

UNIFORMED SERVICES EMPLOYMENT and REEMPLOYMENT RIGHTS

I. POLICY STATEMENT:

It is the established policy of the St. Johnsbury School District (the District) not to deny an individual initial employment, or deny an existing employee any benefit, or dismiss an employee because of the person's membership in a uniformed service, or obligation to perform future service. We will not consider military status or service when making hiring, promotion, or dismissal decisions.

II. RATIONALE:

In accordance with the Uniformed Services Employment and Re-employment Rights Act (USERRA) and the Vermont Employment Rights for Reserve and National Guard Members Act, employees who request a leave of absence to perform service in the uniformed services will be granted a military leave of absence.

III. GENERAL POLICY:

An employee who leaves employment with the District to perform voluntary or involuntary service in the uniformed services will be entitled to reemployment, provided he or she meets the USERRA eligibility criteria:

1. The employee or an appropriate officer of the uniformed service must provide written or verbal notice of the impending service, except when precluded by military necessity. Upon receipt of this notice, the employee will be granted a military leave of absence. This applies to employees in probationary, seasonal, or "temporary" positions. There is no requirement that the employee have been employed by the District for any minimum period before the absence for uniformed service. However, the District is not required to reemploy the returning veteran if it is established that the employment from which the person leaves to serve in the uniformed services is for a brief, nonrecurring period and there is no reasonable expectation that such employment will continue indefinitely or for a significant time. Nor if it established the District's circumstances have so changed as to make such reemployment impossible or unreasonable.
2. The employee's cumulative period or periods of service, relating to employment with the District, shall not have exceeded five years, except that any such period of service shall not include any service--
 - (1) that is required, beyond five years, to complete an initial period of obligated service;
 - (2) during which such person was unable to obtain orders releasing such person from a period of service in the uniformed services before the expiration of such five-year period and such inability was through no fault of such person;
 - (3) performed as required pursuant to section 10147 of title 10, under section 502(a) or 503 of title 32, or to fulfill additional training requirements determined and certified in writing

by the Secretary concerned, to be necessary for professional development, or for completion of skill training or retraining; or

(4) performed by a member of a uniformed service who is--

(A) ordered to or retained on active duty under section 688, 12301(a), 12301(g), 12302, 12304, or 12305 of title 10 or under section 331, 332, 359, 360, 367, or 712 of title 14;

(B) ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress as determined by the Secretary concerned;

(C) ordered to active duty (other than for training) in support, as determined by the Secretary concerned, of an operational mission for which personnel have been ordered to active duty under section 12304 of title 10;

(D) ordered to active duty in support, as determined by the Secretary concerned, of a critical mission or requirement of the uniformed services; or

(E) called into Federal service as a member of the National Guard under chapter 15 of title 10 or under section 12406 of title 10.

It is therefore essential that we know under what authority (military orders) the employee is leaving to perform military service.

3. To have reemployment rights with the District, returning employees must have completed the period of service without having received a punitive or other than honorable discharge or having been dismissed or dropped from the rolls of the uniformed service.

4. Returning employees must make a timely application for reemployment or have been timely in reporting back to work. The following schedule applies:

- Service of one to 30 days: the beginning of the next regularly scheduled work period on the first full day following completion of service and expiration of an eight-hour rest period following safe transportation home.
- Service of 31 to 180 days: application for reinstatement must be submitted no later than 14 days after the completion of military duty.
- Service of 181 or more days: application for reinstatement must be submitted no later than 90 days after the completion of military duty.
- A person who is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service in the uniformed services shall, at the end of the period that is necessary for the person to recover from such illness or injury, report to work. The period of recovery may not exceed two years but shall be extended by the minimum time required to accommodate the circumstances beyond such person's control which make reporting within the period specified above impossible or unreasonable.

