

CITY AND COUNTY OF HONOLULU

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TO: ALL DEPARTMENTS AND AGENCY HEADS

FROM: CHERYL K. OKUMA-SEPE, DIRECTOR *Cheryl K. Okuma-Sepe*
DEPARTMENT OF HUMAN RESOURCES

SUBJECT: RIGHTS AND BENEFITS OF CITY EMPLOYEES
WHO ARE CALLED TO ACTIVE DUTY
(RESERVE AND NATIONAL GUARD PERSONNEL)

In light of the recent terrorist acts in the United States, some employees who are members of the Reserve or the National Guard may be or have already been called to active duty. Therefore, it is important that all departments familiarize themselves with the rights of employees called to active duty.

On December 12, 1994, the Uniformed Services Employment and Reemployment Rights Act (USERRA) became effective. USERRA is a complete rewrite of the Veterans' Reemployment Rights Act (VRR) which has been in effect since 1940. This law clarifies and strengthens veterans' reemployment rights and is found in Section 38 of the U.S. Code. In general, the law provides for the following rights and benefits to employees called to active military service:

1. Employees have reemployment rights for a period of **five years**, with some exceptions. Only military service that is performed with the same employer is counted toward the cumulative five-year limit.
2. The law applies to all employees, including temporary positions unless the employment is for a brief, non-recurrent period and there is no reasonable expectation that such employment would continue indefinitely or for a significant period. Employer bears the burden of defending a position of not granting reemployment rights to a temporary employee, if challenged.
3. Employees have reemployment rights to their **former positions** with full seniority if the employee's period of service does not exceed ninety days or to **a position** offering the same pay, status and seniority as their former position if the period of service was for ninety-one days or more.

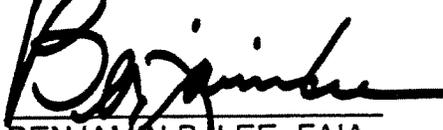
4. Advanced notice is required, either in writing or verbally, for all military service. However, notice is not required if the giving of such notice is precluded by military necessity or the giving of such notice is otherwise impossible or unreasonable, such as in the event of a classified recall. Notice is to be given by the employee to the employer as much in advance as possible.
5. Employees must meet specific conditions, such as discharge from the military under honorable conditions, to qualify for reemployment rights.
6. Employees must apply for reemployment with 31 or 90 days after separation, depending on the length of active military service.
7. Employees must be qualified to perform the duties of their job upon return from military service. If new equipment and methods of work have been implemented during the employee's military service or the employee's skills have been dulled by a long period without use, the employer is required to make "reasonable efforts" to qualify the employee. The employer may also be required to provide the employee with reasonable retraining and other accommodations for service-connected disabilities including placement in some other position that the employee is qualified to perform.
8. Employees have special protection against discharge, except for cause, for six months or one year, based on time spent on military duty.

As employees are likely to have concerns about a number of related issues including vacation leave, retirement benefits, health benefits and deferred compensation, we have attached a list of questions and answers relative to these matters.

If you have any specific question relative to the military leave law, please contact the labor relations specialist assigned to your department. **A Non-Technical Resource Guide to the Uniformed Services Employment and Reemployment Rights Act (USERRA)** is available from the Department of Labor over the internet at <http://www.esgr.org/factsheets/USERRAnontechguide.pdf>.

Attachment

APPROVED:


BENJAMIN B. LEE, FAIA
Managing Director

QUESTIONS AND ANSWERS

CALL UP TO MILITARY SERVICE

PAID MILITARY LEAVE

Am I entitled to paid military leave if I am called to active duty?

Yes, for fifteen days or balance remaining for the current calendar year. Thereafter, you have the right to unpaid military leave for the duration of your military service.

VOLUNTARY EXTENSION OF MILITARY SERVICE

What happens if I decide to voluntarily extend beyond the period of my initial call-up to active duty?

If you voluntarily extend your military service 90 days or more beyond your period of call-up, you will be treated as if you resigned from City service.

If I do voluntarily extend and I later become reemployed by the City, can I obtain credit for my military service?

