

Metro | Policies and procedures

Subject Military Leave – Servicemembers and Families
Section Human Resources
Approved by Martha Bennett, Chief Operating Officer; MERC Commission

POLICY

It is Metro's policy to comply with all state and federal laws providing employment protections to military servicemembers, veterans, and their families. Protections covered by this policy include leave rights for military servicemembers and their spouses and domestic partners and a prohibition against discrimination.

Applicable to

Protected leave: Employees who are U.S. military servicemembers, veterans, or spouses or domestic partners of servicemembers.

Non-discrimination: All employees, interns, volunteers and applicants.

Where provisions of an applicable collective bargaining agreement directly conflict with this policy, the provisions of that agreement will prevail.

Definitions

Eligible employee: Specific eligibility requirements apply under state and federal law and are detailed below under Procedures. Metro's Human Resources (HR) Department will review all leave applications and determine eligibility consistent with state and federal law.

Domestic partner: For the purposes of this policy, "domestic partner" means a same-sex domestic partner registered with the State of Oregon or an opposite-sex domestic partner confirmed by an affidavit on file with Metro.

Reasonable efforts: Actions that do not place an undue hardship on Metro's operations, including training.

Reinstatement: An employee's return to the position they formerly held following a leave of absence.

Reemployment: An employee's return to Metro and placement in a suitable alternate position following a leave of absence. Reemployment is different from reinstatement. Options for reemployment are evaluated in situations in which the employee cannot be reinstated to his or her former position.

Service: The performance of duty on a voluntary or involuntary basis in a uniformed service that may involve active duty, active duty for training, initial active duty for training, inactive duty for

training, full-time duty in the National Guard, funeral honors duty or an examination to determine fitness for uniformed service.

Undue hardship: Significant difficulty or expense.

Uniformed Services: The United States Army, Navy, Air Force, Marine Corps, Coast Guard, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or national emergency.

Guidelines

Discrimination Prohibited

1. Metro will not discriminate against any individual because of their uniformed service or retaliate against any person for exercising or attempting to exercise rights under this policy.

Leave rights

2. Military servicemembers, veterans, members of an organized state militia, and the spouses and domestic partners of U.S. servicemembers are entitled to leave from work without any risk of adverse employment consequences under the circumstances described below.
 - a. Absences under this policy may not be counted against an employee's attendance record.
 - b. Employees will be restored to their position without any loss of employment benefits after leave is concluded.
3. In addition to the types of leave outlined in this policy, the Family and Medical Leave Act provides protected leave for eligible employees to care for family members who are covered military servicemembers or veterans recovering from a serious illness or injury sustained or aggravated in the line of covered active duty, and to handle exigencies related to the servicemember's call to active duty. Please see Metro's Family and Medical Leave Policy for more information.
4. In addition to leave for military service, employees may be entitled to leave for certain types of non-military government service, such as the Peace Corps and certain search and rescue operations. Please contact Human Resources for more information if needed.

Other Protections

5. Military veterans may also be eligible for preference in hiring and promotions in accordance with Oregon law. Please see Metro's Veterans' Preference Policy for more information.
6. Disabled servicemembers and veterans, as well as other disabled employees, may be entitled to reasonable accommodation under the Americans with Disabilities Act (ADA). Please see Metro's Americans with Disabilities Act Policy for more information.

Procedures

Discrimination Prohibited

1. Employees and interns who experience or observe discrimination, harassment, or retaliation on the basis of military service or the exercise of rights under this policy should report the

offending conduct using the procedures specified in Metro's Discrimination and Harassment Policy.

Military Leave

2. **Eligible employee:** An employee who leaves employment, other than in some temporary, seasonal, or part-time positions, for the purpose of military training, examination, and/or service. The employee's absences from Metro for uniformed service must total five years or less. The employee must not have been separated from military service under other than honorable conditions.
 - a. Temporary and seasonal employees are eligible for reinstatement following military leave unless their employment with Metro prior to uniformed service was for a brief, nonrecurrent period and there is no reasonable expectation that the employment would have continued indefinitely or for a significant period.
 - b. There are some exceptions to the five-year limit, including initial enlistments lasting more than five years, periodic National Guard and Reserve training duty, and involuntary active duty extensions and recalls, especially during a time of national emergency.
 - c. There is no time limit on the amount of time reservists may spend in training.
 - d. Reinstatement and reemployment protections do not depend on the timing, frequency, duration, or nature of an individual's service as long as the basic eligibility criteria are met.
3. An eligible employee who takes time off for military duty is generally entitled to reinstatement to his or her former position.
 - a. The returning veteran or reservist will be treated as if he or she had remained on the job instead of performing military service. Employees who are subject to a seniority system will continue to accrue seniority during their military service. Employees will be paid at the rate they would have received from raises based on time worked if they had stayed on the job.
 - b. Reinstatement rights apply even if a replacement has been hired for the position.
 - c. Metro will make reasonable efforts, including training or retraining, to enable returning servicemembers to refresh or upgrade their skills to help qualify for reinstatement or reemployment.
 - d. If the servicemember is unable to return to his or her former position, for example due to disability, Metro will make reasonable efforts to reemploy the servicemember in a comparable alternative position.
 - i. Metro will provide reasonable accommodation for disabilities in accordance with applicable law.
 - ii. If the employee is not qualified for an alternative position, Metro will make reasonable efforts to help the employee become qualified.
 - e. In rare cases, Metro may be unable to reemploy a returning servicemember. For example, reemployment rights may be limited in the following circumstances, consistent with applicable law:
 - i. Metro's circumstances have changed so much that reemployment is impossible or unreasonable;
 - ii. The employee is no longer qualified for the former position or a comparable alternative position, he or she cannot become qualified with

reasonable efforts by Metro, and reemployment would impose an undue hardship on Metro's operations; or

- iii. The returning employee's former position no longer exists and there is no appropriate alternative position for which the employee is or may become qualified with reasonable efforts by Metro. Metro is not required to create a position for a returning servicemember if the position no longer exists.

