



Military Leave Policy

Policy

It is the intent of the San Diego Unified Port District (District) to provide leaves of absence, in accordance with federal and state law, for military service to employees who enter the Uniformed Services of the U.S. or State Militia and to employees who are fulfilling a Unit Field Training or Military Reserve obligation in compliance with military orders.

I. DEFINITIONS

- A. Eligible Employee – All District employees.
- C. Military – includes "uniformed services" or "active state Militia."
 - 1. Uniformed Services – Consists of Army, Navy, Marine Corps, Air Force, Coast Guard and reserve components of the same, Army National Guard, Air National Guard, Commissioned Corps of the Public Health Service, and any other category of persons designated by the President in time of war or emergency.
 - 2. Active State Militia – Consists of the National Guard, State Military Reserve and Naval Militia.
- D. Military Pay – Per Salary Year pay for up to 22 work days (based on an 8 hour day). Military Pay is provided to full-time employees only, and does not apply to Interns or part-time employees.
- E. Military Service – Includes duty by a member of the uniformed services or active state militia on a voluntary or involuntary basis in time of peace or war, for active duty, active duty for training, initial active duty for training, inactive duty training, full time National Guard duty, or absence from work for an examination to determine a person's fitness for the duty mentioned herein. Although most often understood as applying to Guard and Reserve military personnel, USERRA also applies to persons serving in the active components of the Armed Forces and the National Disaster Medical System (NDMS).
- F. Seniority-Based Benefits – Seniority-based benefits are those benefits that accrue with or are increased by an employee's length of service.

- G. Service Pay – Any wages paid by federal or state military agencies for periods of military service.
- H. Non-Seniority-Based Benefits – Non-seniority-based benefits are those benefits which are compensation for work performed or are subject to a significant contingency.

II. NONDISCRIMINATION RULE

The District fully supports those employees who choose to join the military or perform military service. To that end, the District will not unlawfully discriminate against any applicant for employment or employee in the terms and conditions of employment because of the individual's membership or service in the military. Such persons will not be unlawfully discharged, prejudiced with respect to employment, position, status or any benefit of employment, or denied or disqualified from employment because of their membership or service in the military. Such persons will not be unlawfully hindered or prevented from joining the military or performing military service. Finally, the District will not unlawfully retaliate against any employee who takes action to enforce his/her legally protected right to join any military service group.

III. LIMITS ON MILITARY PAY

The District intends to provide continuity of salary and benefits in conjunction with any salary and benefits paid to a full-time District employee by any federal or state military agency due to military service. The employee is entitled to District military pay up to a maximum of twenty-two (22) work days per salary year. Days off for military service exceeding the maximum shall be without military pay.

IV. EMPLOYEE'S OBLIGATIONS FOR REINSTATEMENT

The provisions in this section IV are applicable only to employees who serve on active or inactive duty in the uniformed services. The reinstatement obligations of employees who serve in the active state militia are set forth in section VII. In order to be reinstated to employment with the District after performing active or inactive military service, an employee is required to do all of the following:

- A. Notice – Employees are required to provide notice to Human Resources before leaving for military leave. Such notice should be in writing and submitted at the earliest opportunity, e.g., immediately after the employee receives his/her order to duty. A copy of the written notice received from the military service shall be attached to the request.
- B. Honorable Discharge from Military Service – The employee's separation from military service must be under honorable conditions. An employee whose discharge is upgraded to an honorable discharge after separation

from military service will meet this requirement only if the discharge status upgrade is retroactive and the employee makes a timely application for reinstatement after the discharge upgrade.

- C. Absence Not to Exceed Five (5) Years – Except where the law provides otherwise, the employee's cumulative leave for military **service** must not exceed five (5) years.
- D. Application for Reemployment – Except where the law provides otherwise, the employee must report back or apply for reinstatement as follows:
 - 1. For Fitness for Military Service Examination – Regardless of the length of absence, when an employee takes a leave to undergo a fitness for military service examination, the employee must report back to work by the beginning of the first regularly scheduled work day that begins at least eight (8) hours after the employee returns home. The employee must return home immediately after completion of the examination.
 - 2. For Military service from 1 to 30 Calendar Days – The employee must report back to work by the beginning of the first regularly scheduled work day that begins at least eight (8) hours after the employee returns home. The employee must return home immediately after completion of military service.
 - 3. For Military Service 31 to 180 Calendar Days – An application for reemployment must be submitted to Human Resources no later than fourteen (14) calendar days after completion of military service.
 - 4. For Military Service of 181 or More Calendar Days – An application for Reemployment must be submitted to the Director of Human Resources no later than ninety (90) calendar days after completion of military service.
 - 5. For Military Service Resulting in Service-Connected Illness or Injury – When hospitalized or convalescing due to a military service connected illness or injury, the employee may apply for reemployment in accordance with paragraphs D.2 & D.4 above, using the date the recovery period ends to determine the length of military service. However, the recovery period generally may not exceed two (2) years. The two (2) year period may be extended by the minimum time required to accommodate circumstances beyond the person's control which make reporting within two (2) years impossible or unreasonable.

