

SCHOOL DISTRICT OF WAUPACA

SERIES 500 PERSONNEL

CODE: 532.42-R1

ADMINISTRATION OF THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

Overview and Scope

These guidelines and procedures cover the implementation of certain aspects of the federal Uniformed Services Employment and Reemployment Rights Act (USERRA) within the District. While USERRA applies to most types of service within the "uniformed services", these guidelines and procedures are not intended to diminish any additional rights and benefits provided under other laws, including state laws. Further, in limited situations where USERRA may not be applicable (e.g., for certain state call-ups of the National Guard), other laws and/or District policies may apply and provide the employee with particular rights and benefits.

These guidelines and procedures do not cover all employer and employee rights, benefits, and obligations under USERRA. For purposes of USERRA, the "uniformed services" include the following:

1. Army, Navy, Marine Corps, Air Force and Coast Guard
2. Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve, and Coast Guard Reserve
3. 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
4. Commissioned Corps of the Public Health Service
5. Any other category of persons designated by the President in time of war or emergency

National Guard service under authority of state law (i.e., certain "state call-ups") and service performed in the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA), the Civil Air Patrol, and the Coast Guard Auxiliary are not protected by USERRA. If any employee is in any of these non-USERRA situations, the District will look to any other applicable provisions of federal or state law (e.g., within Chapter 321 of the state statutes) or District policy.

Leave from Employment and Reemployment

Generally. Leave and reemployment rights under USERRA extend to otherwise-qualifying persons who have been absent from a position of District employment because of "service in the uniformed services". Leave under USERRA and these guidelines and procedures is unpaid leave, but a qualifying employee is entitled to the protection of certain employee benefits during any qualifying period of leave.

"Service in the uniformed services" means the performance of duty under federal authority, on a voluntary or involuntary basis, in a uniformed service, including all of the following:

1. Active duty and active duty for training
2. Initial active duty for training
3. Inactive duty training
4. Full-time National Guard duty
5. Absence from work for an examination to determine a person's fitness for any of the above types of duty
6. Funeral honors duty performed by National Guard or Reserve members
7. Duty performed by intermittent employees of the National Disaster Medical System (NDMS), which is part of the U.S. Department of Health and Human Services, when federally activated for a public health emergency, and approved training to prepare for such service.

Notice of Need for Uniformed Services Leave. With limited exceptions, the employee, or an appropriate officer of the uniformed service in which his/her service is to be performed, must notify the District that the employee intends to leave the employment position to perform service in the uniformed services. The notice may be given either verbally or in writing and shall be submitted to the District Administrator and/or his/her designee.

The employee is required to give the notice of service in advance unless giving such notice is (1) prevented by military necessity, or (2) otherwise impossible or unreasonable under all the circumstances. An employee is expected to provide the notice as far in advance as is reasonable under the circumstances. When it is feasible to give at least 30-days advance notice prior to leaving employment, the District will consider at least 30-days' notice to be reasonable. Whenever possible, the request should be accompanied by a copy of applicable military orders.

Length of Service During Uniformed Services Leave. Employees shall continue to accrue length of service for wage/salary increments, if applicable, and all other purposes where length of service is a factor. The employee's absence shall not be construed as a break in service for such purposes.

Returning to Work After a Uniformed Services Leave. Eligible employees returning from uniformed services leave will be promptly reemployed to an appropriate position, as required and determined under applicable law. As a general rule, an eligible employee is entitled to reemployment in the job position that he/she would have attained with reasonable certainty if not for the absence due to uniformed service – i.e., a position that reflects with reasonable certainty the pay, benefits, seniority, and other job perquisites that he/she would have attained but for the period of service. However, depending upon the specific circumstances (the length of leave, the employee's qualifications, any disability, etc.), the District may have the option, or be required, to reemploy the employee in a different position. Further, depending on the circumstances, the applicable criteria may cause an employee to be reemployed in a higher or lower position, in a different shift or location, laid off, or even terminated.

To be eligible for such reemployment, all of the following requirements normally apply:

1. The District received advanced notice of the leave, to the extent specified in federal law and in these procedures.
2. Subject to limited exceptions specified in federal law, the employee has no more than five years of cumulative uniformed service away from the District.
3. The employee establishes eligibility for reemployment, including:
 - a. The employee must not have received a disqualifying discharge or other-than-honorable separation from service; and
 - b. If requested by the District in connection with a period of service exceeding 30 days, and provided such documentation is readily available, documentation that establishes the employee's entitlement to reemployment.
4. The employee must return to work or apply for reemployment. Whether the employee is required to report to work or submit a timely application for reemployment depends upon the length of service, as follows:
 - a. For leaves of one to 30 days, the employee must return to work no later than the beginning of the first regularly scheduled work period that begins on the next calendar day following completion of service, after allowance for safe travel home from the military duty location and an 8-hour rest period.
 - b. For leaves of 31 to 180 days, the employee must submit an application for reemployment (written or verbal) with the employer not later than 14 days after completing service. If it is impossible or unreasonable for the employee to apply within 14 days through no fault of his/her own, he/she must submit the application not later than the next full calendar day after it becomes possible to do so.
 - c. For leaves of more than 180 days, the employee must submit an application for reemployment (written or verbal) not later than 90 days after completing service.

The reporting or application deadlines identified above are extended for up to two years for employees who are hospitalized or convalescing because of an injury or illness incurred or aggravated during the performance of military service.

The employee's reemployment rights are not automatically forfeited if he/she fails to report to work or to apply for reemployment within the required time limits. In such cases, the employee will be subject to the District's rules governing absences from scheduled work (unexcused or excused, as applicable).

Benefits During Uniformed Services Leave

1. **Health Benefits:** Eligible employees with coverage under a District health benefit plan who are on a uniformed service leave of absence of 30 days or less will continue to receive the plan benefits, with the employee contributing no more than he/she would have paid if still employed. For leaves exceeding 30 days, employees with coverage under a District health benefit plan may elect to continue coverage for up to 24 months. Employees electing to continue coverage will be required to pay 100% of the cost of

the applicable health benefit plan. Employees returning from leave who did not continue their health benefits or who took leave for more than 24 months have the right to be reinstated in the applicable health plan(s) upon reemployment, generally without any waiting periods or exclusions (e.g., pre-existing condition exclusions) except for any service-connected illnesses or injuries.

2. Wisconsin Retirement System: Employees may receive service credit and Wisconsin Retirement System (WRS) contributions related to uniformed services leave when an employee leaves a WRS-covered position with the District for active military duty and returns to work for the District within the applicable time-frame after completing uniformed service (as specified above).
 - a. Upon reemployment, the employee is responsible for paying any missed WRS Employee-Required Contributions (EERC). The employee has the choice to make all, some, or none of the make-up EERC related to the military leave. USERRA allows for make-up EERC to the WRS to be made beginning with the date of reemployment and ending on the earlier of three times the period of military service or five years, provided the employee continues to be employed by the District.
 - b. The District will submit WRS Employer-Required Contributions (ERRC) to match the EERC the employee chooses to make. The District will also fund any additional obligations, including interest that would have accrued on the ERRC and EERC, once those contributions are remitted.
 - c. The amount of the available WRS contributions is based on the earnings the employee would have made had the employee not been absent from work to fulfill obligations in the uniformed services.

ADOPTED: 111318

REVISED:

REVIEWED:

LEGAL REFERENCE:

CONTRACT REFERENCE:

CROSS REFERENCE:

School District of Waupaca is an Equal Opportunity Employer