a contingency operation as defined in section 101(a)(13) of title 10, United States Code are entitled to an additional 22 days* military leave per year under 5 U.S.C. 6323(b). An employee is entitled to the greater of his or her civilian pay or military pay, but not both. Under U.S.C. 5519 provision, the City of Virginia may calculate the amount of military pay (less any travel, transportation, or per diem allowances) an employee will receive for the time period that corresponds to the 22 workdays of military leave and reduce the

* Day is defined as 8-hour. "Office of Personnel Management," www.opm.gov/oca/leave/html/MILITARY.ASP, 01/23/06, pg. 1

employee's civilian pay by that amount during the 22 workdays of military leave. Employees directed to participate in extended military duties in the U.S. Armed Forces that exceed twenty-two (22) working days will be placed on an unpaid military leave of absence status for a period of as long as five years and will be entitled to the rights and benefits described below, subject to the procedures outlined below.

• PROCEDURES FOR ALL MILITARY LEAVE

1. The employee will provide his or her immediate supervisor with notice, (either verbal or written) that the employee will be engaging in military service. Employees are requested to provide such notice as soon as they have knowledge of upcoming military service.
2. Employees on short term or extended military leave may, at their option, use any or all accrued paid vacation or personal leave during their absence.
3. When the employee intends to return to work, he or she must make notification of reinstatement to Human Resources within the application period set forth below.
4. If the employee does not return to work, the supervisor must notify Human Resources so that appropriate action may be taken.

• BENEFITS

If an employee is absent from work due to military service, benefits will continue as follows:

1. If an employee has military orders for over 31 days, the employee and covered dependents will be offered a "Cobra like" health coverage for up to 24 months at 100% of the overall (both employer and employee) premium rate. Beginning after the first 31 days of military leave, group health insurance coverage for an employee and/or an employee's covered dependents will run concurrently with applicable health insurance coverage under COBRA. If an employee does not elect to continue coverage during his/her military leave, the employee has the right to be reinstated in the City's health plan when the employee becomes reemployed, generally without any waiting periods or exclusions (e.g. pre-existing condition exclusions) except for service-connected illnesses or injuries. (USERRA 01/18/06 Revised Pub.)
2. The group term life insurance provided by the City of Virginia will be suspended the 31st day the employee is on an unpaid military leave of absence.
3. Employees will accrue vacation, personal leave, and sick leave at regular rates while on an unpaid military leave of absence status.

5. With respect to the City of Virginia's retirement plan, upon reemployment, employees who have taken military leave will be credited for purposes of vesting with the time spent in military service and will be treated as not having incurred a break in service. Immediately upon reinstatement, the employee may, at the employee's election, make any or all employee contributions that the employee would have been eligible to make had the employee's employment not been interrupted by military service. Such contributions must be made within a period that begins with the employee's reinstatement and that is not greater in duration than three times the length of the employee's military service, not to exceed five years. Employees will receive all associated company match for such contributions.

• REINSTATEMENT

Upon an employee's prompt application for reinstatement (as defined below), an employee will be reinstated to employment in the following manner depending upon the employee's period of military service:

1. For a period of 1 to 90 days-

(A) in the position of employment in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by such service, the duties of which the person is qualified to perform; or

(B) in the position of employment in which the person was employed on the date of the commencement of the service in the uniformed services, only if the person is not qualified to perform the duties of the position referred to in subparagraph (A) after reasonable efforts by the employer to qualify the person.

2. 91 or more days-

(A) in the position of employment in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by such service, or a position of like seniority, status and pay, the duties of which the person is qualified to perform; or

(B) in the position of employment in which the person was employed on the date of the commencement of the service in the uniformed services, or a position of like seniority, status and pay, the duties of which the person is qualified to perform, only if the person is not qualified to perform the duties of a position referred to

in subparagraph (A) after reasonable efforts by the employer to qualify the person.

3. Employee with a service-connected disability - if after reasonable accommodation efforts by the employer, an employee with a service-connected disability is not qualified for employment in the position he or she would have attained or in the position that he or she left, the employee will be employed in (i) any other position of similar seniority, status and pay for which the employee is qualified or could become qualified with reasonable efforts by the Company; or (ii) if no such position exists, in the nearest approximation consistent with the circumstances of the employee's situation.

• APPLICATION FOR REINSTATEMENT

An employee who has engaged in military service must, in order to be entitled to the reinstatement rights set forth above, submit an application for reinstatement according to the following schedule:

1. If service is less than 31 days (or for the purpose of taking an examination to determine fitness for service) - the employee must report for reinstatement at the beginning of the first full regularly scheduled working period on the first calendar day following completion of service and the expiration of eight hours rest and after a time for safe transportation back to the employee's residence.

2. If service is for 31 days or more but less than 180 days - the employee must submit an application for reinstatement with Human Resources no later than 14 days following the completion of service.

3. If service is 181 days or over - the employee must submit an application for reinstatement with Human Resources no later than 90 days following the completion of service.

4. If the employee is hospitalized or convalescing from a service-connected injury - the employee must submit an application for reinstatement with Human Resources no later than two years following completion of service.

• EXCEPTIONS TO REEMPLOYMENT

In addition to the employee's failure to apply for reemployment in a timely manner, an employee is not entitled to reinstatement as described above if any of the following conditions exist:

1. The Company's circumstances have so changed as to make reemployment impossible or unreasonable

2. The employee's employment prior to the military service was for a non-recurrent period and there was no reasonable expectation that the employment would have continued indefinitely or for a significant period.

3. The employee did not receive an honorable discharge from military service.

• GENERAL BENEFITS UPON REINSTATEMENT

Employees reinstated following military leave will receive seniority and other benefits determined by seniority that the employee had at the beginning of the military leave, plus any additional seniority and benefits the employee would have attained, with reasonable certainty, had the individual remained continuously employed. In addition, an employee's time spent on active military duty will be counted toward their eligibility for FMLA leave once they return to their job at the City of Virginia.

• DOCUMENTATION

An employee's manager will, upon the employee's reinstatement, request that the employee provide the City of Virginia with military discharge documentation (DD214) that establishes the length and character of the employee's military service.

EFFECTIVE DATE: _____

City Administrator

Date

Adopted: _____