- E. Verification of Eligibility for Reinstatement – Except where the law provides otherwise, the District may require as a condition of reinstatement that an employee returning from a period of military service of 31 calendar days or more must provide documentation demonstrating that the reinstatement application is timely, the period of military service did not exceed the five-year limit, and/or the period of military service ended under honorable conditions.

V. REINSTATEMENT RIGHTS

- A. Reinstatement to a Particular Position – The provisions in this section V are applicable only to employees who serve in the uniformed services. The reinstatement rights of employees who serve in the state militia are set forth in section VIII. Except where the law provides otherwise, if an employee fulfills all applicable obligations, as stated herein, the employee will be returned to employment after military service as follows:
1. For Military Service of 1 to 90 Calendar Days – the employee will be promptly reemployed in the following order of priority:
 - a. In the job the person would have held had the person remained continuously employed (“escalator position”)¹ provided the employee is qualified for the job or can become qualified after reasonable efforts by the District; or
 - b. If the employee cannot become qualified for the escalator position, the employee must be placed in the position the employee held immediately before military leave began ('pre-service position') provided the employee is qualified or can become qualified after reasonable efforts by the District; or
 - c. If the employee cannot become qualified for the escalator position or the Pre-service position, the employee must be placed in any other open position of lesser status and pay that the employee is qualified to perform, with full seniority.
 2. Conflicting Reemployment Claims – If there are conflicting reemployment claims, the person who left the position first has priority. The otherwise applicable reemployment scheme applies to the other person.
 3. Exceptions to Reemployment

An “escalator” position may not necessarily be the same job the person previously held. If the person, with reasonable certainty, would have been promoted, then the person is entitled to that promotion. On the other hand, the person may be demoted or possibly laid off.

- a. Changed Circumstances – The District may be excused from reemploying an otherwise eligible employee if the District's circumstances have changed so much that reemployment would be impossible or unreasonable, e.g., the person's position has been eliminated.
 - b. Undue Hardship – The District may be excused from reemploying an otherwise eligible service member if such employment would impose an undue hardship. The District may also be excused from making reasonable accommodation efforts for employees with military service connected disabilities and from making efforts to re-qualify returning employees for employment where to do so would cause an undue hardship.
 - c. "Qualified for the Job" Defined – For the purpose of this Paragraph c., a person is "qualified" for a particular position if he or she has the ability to perform the essential tasks of the position. If the returning employee is not initially qualified for the position to which he or she is entitled to return, the District shall make reasonable efforts to refresh or update the employee's skills. Any training an employee would have received if he or she had remained on the job shall be provided to the returning employee if such training is required to establish that the employee is qualified.
- B. Benefits upon Return from Leave – Except where the law provides otherwise, if an employee fulfills all applicable obligations as stated above, upon return from leave due to military service in the uniformed services, such employee shall be entitled to benefits as follows:
 - 1. Seniority-Based Benefits – Returning employees will be provided the seniority and all rights and benefits based on seniority, that they would have attained with reasonable certainty had they remained continuously employed.
 - 2. Seniority – The duration of military leave shall not constitute a break in service for purposes of seniority under any employee benefit plan.
 - 3. Annual Leave accrual rate – The accrual rate for an employee returning from military service in the uniformed services shall be determined by including the period of leave in calculating the length of active service as if the employee had not been absent.

C. Retirement benefits

1. City Employees' Retirement System – This provision applies to employees of the District who were participants in the San Diego City Retirement System prior to beginning military leave. Following reinstatement, an employee shall be entitled to vesting credit for the period of military service. Additionally, the period of military service shall count as creditable service for benefit accrual purposes if the employee meets the service credit purchase criteria established by the Retirement Board. The time period for meeting the service credit purchase criteria shall be at least five years or three times the period of military service, whichever is less.
2. 457 Deferred Compensation Plan – Following reinstatement, an employee who would have been eligible to defer compensation but for the period of military service shall be entitled to make up any missed contributions over a period of five years or three times the period of military service, whichever is less. For purposes of determining the salary deferral amount which the employee is permitted to make up, the employee's compensation shall be either:
 - a. The rate of pay the employee would have received if he or she had remained employed during the period of military service, or
 - b. If the rate of pay determined under (1) is not reasonably certain, then the average rate of compensation earned by the employee during the 12 month period before the period of military service or during, the entire period of employment if less than 12 months.
3. Non-seniority Based Benefits – Returning employees will be provided the same non-seniority-based benefits that are given to employees on other types of approved leaves of absence.
 - a. Annual Leave – The number of days for which the employee earned Military pay shall be counted in calculating the amount of annual leave earned as if the employee had not been absent. No annual leave is earned while on leave without pay for military service.

VI. **COMPENSATION AND BENEFITS DURING LEAVE**

A. Requirements for Pay

1. In General – Full-time employees who are members of the uniformed services or active state militia who take a military leave

of absence for any type of ordered military duty and have been in the service of the District at least one (1) year immediately prior to the day on which the leave begins will be paid military pay.