4. Pay status:

- a. Servicemembers, including reservists or National Guard members, are permitted but not required to use their accrued paid leave time for military leave.
- b. Employees who are members of the National Guard, National Guard Reserve or any reserve component of the U.S. Armed Forces or Public Health Service and who have been employed by Metro for six months or more may receive up to 15 consecutive calendar days of paid leave per federal fiscal year for periods of initial or annual temporary active duty for training. This equates to eleven (11) paid work days for those working a five (5) day work week and nine (9) paid work days for those working a four (4) day work week.

5. Notification requirements before taking leave: Servicemembers should provide advance written or verbal notice to Metro unless giving notice is impossible, unreasonable, or precluded by military necessity. An employee should provide notice as far in advance as is reasonable under the circumstances.

6. Notification requirements for return to work:

- a. Employees returning from active duty of less than 31 days must return to work at the beginning of the next regularly scheduled work period on the first full day after release from service, taking into account safe travel home plus an eight-hour rest period.
- b. Employees returning from active duty of more than 30 but fewer than 180 days must notify the Metro Human Resources Department of their intention to return to work within 14 days of release from service.
- c. Employees returning from active duty of more than 180 days must notify the Metro Human Resources Department of their intention to return to work within 90 days of release from duty.
- d. Reservists and members of the National Guard returning from training must inform Metro's Human Resources Department of their training obligations and report back at the next regularly scheduled work period.

7. After returning from service, a returning veteran will not be discharged except for cause for a period of one year. A returning reservist will not be discharged except for cause for a period of six months.

Oregon Military Family Leave Act

- 8. Eligible employee: An employee who has worked an average of 20 hours per week, and who is a spouse or domestic partner of a member of the U.S. Armed Forces, National Guard or military reserve forces.
- 9. An eligible employee whose spouse or domestic partner has been notified of an impending call or order to active duty or impending leave from deployment is entitled to a total of 14 work days of unpaid leave per deployment with continuation of benefits under the Oregon Military Family Leave Act (OMFLA).

- a. Leave may be taken before the servicemember's deployment and/or while the servicemember is on leave.
 - b. Leave need not be taken in one, uninterrupted period, but may be taken intermittently.
 - i. For the purpose of intermittent leave, OMFLA leave is calculated for an employee by multiplying the number of hours the employee normally works per day by 14.
 - ii. If an employee's schedule varies from day to day, a daily average of the employee's work hours over the previous 12 months will be used for calculating the employee's normal work day.
 - c. Leave taken under this policy is counted against the employee's general leave entitlement under the Oregon Family Leave Act (OFLA). Please see Metro's Family and Medical Leave Policy for more information about OFLA.
 - d. If multiple deployments occur within the employee's OFLA leave year, the employee is entitled to use all OMFLA leave until his or her OFLA entitlement is exhausted.
 - e. If the leave is also covered by the exigency leave provisions of the Family and Medical Leave Act (FMLA), Metro may run OMFLA leave and FMLA leave concurrently. Please see Metro's Family and Medical Leave Policy for more information about FMLA.
10. An employee who intends to take leave must notify his or her supervisor or the Human Resources Department by requesting leave through Kronos or submitting a Leave Request Form within five business days of an impending call or order to active duty or impending leave from deployment.
 11. An employee who takes military spouse leave may draw on any accrued paid leave to which the employee is entitled for any part of the leave. He or she may also choose to take unpaid leave rather than using accrued paid leave.

Veterans' Leave

12. Eligible employee: An employee who is a veteran undergoing medical treatment, recuperation or therapy for a serious injury or illness that occurred any time within five years of service in the U.S. Armed Forces. The employee must not have been separated from military service under other than honorable conditions.
13. An eligible employee may take up to 14 weeks of leave to recover or seek treatment for a qualifying illness or injury.
14. Veterans' leave, when combined with all other family or medical leave under the Family and Medical Leave Act and the Oregon Family Leave Act, may not exceed 26 weeks in a single 12-month period. Please see Metro's Family and Medical Leave Act policy for more information.

Responsibilities

Employee:

- Notify Metro of your need for leave as specified by the procedures for the specific type of leave.
- Notify Metro of your intention to return to work as specified by the procedures for the specific type of leave.

- Provide documentation as requested by the Human Resources Department.
- Report any discrimination, harassment, or retaliation based on military service or the exercise of any rights under this policy.

Supervisor:

- Notify the HR Benefits Manager of any requests for leave.
- Work with the HR Benefits Manager to make any operational adjustments that may be necessary.
- Ensure that no employee is subject to discrimination, harassment, or retaliation based on military service or the exercise of any rights under this policy.

Human Resources Department:

- Immediately notify the Department Director of any requests for leave under this policy.
- Request documentation as needed to verify eligibility for leave.
- Determine the employee's eligibility for protected leave and notify the employee as soon as possible.
- Notify the employee if leave will be charged against the employee's OFLA and/or FMLA entitlement.
- Work with the Supervisor and Department Director to make any necessary operational adjustments.
- Ensure that an employee hired to replace a servicemember on leave understands the servicemember's reinstatement rights and the potential impact on the replacement employee's employment.
- Track leave requests, verification of the need for leave, and the use of paid and unpaid leave following usual procedures.
- Investigate and resolve any reports of discrimination, harassment, or retaliation.

References

Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 USC 4301-4335

Oregon Military Family Leave Act, ORS 659A.090 – 659A.099

ORS 408.225 - 408.235

ORS 408.290