

## Military Leave

<b>Objective:</b>	To establish a military leave policy for County employees.	<b>Policy/Procedure Number:</b>	03-15
<b>Reference:</b> (All applicable federal, state, and local laws)	NYS Military Law, Article 11, §242-243; U.S. Department of Labor, Uniformed Services Employment and Reemployment Rights Act (USERRA); Americans with Disabilities Act (1990); The NY Patriot Plan III; NYS Civil Service Law	<b>Effective Date:</b>	January 12, 1981
<b>Legislative Policy Statement:</b>	Employees on ordered military duty status, whether voluntary or involuntary, shall be entitled to leave and reemployment as allowed by NYS Military Law and USERRA.	<b>Responsible Department:</b>	Human Resources
<b>General Information:</b>		<b>Modified Date (s):</b>	June 28, 1988; December 2, 2003; November 16, 2004; July 3, 2007; February 4, 2009; December 6, 2011; May 19, 2020
		<b>Resolution No.:</b>	2001-244; 2002-313; 2004-232; 2007-126; 2009-18; 2011-118; 2011-221; 2020-93
		<b>Next Scheduled Review:</b>	May 2025

### I. Definitions:

**Employee** - All persons filling positions of any rank within County government, including elected or appointed officials, paid staff, and members of any administrative board, commission, or agency of that government, interns, whether paid or unpaid, and volunteers.

**Ordered Military Duty** - Any military duty performed in the service of the state or of the United States pursuant to orders issued by competent State or Federal authority, with or without the consent of such public officer or employee. Service in the uniformed services on a voluntary or involuntary basis includes, but is not limited to the following:

- Active duty and active duty for training;
- Initial active duty for training;
- Inactive duty training;
- Full-time National Guard or Reserves duty;
- Service school or schools;
- Monthly meetings;
- Absence from work for an examination to determine a person's fitness for any of the above types of duty;
- Funeral honors duty; or
- Duty performed by intermittent employees of the National Disaster Medical System (NDMS), which is part of the Department of Health and Human Services, when activated for a public health emergency, and approved training to prepare for such service.

**Promptly Reemployed** - Means as soon as is practicable under the circumstances of each individual case.

**Reasonable Efforts** - Includes but is not limited to any training necessary to update a returning employee's skills so that they have the ability to perform the essential tasks of the position. If the employee has a disability incurred or aggravated during the performance of uniformed service, the employer must make reasonable efforts to accommodate the disability and to help the employee become qualified to perform the duties of the reemployment position.

**Supplemental Salary** - The pay calculated as the difference between military salary and County salary, where the military salary is less than the County salary.

**Termination of Military Duty** - The date of a certificate or release of honorable discharge, a release or discharge other than bad conduct or dishonorable from service, a certificate of completion of training and service, or in the event of the incurrence of a temporary disability arising out of and in the course of such military duty, the date of termination of such disability.

**United States Military (Armed Forces)** - Consists of the following: Army, Navy, Marines, Air Force, Coast Guard, Army Reserve, Naval Reserve, Marines Reserve, Air Force Reserve, Coast Guard Reserve, 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.

## **II. Policy:**

- A.** The granting of Military Leave is not within the discretion of the County. Employees are entitled to Military Leave as a matter of right.
- B.** Any employee who is or becomes a member of any force of the United States Military or of any reserve force or reserve component of the United States Military, shall be entitled to a leave of absence with or without pay, as applicable, while engaged in the performance of ordered military duty and while going to and returning from such duty.
- C.** Retaliation and discrimination because of past, current, or future military obligations are prohibited. This includes, but is not limited to hiring, promotion, termination, and benefits.
- D.** Any employee who takes Military Leave will be entitled to all rights and benefits that they would have attained had they remained continuously employed and will be entitled to participate in any rights and benefits that are available to employees on comparable non-military leaves of absence.
- E.** Time spent on Military Leave shall not count as time worked toward completing a probationary period (either initial probation or promotional probation). Employees shall complete the remaining time of probation when they return from military duty.
- F.** Employees returning from military duty must be "promptly reemployed".
- G.** Employees will not be eligible to assert leave rights under this policy or under Federal and/or State law if any of the following disqualifications apply:
  - Separation from duty with a dishonorable or bad conduct discharge;
  - Separation from duty under other than honorable conditions.