2. National or State Emergencies – Employees who are members of the National Guard or state military reserve shall be entitled to leave with pay regardless of their length of service with the District when they are ordered to perform military or naval duty because the governor issued a proclamation of a state of extreme emergency or during such time as the National Guard may be on active duty.
 3. Maximum – Employees will be paid military pay by the District while engaged in such military service, including going to and returning from such duty (Transportation time) for up to twenty-two (22) work days. The twenty-two (22) days need not be consecutive. Transportation time will not be reimbursed if it occurs on the employee's regularly scheduled day off.
 4. Exempt Employees – Exempt employees, who perform any type of military service, may have other legal entitlements than those stated herein. Contact Human Resources for further information.
- B. Annual Leave – Employees who wish to use any accrued annual leave balance during any unpaid portion of military leave must notify Human Resources at the time leave is requested.
- C. Continuation of Group Health Benefits – While receiving military pay, all employee group health benefits will continue as if no military service occurred. If, while on military leave the employee is using annual leave, all employee group health benefits will continue. If the employee, while on military leave for 31 or more days, enters into an unpaid status, the employee may elect to continue coverage of the District's health insurance, dental insurance, vision insurance and/or life insurance plans, for a period of up to twenty-four (24) months, provided the employee pays no more than 102% of the full premium under the plan, which represents the employer's share plus the employee's share, plus 2% for administrative costs, in addition to any dependent coverage, if applicable.
- D. Holiday Pay – Employees who are members of the uniformed services or active state militia who take a military leave of absence for any type of ordered military duty and have been in the service of the District at least one (1) year immediately prior to the day on which the leave begins will be paid holiday pay.

VII. PROTECTION FROM DISCHARGE

Except as otherwise provided by law, all employees who are eligible for reinstatement and do return to work after military services within the time prescribed by law are protected from discharge without cause for the following length of time:

- A. For Military Service of 31 to 180 Calendar Days – Protected from discharge without cause for six (6) months after reemployment.
- B. For Military Service of 181 Calendar Days or More – Protected from discharge without cause for one (1) year from date of reemployment.
- C. For Active Duty in Time of War or National Emergency, United Nations Military or Police Operation or While Any National Conscription Act Is in Effect – Notwithstanding paragraphs A and B above, employees who are eligible for reinstatement and return to work within the time prescribed by law, as described in herein, other than probationers, are protected from discharge without cause for one year, regardless of the length of service.

VIII. SPECIAL RULES UNDER STATE LAW

The rules in this Section VIII apply to employees who serve in the active state militia. These rules also apply to employees who serve in the uniformed services if application of these rules will give them greater rights or benefits than the other provisions stated above.

- A. Temporary Military Leaves of Absence.
 - 1. Reinstatement – An Employee who takes a “temporary military leave of absence” will be restored to his/her former position and status upon termination of such temporary military duty.
“Temporary military leave of absence,” as used in this section VIII, means leave for active military training, encampment, naval cruises, and special exercises or like activity for a period not to exceed one hundred-eighty (180) calendar days, including time involved in going to and returning from such Duty.
 - a. If the employee's former position has been abolished or has otherwise ceased to exist, the employee will be reinstated to a position of like seniority, status and pay if such position exists, or the employee will be given the same rights and privileges that the employee would have had if the employee had occupied the position when it ceased to exist and had not taken temporary military leave of absence.
 - b. If the employee has been in the service of the District for at

least one (1) year immediately prior to the date the temporary military leave of absence begins, the employee will receive the same annual leave and holiday privileges, and the same rights and privileges to promotion, employment or reemployment that the employee would have enjoyed had the employee not been absent, except that if the employee was on probation when the leave began, the probationary period must be completed upon reinstatement.

B. Leaves in Time of War or Other Emergency

1. Extension of Duration of Leave – If an employee enters the uniformed services or active state militia when the United States is engaged in war, or when the governor proclaims an emergency exists to prepare for the national defense, the employee is entitled to a leave of absence for the duration of the war or emergency, or until the governor proclaims the emergency no longer exists, and for ninety (90) calendar days thereafter, or until ninety (90) calendar days after the termination of service, whichever is earlier.
2. Extension of Time to Return to Work – Employees who join the uniformed services or state militia or are ordered to duty in the same will have additional time to apply for reinstatement under certain circumstances.²
 - a. Applicable situations
 - i. Employees must join the uniformed services or state militia:
 1. In time of war or national emergency as proclaimed by the president or Congress
 2. When the Armed Forces of the United States are serving outside the United States or its territories pursuant to an order or request of the United Nations;
 3. While any National Conscription Act is in effect; or
 - ii. Employees must be members of the reserve force or corps of any of the Armed Forces of the United States

This provision is intended to reflect the requirements of California Military and Veterans Code Sections 395.4, 395.1 and 566.

or state militia and be ordered to duty by competent military authority.

b. Conditions for reinstatement:

- i. The employee must be released, separated or discharged from military service under conditions other than dishonorable; and
- ii. The employee must return to work within six (6) months after termination of active military service, but no later than six (6) months after the end of the war, national emergency or other applicable situation described in Paragraph B.2.a.i above and no later than 12 months after the first date the employee could have terminated active service.