

COUNTY OF RIVERSIDE
HUMAN RESOURCES PROCEDURAL GUIDELINE

SUBJECT: MILITARY LEAVE AND REINSTATEMENT FROM MILITARY DUTY

REFERENCES: CALIFORNIA MILITARY & VETERANS' CODE SEC 395;
 UNITED STATES CODE TITLE 38, CH 43

DATE: JULY 13, 2004

Call to Active Military Duty Reservists who are called to active duty and other employees who join the armed forces (see a, b, c, Page 2) will receive their regular base pay, under most circumstances, for the first month of military duty, and are entitled to benefits for up to six months of their absence. *For employees who are called up to active duty in combat or preparation or for the war on terrorism, the Board of Supervisors has approved extended supplemental pay and benefit continuation (See "Agreement" below).*

This guideline is not a contract, but an interpretation of existing federal and State law, and is subject to amendment by the County. Departments should conform to this guideline, and not apply it retroactively except as approved by Human Resources or County Counsel.

Who is Covered by these Rules All employees, officers and elected officials of the County of Riverside and its districts are covered by these federal and State laws.

Military Leave This is "active duty" or "ordered duty". Departments must honor military orders, and place an employee on leave of absence for the duration of the orders. Leaves of absence in the County are limited to one-year increments, except in the case of military orders. There is a five-year limit on cumulative military duty with a single employer in order for federal benefits and protections to continue.

Departments are free to contact the employee's commanding officer if clarification of orders or travel time is needed. Temporary and Per Diem employees serve at the pleasure of the appointing authority, and there is not a guarantee of continued employment or a certain number of work hours on their return from ordered military duty.

Inactive Duty of Reservists Weekend drills of military reservists are not considered "active duty", and are not "temporary military leave" which would allow for pay. However, departments must allow employees to attend the drills. If an employee is usually scheduled to work the weekend, the department may choose to schedule the employee to be off on the weekend they must report. If scheduled to work that weekend, the employee at his/her discretion may choose to use accrued compensatory time off (CTO), vacation, or holiday leave, if there are any balances, rather than be away without pay.¹

¹ *Under County Ordinance 449, employees are not in general allowed to take approved AWOP when they have leave balances, but being on military duty is an exception, since an employee on military leave cannot be required to use accrued leave.*

Weekend drills are usually Saturday and Sunday. If an extended weekend drill includes Thursday, Friday, and/or Monday, the reservist should be allowed to count the extra days, other than Saturday and Sunday, as part of the 30 calendar days he/she may be allowed paid leave, if otherwise entitled to paid leave.

Pay While on Military Leave Under California law, some employees (a, b, and c, below) are entitled to be paid during their first month (or 30 cumulative calendar days) of active military duty. Where 30 calendar days' pay is allowed, it means 30 cumulative calendar days of absence on account of military leave, including the employee's normal days off. Whatever base pay the employee would have earned on his/her normal schedule during those days is payable. In any fiscal year, July through June, pay is limited to the first 30 calendar days of absence on account of military leave, including travel days if the travel days cause the employee to not be at work. The employee may receive County pay and military pay at the same time. ***If the employee is eligible for the 30 days' pay, he/she is also eligible for salary continuation if called up as a result of the terrorist attacks on the United States. The additional pay is the difference between regular base pay and base military pay (if base military pay is higher, there is no salary supplement, but benefits are still extended).***

When the employee is not in the 30-day status, the employee may opt to use any accrued vacation, comp time, or holiday time, but may not be required by the employer to use it.

Departments need to track the employee's total leave in calendar days within a fiscal year. The purpose is to identify the period of 30 calendar days in which the employee may be entitled to pay, and track the number of days of supplemental pay and benefits.

(a) Call-up of the National Guard - National Guard members going on active duty by order of the Governor or by lawful order of a city, county, or the federal government receive up to 30 calendar days' pay. No minimum length of County service is required to qualify. Persons who exhaust the pay allowance may take accrued vacation, holiday or CTO.

(b) Military Leave of Absence - A reserve member of the U.S. armed forces, National Guard, or Naval Militia, who is called to active military duty of 180 calendar days or less, as specified in the orders ("temporary military leave"), if the employee has at least one year of service with the County of Riverside, and including any period of active U.S. military service in the one year, is entitled to up to 30 calendar days' pay. No national or local emergency needs to exist. Two-week training periods are counted as temporary military leave. Weekend drills are not. Persons who exhaust the pay allowance may take accrued vacation, holiday or CTO.