Regulations for each military branch specify when separation from the service would be considered "other than honorable";

- Dismissal of a commissioned officer in certain situations involving a court martial or by order of the President in time of war; or
- Dropping an individual from the rolls when the individual has been absent without authority for more than three months or is imprisoned by a civilian court.

### III. Procedure:

#### A. Requesting Military Leave

1. Unless military necessity prevents it or it is otherwise impossible or unreasonable, an employee should provide their Department Head and Department of Human Resources with notice of the need for leave as far in advance as is reasonable under the circumstances.
2. To request Military Leave, it is recommended the employee provide notice to their Department Head and the Department of Human Resources in writing by completing a Request for Military Leave of Absence Form (*Appendix A*). Notice may also be given verbally. Notification of Military Leave may also be provided by an appropriate officer of a branch of the United States Military.

**Note:** The Request for Military Leave of Absence Form can be found at ["Request for Military Leave of Absence Form"](#).

3. All employees ordered to military duty must provide a copy of such orders or schedule covering all duty days to the Department of Human Resources prior to their leave and, if extended, submit a copy of their extended orders as soon as practical.

#### B. Military Leave with Pay

1. Employees on Military Leave shall be paid their full regular salary for any and all periods of absence while engaged in the performance of ordered military duty, and while going to and returning from such duty, not exceeding a total of thirty (30) days or twenty-two (22) working days, whichever is a greater benefit, in any one calendar year and not exceeding thirty (30) days or twenty-two (22) working days, whichever is a greater benefit, in any one continuous period of such absence.
2. In the event an employee remains on Military Leave for more than thirty (30) days, the employee shall be paid a supplemental salary for any and all periods of absence while engaged in the performance of ordered military duty, and while going to and returning from such duty, not exceeding an additional sixty (60) days or forty-four (44) working days, whichever is a greater benefit, in any one calendar year and not exceeding sixty (60) days or forty-four (44) working days, whichever is a greater benefit, in any one continuous period of such absence. The combination of their full military compensation and the supplement will equal what would otherwise be an employee's regular base County pay retroactive to the date of their activation.

**Note:** If military pay is equal to or in excess of County base salary, no supplemental payment will be made.

3. In order to justify the payment of supplemental salaries, the County requires documented proof of an employee's current military salary. This documentation must be submitted to the Department of Human Resources as soon as practicable in order to ensure prompt and accurate payment of wages.
4. Paid time off (vacation, sick, personal) will continue to accumulate during a paid leave of absence. An employee on a paid leave may claim bereavement pay or holiday pay.

### **C. Military Leave without Pay**

1. All employees are entitled to Military Leave without pay for a period not exceeding five (5) years while employed by Tompkins County.
2. Employees on Military Leave without pay are able, but not required, to use accrued paid time off, except sick time (vacation, personal, compensatory) while on unpaid leave while for ordered military duty.

**Note:** Eight (8) categories of services are exempt from the five (5) year limitation. Please refer to the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) for further details outlining these exemptions.

3. Paid time off (vacation, sick, personal, disability) will not accumulate during an unpaid leave of absence. An employee on an unpaid leave may not claim bereavement pay or holiday pay.

### **D. Employment Rights**

#### *1. Health Insurance*

- a. Tompkins County will continue to maintain the health coverage (medical, dental, vision) for employees on military duty for ninety (90) days or less as if the employee had remained employed.
- b. Employees performing military duty of ninety-one (91) days or more may elect to continue the County sponsored health plans for up to twenty-four (24) months; however, they may be required to pay up to 100% of the full premium. Employees wishing to continue County sponsored health plan coverage should contact the Department of Human Resources as soon as they are aware they will be on duty exceeding the initial ninety (90) days of leave to prevent a lapse in coverage.
- c. It is recommended that employees check with appropriate military personnel to determine what medical benefits, if any, are available while on military duty. If an Employee does not choose continuation of coverage through the County (i.e., waives coverage) during their unpaid leave of absence, benefits will be reinstated following their timely return to work.

