



# UNIFORMED SERVICES LEAVE OF ABSENCE, REEMPLOYMENT, AND RECALL RIGHTS

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## FREQUENTLY ASKED QUESTIONS

### ***PROCEDURES***

**Q1. What kind of notice must an employee give the County about their need for uniformed services leave?**

An employee is required to give their employing county agency advance notice of their need for uniformed services leave, preferably in writing, though verbal notification is acceptable. Notice should be provided as soon as reasonable. If feasible to do so, an employee should provide thirty days advance notice or more.

**Q2. Does the agency need to obtain new orders/documentation when the days requested for annual training do not match the original training schedule the employee previously submitted?**

Yes. Annual training days that do not match the original training schedule submitted requires new orders or documentation that clearly documents the change in training days. This could be something as simple as a copy of the email from the military requesting the employee train on a certain day. Upload a copy of this documentation to the employee's file on SharePoint.

**Q3. How often should an employee submit a completed County "Uniformed Services Payment Election Form"?**

For both active duty and annual training/drills, an employee should submit one completed form when they initially submit their orders or training/drill schedules and again at the beginning of each military fiscal year by October 1<sup>st</sup>.

**Q4. If an employee is deployed and cannot be reached, can the employee's Power of Attorney (POA) or the agency's Military Leave Coordinator complete and sign the annual Uniformed Services Payment Election Form on the employee's behalf?**

The Power of Attorney may sign on the employee's behalf. For active duty leave, those receiving pay and/or benefits from the County must provide a signed/updated form at least annually.

In the event that the Agency's Military Leave Coordinator is unable to obtain an updated Uniformed Services Payment Election Form while the employee is on active duty, the County will process the employee's elections for the current military fiscal year based on the employee's elections from the previous military fiscal year. If this rare situation occurs, the Agency's Military Leave Coordinator completes an updated Uniformed Services Payment Election Form on the employee's behalf and attaches a copy of the form from the previous military fiscal year. The Prosecuting Attorney's Office (PAO) opined that Military Leave Coordinators or other King County employees should not sign on behalf of the employee.

**Q5. Should employees be required to submit the new “Uniformed Services Payment Election Form” for the current military fiscal year (October 1, 2015 – September 30, 2016) if they have already submitted the old “Uniformed Services Leave Form”?**

Yes

**Q6. When does an employee released from uniformed services leave have to report back to work?**

It depends on how long the employee was on uniformed services leave:

- Less than 31 days: By the beginning of the first regularly scheduled work period after the end of the calendar day of duty, plus time required to return home safely and an eight hour rest period. If this is impossible or unreasonable, then as soon as possible.
- Between 31-180 days: The employee must apply for reemployment no later than 14 days after completion of military services. If this is impossible or unreasonable through no fault of the employee, then as soon as possible.
- 181 days or more: The employee must apply for reemployment no later than 90 days after completion of military service.

If the employee needs rest/sleep time beyond these report-back-to-work periods, the employee may request approval to use vacation, compensatory time, or other similar leave (except sick leave).

These time periods may be extended for up to two years if the employee was hospitalized or is recovering from illness or injury incurred or aggravated by uniformed service.

If the employee is on uniformed services leave for more than 30 days and did not provide uniformed services documentation when the leave commenced; the employee may be required to provide their training/drill schedules or active duty orders upon return to County employment.

**Q7. What type of position is provided to an employee on uniformed services leave upon reemployment?**

As a general rule, the employee should be reemployed in the same position or a similar position. The County is not required to hold the specific position vacant and may fill it while the employee is on uniformed services leave. However, if the employee seeks reemployment and a similar position is not available, the County may be required to lay off a newer employee to provide a position for the employee returning from uniformed service.

**Q8. What if a former employee on the County’s layoff referral list is called into Uniform Service?**

If a career service employee who was laid off due to lack of work or funds and is involuntarily called up to uniformed service during the two year recall period, the County will place in abeyance the layoff referral rights for a period equal to the amount of time of uniformed service. However, the former employee must report to the layoff/recall coordinator within the following timeframes:

- Less than 31 days: If the uniformed services leave period is 30 days or less, the former employee must report to the layoff/recall coordinator the next business day after their discharge from uniformed service and inform the coordinator that they are available for referral.
- Between 31 and 180 days: If the uniformed services leave period is 31-180 days, the former employee must report to the layoff/recall coordinator within 14 days of discharge from uniformed service and inform the coordinator that they are available for referral.
- 181 days or more: If the uniformed services leave period is more than 180 days, the former employee must to report to the layoff/recall coordinator within 90 days of discharge from uniformed service and inform the coordinator that they are available for referral.

## ***ELIGIBILITY***

### **Q9. Who is covered?**

When uniformed service is referred to under the King County Code, it means an individual who is in the United States Uniformed Services, which includes, but is not limited to, the Armed Forces, the Washington National Guard, the United States Air National Guard, the United States Army National Guard, the United States Coast Guard and its reserve, the United States Public Health Service Commissioned Corps and its reserve, and as an appointee when the National Disaster Medical System is activated.