Yes, you may obtain membership service credit for active military service of up to four years of service as follows:

1. Employees with 8 years of credited service in the retirement system may be credited with up to 2 years of membership service if hired before June 18, 1996.
2. Employees with 10 years of credited service in the retirement system may be credited with up to 2 years of membership service if hired after June 17, 1996.
3. Employees with 20 years of credited service in the retirement system may be credited with up to 3 years of membership service credit.
4. Employees with 25 years of credited service in the retirement system may be credited with up to 4 years of membership service credit.

HEALTH BENEFITS

Can I continue my health insurance coverage while on active military service?

Yes, USERRA allows you the right to elect continued health insurance coverage during military service or training. Note: The State of Hawaii Health Fund is currently reviewing this situation and information on the continuation of your health fund benefits will be forthcoming.

VACATION

Can I take accrued vacation leave while on military duty?

Yes, you are allowed to either exhaust your accrued vacation leave or request lump sum payment of your vacation leave to supplement your military pay in the event of a military call back to active service.

Do I have to use my vacation leave before I can take leave without pay?

No, you do not have to use up your accrued vacation leave before being placed on leave without pay due to military call-up.

What happens if I am unable to use up accumulated excess leave before the end of the year if I am called back to active military service?

If you are unable to use your excess leave before you are called up, the City will pay you for your excess leave.

RETIREMENT

What happens to my retirement with the City if I'm called back to active military service?

There are special provisions for City employees who are called to active duty. These provisions are covered in Section 88-131, 88-132 and 88-132.5 of the Hawaii Revised Statutes. In summary, the law provides for the following:

1. Employees may claim service credits and the retirement system will determine the service credit allowable. Verified service shall be credited to and paid for by the member.
2. Active military service in the military reserve or national guard is not considered active military service unless in time of war or declared national or state emergency. Membership service creditable under this Section shall be credited at no cost upon certification by the retirement service in accordance with Sections 88-59 and 88-272, HRS.

3. Under the Servicemen's Act, active members in the Contributory or Noncontributory plan who are on leave of absence from work for the purpose of entering the military service in time of war or declared national or state emergency, or is called involuntarily to active duty, and who return to government service upon release from active duty, shall earn service credit during the active duty period up to a period of four years.
4. For Contributory plan members, the Employer shall pay the member's retirement contributions up to a period of four years as long as the member remains in military service and returns to government service upon release from active duty.

DEFERRED COMPENSATION

Can I continue to contribute to my deferred compensation?

No, since it is a payroll deduction system and you will not be receiving any compensation from the City while on active duty.

Can I withdraw my money from the deferred compensation system?

You can apply to withdraw your money from the deferred compensation program, under Section 457 of the Internal Revenue Code, for "sudden and unexpected financial difficulty." Application for withdrawal can be made through the Director of Budget and Fiscal Services to the Deferred Compensation Committee. Applications will be reviewed on a case-by-case basis.

DISABILITY

What happens if I am disabled while in the service? Can I receive the accidental disability benefit?

No. Any member who has been incapacitated for duty by accident, act of war, or otherwise, occurring while the member is not in the service of the City, shall not be entitled to accidental disability benefit, but in such event the member may qualify for an ordinary disability retirement benefit.

What happens if I am killed while in the service? Can my beneficiary receive the accidental death benefit?

No, your beneficiary cannot receive the accidental death benefit. However, the beneficiary is entitled to the ordinary death benefit. "Ordinary death" is defined as not accidental which occurs in service or on an authorized leave without pay.

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT

Can I have interest rates on my mortgage and other loans reduced while I am on active duty?

Yes, where the individual's military income is less than pre-service income and affects their ability to meet financial obligations, they can request that their credit cards, loans and mortgage interest rates, incurred prior to receipt of orders for active military service, be lowered to a fixed rate of six percent. Individuals should notify their credit card companies and mortgage lenders in writing of their intent to invoke the six percent interest cap. Notification must include proof of mobilization/activation to active duty status, as well as documentation of reduced income, such as a leave and earnings statement. After active service ends, the interest rates held prior to deployment will be reinstated.

What other protections are provided to me by the Soldiers' and Sailors' Civil Relief Act?

Under the Act, individuals are also protected in civil actions. If because of military responsibilities, the person cannot be properly represented in court, he/she can request a delay in the case until proper representation is possible. If the individual intends to seek such relief, he/she should seek assistance from military legal staff upon entry into active military service.