## 2. *Pay Rate*

- a. An employee restored to their position after the termination of their military duty is entitled to the rate of compensation they would have received had they remained in their position continuously during such period of military duty.
- b. Employees may not be subjected directly or indirectly to any loss of time service, wage increases, seniority, or any other right or privilege or to be prejudiced in any way with regard to promotion, transfer, re-instatement, etc.

## 3. *Pension/Retirement Plans*

- a. Pension plans which are tied to seniority are given separate, detailed treatment under the law. The law provides that:
  - A reemployed person must be treated as not having incurred a break in service with the County maintaining a pension plan;
  - Military service must be considered service with the County for vesting and benefit accrual purposes;
  - The County is liable for funding any obligation of the plan to provide required benefits; and
  - The reemployed person is entitled to any accrued benefits contingent upon employee contributions only to the extent that the person repays the employee contributions.
- b. If an employee has been absent for military service for ninety-one (91) or more days, the County may delay treating the employee as not having incurred a break in service for pension purposes until the person submits satisfactory documentation establishing reemployment eligibility. However, such contributions have to be made promptly for persons who are absent for ninety (90) days or less.

## **E. Reemployment after Military Duty**

### 1. *Time Limits for Returning to Work*

To qualify for Military Leave protections, an employee must be available to return to work within certain time limits. These time limits for returning to work depend (with the exception of fitness-for-service examinations) on the duration of a person's military service.

**Note:** An employee's reemployment rights are not automatically forfeited if the person fails to report to work or to apply for reemployment within the required time limits. In such cases, the person will be subject to County's established rules governing unexcused absences.

a. Service of 1-30 days

- The person must report to their employer by the beginning of the first regularly scheduled work period that begins on the next calendar day following termination of duty, after allowance for safe travel home from the military duty location and an 8-hour rest period.

For example: An employer cannot require an employee who returns home at 10:00 p.m. to report to work at 12:30 a.m. that night. But the employer can require the employee to report for the 6:00 a.m. shift the next morning.

- If, due to no fault of the employee, timely reporting back to work would be impossible or unreasonable, the employee must report back to work as soon as possible after the expiration of the 8-hour period.
- The time limit for reporting back to work for a person who is absent from work in order to take a fitness-for-service examination is the same as the one above for persons who are absent for 1-30 days. This period will apply regardless of the length of the person's absence.

b. Service of 31-180 days

- An employee on Military Leave shall be reinstated to County service provided they make an application for such reinstatement within fourteen (14) days after the termination of military duty.
- If submission of a timely application is impossible or unreasonable through no fault of the person, the application must be submitted as soon as possible on the next day when submitting the application becomes possible.

c. Service of 180 days or more

- An employee on Military Leave shall be reinstated to County service provided they make an application for such reinstatement within ninety (90) days after the termination of military duty.
- At the discretion of the Commissioner of Human Resources or their designee, an employee may be reinstated at any time after such ninety (90) day period up to one (1) year after the termination of their military duty.

d. Timeframe Extensions for Disability

- Periods for reinstatement or to reapply for reemployment may be extended for up two (2) years if the employee is hospitalized or convalescing from an illness or injury incurred or aggravated during the performance of military duty.

- The two (2) year period will be extended by the minimum time required to accommodate a circumstance beyond an individual's control that would make reporting within the two (2) year period impossible or unreasonable.

## 2. *Returning to a Position*

Reemployment to a position with the highest priority reflects the "escalator" principle. The escalator principle requires that each returning service member be reemployed in the position the employee would have occupied with reasonable certainty if the employee had remained continuously employed, with full seniority. The position may not necessarily be the same job the employee previously held.