### **Q10. What if the employee volunteered for training or active duty? Does the fact that an employee's uniformed service is voluntary make a difference when considering whether to approve the leave and/or provide uniformed services pay and benefits?**

No. Voluntary uniformed services leave should be treated the same as involuntary uniformed services leave.

## ***PAY AND BENEFITS***

### **Q11. What kind of pay and benefits does an employee receive while on uniformed services leave?**

While on uniformed services leave, an employee will receive the following when they submit a completed Uniformed Services Payment Election Form **and** active duty orders or training/drill schedules prior to their uniformed services leave commencing:

- Up to 21 days of paid uniformed services leave per military fiscal year per RCW 38.40.060
- Differential pay when on active duty uniformed services leaves per KCC 3.12.260
- Medical, dental, vision, and basic life insurance benefits after being on uniformed services leave for over 30 days per KCC 3.12.262
- Continued earning of vacation and sick leave accruals while on uniformed services leave per KCC 3.12.262, to include personal holidays which will be added to the employee's vacation bank on the first of October and November of each year
- An employee may be eligible for additional benefits under the Affordable Care Act (ACA)
- Local 587 employees in the Partial Benefits Plan are still required to pay for a portion of their benefits that are not subsidized by the County.

Orders are not required if the employee is using their own leave accruals (except sick leave) or does not elect to receive certain pay or benefits associated with RCW 38.40.060, KCC 3.12.260, and KCC 3.12.262.

While on uniformed services leave, an employee **may elect to** self-pay for the following:

- Supplemental life insurance for up to 12 months from the date the uniformed services leave commenced
- Basic and supplemental accidental death and dismemberment (AD&D) for up to 12 months from the date the uniformed services leave commenced
- Basic and supplemental long-term disability (LTD) for up to 18 months from the date the uniformed services leave commenced

While on uniformed services leave, an employee **may elect to** continue:

- Health flexible spending account (FSA) coverage for up to 24 months

An employee may also want to ensure that all other important forms are updated. Examples include:

- Wellness assessment exception form which is located at: <http://www.kingcounty.gov/employees/benefits/Forms.aspx> and click on “Request exception from participating in Healthy Incentives”
- Personnel information update form located at: <http://www.kingcounty.gov/employees/benefits/Forms.aspx> and click on “Update personal information”
- W-4 form Located at : [www.kingcounty.gov/employees/benefits/Payroll](http://www.kingcounty.gov/employees/benefits/Payroll) and click on “Change federal tax withholding with W-4”
- Direct deposit form located at: [www.kingcounty.gov/employees/benefits/Payroll](http://www.kingcounty.gov/employees/benefits/Payroll) and click on “Sign up for direct deposit”

Upon an employee’s return to work from uniformed services leave, the employee may want to contact the Washington State Department of Retirement Services (DRS) to ensure their retirement credits have been processed correctly. Washington State Department of Retirement Services (DRS) may be reached at **Phone:** 1-800-547-6657 **Web:** [www.drs.wa.gov](http://www.drs.wa.gov)

**Q12. Can an employee use the 21 paid uniformed services days to travel to/from their training drills. For example, if an employee had to travel out of state to attend their training drills on Saturday/Sunday, can they take Friday/Monday off as travel days and be paid under the 21 paid uniformed services days?**

Yes, the employee can be paid for their travel time to/from the training drills if they are able to provide supporting documentation of the need to travel to/from the training location on a scheduled workday. The employee would need to provide a copy of their travel ticket to receive the paid uniformed services day and the documentation needs to be uploaded to the Military Leave SharePoint site.

**Q13. Can an employee use uniformed services leave beyond the 21 paid uniformed services days?**

Yes. When uniformed service exceeds 21 days but is not active duty, an employee may elect the following types of leave to use in any order: vacation, executive, compensatory, leave without pay or other leave (except sick leave). If the employee is a short-term temporary employee, they are not eligible for leave accruals (except WA State paid sick leave), but may take leave without pay. An employee may also elect to use their own leave accruals (except sick leave) and not use the 21 paid uniformed services days per military fiscal year.

An employee does not need to provide orders or training/drill schedule if they are using their accrued leave.

**Q14. Does an employee receive premium pays for the 21 paid uniformed services days?**

Yes, the employee would be paid the same amount as if they were working their scheduled shift, including premium pays such as longevity pay, firearm pay, shift differential pay, etc...

**Q15. How does the County calculate pay differential and how long is it paid?**

Per KCC 3.12.260, if an employee has exhausted their 21 paid uniformed services days and are called up to active duty, they may receive a differential paycheck from the County (except short-term temporary employee because they are not eligible for differential pay). It is calculated by taking an employee's regular base rate of County pay less the amount of regular base rate of uniformed service pay. Premium pays are not included as differential pay is calculated strictly based on the employee's regular base rate of County pay.