5. Returning employees who, within the 14 days or 90 days, communicate to us that he or she is available to return to work after service, and meets the other eligibility criteria, will have his or her application acted upon promptly. Returning service members will be returned to active employment and will not be required to wait for a vacancy, and if training or retraining is needed, we will provide such training in a pay status. If the individual misses the relevant deadline by a day or two, he or she is entitled to reemployment, but is subject to our usual policy regarding explanations or sanctions for absence from scheduled work.

IV. ENTITLEMENTS DURING SERVICE:

An employee who is away from work performing service in the uniformed services is entitled to non-seniority benefits during the military-related absence, if and to the extent that the District offers such benefits to employees on some other form of leave, like jury leave, educational leave, or maternity/paternity leave. Since the District has more than one form of non-military leave, the comparison is to the most generous form of leave that we provide, whether that leave be paid or unpaid.

For employees performing military service of less than 31 days, health insurance benefits will continue as if the employee were continuously employed. Employees performing military service for 31 or more days may elect to continue health coverage with the District for a period of up to two years. Those employees exercising this option will be required to pay 102% of the premium. We will make this continuing coverage available to the employee who is away from work for service until the first of the following occurs:

- a. The employee returns to work after service.
- b. The employee allows the deadline for an application for reemployment to pass without having made such an application.
- c. Twenty-four (24) months have passed since the employee left his or her civilian job for service.

V. ENTITLEMENTS AFTER RETURN FROM SERVICE:

A person who returns to employment with the District after service in the uniformed services, and who meets the eligibility criteria under USERRA, is entitled to continuous longevity with the District for the entire period of the military-related absence. This includes the period between leaving the job and the start of the service, the period of service, the period (up to 90 days) during which the individual waited to submit the application for reemployment, and the period between the application for reemployment and returning to work.

Upon reemployment, returning service members are entitled to pay raises, promotions, and other benefits they would have received, in accordance with seniority, had they remained continuously employed with the District.

A returning veteran who is reemployed by the District, and who meets the USERRA eligibility criteria, is entitled to be treated as if she or he had been continuously employed, for purposes of the pension benefit plan.

If the returning employee's period of service was less than 91 days, he or she is entitled, upon reemployment, to the exact job that he or she would have attained if he or she had been continuously employed.

If the period of service was 91 days or more, the District has the option to reemploy the returning veteran either in the position that he/she would have attained or, alternatively, in another position of like seniority, status, and rate of pay. Location (commuting area), hours of work, opportunity to earn commissions or to be promoted, etc., are other aspects of status.

The returning veteran is entitled to the training or retraining that he or she would have received if continuously employed.

The returning veteran who meets the USERRA eligibility criteria may not be discharged, except for cause, within one year after reemployment, if the veteran's period of service was 181 days or more. If the period of service was 31-180 days, the period of special protection is 180 days. This special protection provision applies even if the employee was in an at-will or probationary status before leaving for service.

Regrettably, some of our employees who have been called to serve may return with temporary or permanent physical limitations, resulting from service-connected injuries or illnesses. In such a situation, we will make reasonable accommodations in equipment, scheduling, etc. in order to enable the employee to perform the duties of his or her escalated reinstatement position. If the employee cannot be reinstated in the escalated reinstatement position, he or she is entitled to reinstatement in some other position, the duties of which he or she can perform despite the limitations. The employee is entitled to the position that comes as close as possible (in terms of seniority, status, and pay) to the position to which he or she would be entitled but for the disability.

An employee returning from service, and who meets the USERRA eligibility criteria, is entitled to immediate reinstatement of the District's health insurance coverage upon reemployment. This applies to coverage for the employee and for family members who would have been covered if the employee had been continuously employed. This includes children born or adopted during the employee's military-related absence from work. There is no waiting period, and no exclusion of "pre-existing conditions" except for conditions that the U.S. Department of Veterans Affairs has determined to be service-connected.

DATE WARNED: JANUARY 28, 2006
DATE APPROVED: FEBRUARY 6, 2006

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Uniformed Services