For instance, if the employee would have been promoted with reasonable certainty had they not been absent, the employee would be entitled to that promotion upon reinstatement. On the other hand, depending on economic circumstances, reorganizations, layoffs, etc., the position could be at a lower level than the one previously held, it could be a different job, or it could conceivably be in layoff status. In other words, the escalator can move up or down.

Except with respect to employees who have a disability incurred in or aggravated by military service, the position into which an employee is reinstated is based on the length of an employee's military service.

### a. Service of 1-90 days

An employee whose military service lasted 1 to 90 days must be "promptly reemployed" in the following order of priority:

- In the job the employee would have held had they remained continuously employed, so long as they are qualified for the job or can become qualified after reasonable efforts by the County; or
- In the job in which the employee was employed on the date of the commencement of the service in the military, only if they are not qualified to perform the duties of the position above after reasonable efforts by the County to qualify the employee.
- If the employee cannot become qualified for either position described above (other than for a disability incurred in or aggravated by the military service) even after reasonable efforts, the employee must be reemployed in a position that is the nearest approximation to the positions described above (in that order) which the employee is qualified to perform, with full seniority.

### b. Service of 91 days or more

The law requires the County to promptly reemploy persons returning from military service of ninety-one (91) days or more in the following order of priority:

- In the job the employee would have held had they remained continuously employed, or a position of like seniority status and pay so long as the employee is qualified for the job or can become qualified after reasonable efforts by the County; or
- In the position of employment in which the employee was employed on the date of the commencement of the service in the military, or a position of like seniority, status, and pay the duties of which the employee is qualified to perform, only if the employee is not qualified to perform the duties of the position above after reasonable efforts by the County to qualify the employee.
- If the employee cannot become qualified for either position described above: in any other position that most nearly approximates the above positions (in that order) that the employee is qualified to perform with full seniority.

c. Returning Disabled Employees

If an employee has a disability incurred or aggravated during the performance of military duty and they cannot become qualified for the reemployment position despite reasonable efforts by the County to accommodate and qualify them to perform the duties of the position, the employee must be reemployed in a position according to the following priority:

- A position that is equivalent in seniority, status, and pay to the escalator position. The employee must be qualified to perform the duties of this position or be able to become qualified to perform them with reasonable efforts by the County; or
- If the employee cannot become qualified for the position, the employee must be employed in a position that, consistent with the circumstances of that their case that most nearly approximates the position above in terms of seniority, status, and pay. Such a position may be a higher or lower position, depending on the circumstances.
- The County is excused from making efforts to qualify returning employees or from accommodating employees with service-connected disabilities only when doing so would be of such difficulty or expense as to cause "undue hardship" as defined by the Americans with Disabilities Act.

### 3. *Documentation upon Return*

- a. Tompkins County has the right to request that an employee who is absent for a period of service of thirty-one (31) days or more provides documentation showing that:
  - the employee's application for reemployment is timely;
  - the employee has not exceeded the five (5) year service limitation; and
  - the employee's termination from duty was other than disqualifying.
- b. If an employee does not provide satisfactory documentation because it is not readily available or does not exist, the employer still must promptly reemploy the person. However, if after reemploying the person documentation becomes available that shows one (1) or more of the reemployment requirements were not met, the employer may terminate the person from County employment and any rights or benefits that may have been granted.

### 4. *Protection from Discharge*

A reemployed employee may not be discharged without cause:

- a. For one (1) year after the date of reemployment if the employee's period of military service was for 181 days or more; or
- b. For 180 days after the date of reemployment if the employee's period of military service was for 31 to 180 days.
- c. Employees who serve for thirty (30) or fewer days are not protected from discharge without cause. However, they are protected from discrimination because of military service or obligation.

## Appendix A



# Tompkins County Department of Human Resources

125 East Court Street, Ithaca, NY 14850 | P: (607) 274-5526 | F: (607) 274-5401 | www.TompkinsCountyNY.gov  
*Inclusion through Diversity*

### MILITARY LEAVE OF ABSENCE FORM

(Submit to Department of Human Resources)

This form may be used to request a Military Leave of Absence. Tompkins County acknowledges and appreciates the important contributions of our employees who are currently serving in the United States Military. In order to support these employees, Tompkins County pledges to make every effort to provide accommodations to individuals who must be absent due to ordered military duty.