(c) Military Leave Longer than 6 months - Any person who has been employed by the County for one year or longer who is included, enlists, enters, or is otherwise called into active duty in the U.S. armed forces, National Guard or Naval Militia for a time specified in the orders which exceeds 180 calendar days (6 months), or indefinitely, is entitled to County pay for the first 30 calendar days of active military service. No national or local emergency needs to exist.

Benefits for Reservists during Military Leave By California law, under the same conditions in (a) and (b) above; National Guard reservists, and U.S. armed forces and Naval Militia reserves are

Non-discrimination It is illegal to discriminate against a person in regard to appointment, position, or employment status because of his or her membership in the armed forces, or because of his/her assistance in administering these protections.

Volunteering Departments may not discourage applicants or employees from participating in military duty – even from volunteering for military training or assignment.

Reinstatement Under California law, a regular employee who leaves County service to enter the armed forces of the United States, whether or not there is a national emergency, will be entitled to be reinstated in the same or similar job, and with the same status. It does not matter whether the employee received orders or was on a leave of absence. On reinstatement, military service time will count toward seniority, retirement service, and step placement. Under federal law, persons who serve in the Commissioned Corps of the Public Health Service are also entitled to reinstatement, as well as anyone who serves in a category designated by the President of the United States in an emergency.

When there is military urgency, no advance notice of the employee's departure is required to protect the reinstatement right. To ensure proper recording of military leave, an employee should submit a form requesting leave of absence, along with a copy of military orders.

Incumbents in positions of brief, non-recurrent employment status may be reemployed upon return, but will not be entitled to reinstatement. A Per Diem employee who has been employed for a significant period of time should be reinstated on proper request. Elected officials are not entitled to reinstatement after their term of office expires.

Under federal law, reinstated employees may not be terminated without cause for six months or a year, depending on their length of military leave.

Expiration of Reinstatement Rights Situations vary as to when the reemployment right expires, depending on whether the employee was a reservist, and whether a national or local emergency existed, and the length of military duty. The right to return to a job depends on not being dishonorably discharged from the military. County Counsel should be consulted for questions about reinstatement, on a case-by-case basis (CA Military and Veterans Code 395.1, 395.3, 395.4; USC Title 38, Sec 4304, 4312).

**AGREEMENT BETWEEN THE COUNTY OF RIVERSIDE
AND EMPLOYEE UNIONS TO PROVIDE SALARY CONTINUATION
FOR SPECIFIED RESERVISTS CALLED TO ACTIVE DUTY**

Employees who are called to active duty after the September 11, 2001, terrorist attack on the United States, who serve at a time when any armed forces of the United States are in combat or are preparing for combat that appears imminent, and who are eligible at the time of call-up to receive the thirty (30) calendar days pay in accordance with the Military and Veterans Code (full regular County pay for 30 days), shall be eligible for supplemental salary continuance. This includes reservists who serve outside the United States in the war on terrorism, those who secure the U.S. homeland, and National Guard members who are called to active duty by the Governor of California in a time of emergency.

Salary Continuation: Eligible employees shall receive the difference between their County base salary and their military base pay starting on the 31st day of military leave each fiscal year, and continuing up to March 17, 2004, unless extended to a later date by the Board of Supervisors (***This agreement was extended indefinitely by the Board on March 9, 2004.*** Military salary is based on base pay as evidenced by the military paycheck stubs or other documents from the military acceptable to the County Auditor-Controller.

Benefits While on Salary Continuation: Employees who are currently eligible for County health, dental, and vision insurance coverage shall be eligible for continued coverage throughout the military leave described above, with the County continuing to pay the applicable flex plan contributions as described in the Flexible Benefits Plan for coverage the employee had in effect at the time the leave commenced. The County shall also continue to pay the Riverside Sheriff's Association Medical Trust for the applicable flex plan contributions for its members while the employee is on salary continuance. After that time, employees shall be eligible for continued coverage at their own expense for the remainder of their leave. Employees called to duty are encouraged to provide their spouse or legal guardian with power of attorney to make medical insurance selections during open enrollment periods.

Life Insurance Continuation: The County will continue to pay the County portion of employee life insurance while the employee is on salary continuance. Dependent coverage and additional employee paid voluntary amounts of life insurance benefits may be continued subject to the employee's payment of the premiums. Employees should note that the Accidental Death and Dismemberment (AD&D) plan contains an exclusion for acts of war.

Leave Accruals: In conformance with California law, employees shall accrue applicable vacation, sick leave, holiday leave or annual leave for the salary continuation period covered under the provisions of this agreement

Supersession: This agreement supersedes the agreement that was adopted by the County's Board of Supervisors in October 2001 and extended in October 2002.