In order to receive the differential pay, an employee must provide their uniformed services pay grade statement in addition to supporting documentation verifying uniformed service. An employee on uniformed services leave must also submit appropriate documentation during the military fiscal year when there are changes in their uniformed service pay. This calculation is performed in DES, FBOD Central Payroll Operations.

**Q16. How long is an employee eligible for uniformed services leave, leave accruals, and health insurance?**

Per KCC 3.12.260 and KCC 3.12.260, for the period of time that an employee retains reemployment rights under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), which is generally up to five years, subject to certain exceptions provided under federal law. Short-term temporary employees are not eligible for these benefits.

**Q17. Can Agencies enter unpaid military leave TRC codes on the employee's timesheet when a LOA HCM code is entered into the HCM system of PeopleSoft? Is this information accessible through queries?**

We have confirmed with the Business Resource Center (BRC) that unpaid military time reporting codes are able to be entered onto employee timesheets even after an LOA code is entered. Since the time is unpaid, the hours will not be sent to payroll (to be paid) but are viewable on the timesheet and can be queried. It is important to enter unpaid time on the timesheet using the "day" view. If you try to use the "pay period view" or "weekly view", you may be unable to enter unpaid military TRC codes onto the timesheet.

If you are having trouble entering TRC codes on the employee's timesheet, it's likely due to a mid-pay period change to the employee's HCM status. When the employee switches status mid-pay period (i.e., paid to unpaid) the remainder of that pay period might appear to be gray or not available for time entry. To enter the unpaid time, you may need to use the "day" view on the timesheet.

**Q18. What happens if someone initially provides verbal orders and does not want military pay/benefits and then at a later date decides they do want military pay/benefits?**

The Prosecuting Attorney's Office (PAO) opined that any benefits for military leave begin from the first day of military leave. This means that if the employee later requests to be paid or receive benefits that they have a right to the full pay and benefits afforded by the County and USERRA. If this rare situation occurs, please contact Peter Hu in the Human Resources Division (HRD), Brian Czerwinski in the Benefits Payroll Retirement Operations Section (BPROS) and your central payroll representative.

Verbal orders should still be tracked in the employees' file under the "comments" section on SharePoint.

**Q19. If an employee does not provide orders, can they use their own accruals (except sick leave) for more than 30-days?**

Yes. They can use their own paid accruals until exhausted. It is important to remember that an employee may not "parcel" their accrued leave to remain in a paid status with benefits. They must use their paid accruals on a continuous basis for their scheduled hours each week.

The Agency should enter a PLA/MTW code into the HCM system of PeopleSoft to record the military leave period. Accrued leave should be processed through the normal department procedures.

**Q20. How is the 21-day military leave calculated for employees that are scheduled to work a shift that begins and ends on different calendar days?**

If the employee is scheduled to work a shift that begins on one calendar day and ends on the next calendar day, the employee shall be charged only a single day military leave (the first calendar day) even though the shift expands two calendar days. If the employee is scheduled to work a shift that begins on one calendar day and ends later than the next calendar day (rare occurrence), the employee shall be charged military leave for each calendar day except the calendar day on which the shift ends. Change becomes effective on June 7, 2018.

From a payroll standpoint, departments would still code all hours as military pay but would need to separately track the number of days used for the annual 21-days of paid military leave.

**Example:** The employee's normally scheduled shifts and the days that will be counted against an employee's uniformed services leave will depend upon specific circumstances. Here are some basic examples. In this example the Employee is normally scheduled to work Friday, Saturday and Sunday from 10 p.m. to 6 a.m. each shift with reporting to military duty at 6:30 a.m. These examples are generic so use reasonability when making determinations. (Contact Judy Hullett or Brian Czerwinski if you have questions).

- 1) Saturday and Sunday Military Orders:
  - a. Friday off for travel
  - b. Saturday training
  - c. Sunday training
  - d. Count 3 days of military leave because of the travel time (3 out of 21 days used)
  - e. Paid for 3 days of uniformed services leave
  
- 2) Friday and Saturday Military Orders:
  - a. Thursday off for travel but not charged or paid since not a scheduled workday
  - b. Friday training
  - c. Saturday training
  - d. Count 2 days of military leave (Friday and Saturday) (2 out of 21 days used)
  - e. Paid for 2 days of uniformed services leave
  
- 3) Friday, Saturday and Sunday Military Orders:
  - a. Thursday off for travel but not charged or paid since not scheduled
  - b. Friday training
  - c. Saturday training
  - d. Sunday training
  - e. Count 3 days of military leave (Friday, Saturday, Sunday)
  - f. Paid for 3 days of military leave (3 out of 21 days used)

## ***ADDITIONAL INFORMATION***

### **Q20. Who should I contact if I have additional questions regarding the processing of Uniformed Services Leave?**

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