*(Note: Ordered Military Duty is defined as, but not limited to: Active Duty, Deployment, Training, Drills, Service Schools, etc.)*

**To be completed by Employee (print clearly):**

Today's Date:		Employee I.D. (if known):	
<b>EMPLOYEE INFORMATION</b>			
Employee Last Name:	First:	Middle:	Phone Number: (____) _____ - _____
Department:		Job Title:	Personal Email:
Street Address:		Birth Date: / /	Date of Hire: / /
P.O. Box (if applicable):	City:	State:	ZIP Code:
<b>EMPLOYEE REQUEST (Complete the required information and check leave type.)</b>			
Requested Start Date: / /		Anticipated Return to Work Date: / /	
Name of Military Organization Issuing Orders:		Current Employment Status: <input type="checkbox"/> Full-Time <input type="checkbox"/> Part-Time <input type="checkbox"/> Temporary	
<input type="checkbox"/> This is a new request		<input type="checkbox"/> This is an update to an existing request	

**+ Please select the reason for your leave request:**

<input type="checkbox"/> Annual Training
<input type="checkbox"/> Basic Training
<input type="checkbox"/> Special/Advanced Training or Service School
<input type="checkbox"/> Required Monthly Meeting
<input type="checkbox"/> Active Duty/Deployment
<input type="checkbox"/> Other (Please Describe)

**ATTACH A COPY OF OFFICIAL MILITARY ORDERS AND/OR SCHEDULE TO THIS FORM**

**Paid Leave**

Tompkins County employees shall be paid their full regular salary while on a Military Leave of Absence for ordered military duty not exceeding 30 days or 22 working days in a calendar year. Employees on a Military Leave of Absence for more than 30 days shall be paid a supplemental salary not exceeding an additional 60 days or forty-four 44 working days in a calendar year.

**Note: In order to receive Military Leave supplemental salary, documented proof of current military salary must be submitted to the Department of Human Resources as soon as practicable in order to ensure prompt and accurate payment of wages.**

**Unpaid Leave**

Tompkins County employees on a Military Leave of Absence for ordered military duty exceeding 90 days will be placed on an unpaid leave of absence not to exceed 5 years while employed with the County. Employees may, but are not required, to use accrued vacation, personal, or compensatory time during this time.

**Acknowledgement & Signature**

I understand that I am entitled to 30 days (22 working days) of military leave with full pay and that I am entitled to an additional 60 days (44 working days) of military leave with supplemental pay if military leave extends past 30 days. If some military leave with pay has already been paid within this calendar year, I am entitled to the remaining balance during the same calendar year.

I understand that I may elect to use any vacation, personal, or compensatory time that was accrued prior to the military leave of absence once I am placed on an unpaid leave of absence. Select option below:

I *do not want to* use accrued vacation, personal, or compensatory time after my military leave with pay/supplemental pay has been used and understand I will be placed on a military leave of absence without pay.

I *want to* use paid vacation, personal, or compensatory time after utilizing all my military leave with pay/supplemental pay and understand that once this time is exhausted, I will be placed on a military leave of absence without pay.

I understand that if my leave has been changed or extended, I will submit updated military orders and/or schedule as soon as practical and if possible, it is recommended a new Military Leave of Absence Form be completed.

I have read *Tompkins County Administrative Policy 03-15: Military Leave* and understand my employment and reemployment rights and responsibilities as outlined within the policy.

**Employee Signature:**

**Date:**

**Department Head/Supervisor Name (Print) & Signature:**

**Date:**

**For Human Resources Use Only**

Date Received: \_\_\_\_\_ Date Reviewed: \_\_\_\_\_

Received by: \_\_\_\_\_ Reviewed By: \_\_\_\_\_