

AN ORDINANCE

AMENDING Article 4-4-16, Attendance and Leave Policy

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF MARIETTA, GEORGIA:

Section 1: Section 4-4-16-060, Military leave shall read as follows:

These provisions are intended to comply with federal and state laws regarding military leave and are not intended to add to or detract from those regulations. See the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA), 38 U.S.C. Section 4301 et seq., commonly known as the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), the Veterans Benefits Improvement Act of 2004, the Veterans' Benefits Improvement Act of 2008, O.C.G.A. § 38-2-54, and O.C.G.A. § 38-2-279. The city/BLW specifically reserves the right to add to, change, or abolish the provisions of this section, in whole or in part, based upon pertinent action by any appropriate legislative, judicial or regulatory authority.

In accordance with these laws, the city/BLW will not discriminate against any employee or job applicant in initial employment, reemployment, retention, promotion, or any benefit of employment on the basis of their membership, application for membership, performance of military service, application for service, or obligation to the uniformed service.

A. Eligibility. Any regular employee who is a member of a uniformed service, or any current employee who is drafted or joins a uniformed service may be granted a leave of absence for the purpose of service, including travel to and from same. Such service may be voluntary or involuntary, in time of peace or war. The "uniformed services" are defined as the U.S. Army or U.S. Army Reserve, U.S. Navy or U.S. Navy Reserve, U.S. Air Force or U.S. Air Force Reserve, U.S. Marines or U.S. Marine Corps Reserve, U.S. Coast Guard or U.S. Coast Guard Reserve, National Guard, Commissioned Corps of the Public Health Service, State Defense Force, or the National Disaster Medical System.

B. Advance Notice. An employee, or an appropriate officer of the uniformed service in which his service is to be performed, must notify the city/BLW that the employee intends to leave his position to perform uniformed service. An "appropriate officer" is a commissioned, warrant, or noncommissioned officer authorized to give such notice by the uniformed service concerned. Although verbal notice is acceptable, employees should make every effort to provide written notice at least 30 days prior to departure. No advance notice is required if the notice is precluded by military necessity or the giving of notice is impossible or unreasonable.

C. Health Benefits. All full-time employees on military leave are entitled to continue their health insurance under the Consolidated Omnibus Budget Reconciliation Act (COBRA) for up to 24 months. The city/BLW can charge the employee 102 percent of the full premium for

this coverage if the military leave exceeds 31 calendar days. If the leave is 31 calendar days or less, the employee can continue to pay the employee portion of the premium and the city/BLW will continue to pay the employer portion until the end of the 31st calendar day.

Employees who do not elect to continue coverage during military leave will have their coverage reinstated upon reemployment without any exclusions or waiting periods except to the extent the exclusion would have applied even if coverage had not been terminated as a result of such service. However, some exclusions or waiting periods could apply to medical problems or conditions that the Secretary of Veterans Affairs determines to be the result of a service-connected disability.

D. Pension Benefits.

1. Supplemental Pension. The city/BLW will retroactively contribute to the account of returning employees, an amount that would have been contributed had the employee not left for military duty. Allocations will not include earnings or forfeitures.

2. Regular Pension. Time spent in the uniformed service will be credited to all employees toward meeting length of service requirements for eligibility for participating in a retirement plan, for vesting in the retirement plan or in the calculation of benefits under the retirement plan. The city/BLW will suspend pension contributions during uniformed service because the employee is not in pay status. However, upon such employee's return, the city/BLW will retroactively contribute an amount that would have been contributed had the employee not left for duty. Earnings for pension purposes will be computed at the hourly or salary rate at which it would have been earned if the employee were not on leave. The break in service provision of the retirement plans shall not affect an employee on military leave.

E. Reemployment. Employees on a leave of absence for uniformed service or training have varying time limits within which to report to work or apply for reemployment after service has ended, depending on the length of the period of service or training. For service of 30 days or less, employees must notify the city/BLW verbally or in writing of their intent to return to a position of employment no later than the first regularly scheduled work period on the first full calendar day after the service plus eight hours to return home. For service from 31 to 180 days, an application for reemployment must be filed within 14 days after completion of the service. For service for 181 days or more, an application for reemployment must be submitted not later than 90 days after completion of the service. All of these deadlines can be extended for up to two years if the individual is hospitalized or convalescing from a service-connected injury or illness. Such discharge from service must not be disqualifying and the employee must be physically and mentally capable of performing the essential functions of the work involved in his previous or similar position with or without a reasonable accommodation. An examination by an individual or entity appointed by the city BLW at city/BLW expense will be utilized to aid in determining fitness for duty and/or the ability to perform the essential functions of the position with or without a reasonable accommodation. An "application for reemployment" is defined as an employee notifying the Department of Human Resources verbally or in writing that he or she is returning from duty and seeks reemployment. For any period of service that exceeds 30 days, employees must also submit acceptable documentation that establishes a timely reemployment application, shows that the employee has not exceeded the five-year total time limit on the duration of service, and shows that the employee's separation or discharge from service was not disqualifying. Examples of acceptable documentation include the Department of Defense Form

214 (Certificate of Release or Discharge from Active Duty), military orders carrying an endorsement indicating completion of required service, or copies of payroll documents showing periods of service.

The city/BLW is not required to reinstate returning employees under the following conditions:

1. The city/BLW's circumstances have so changed as to make reemployment impossible or unreasonable;
2. 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 period;
3. The returning employee is no longer qualified (i.e., no longer has the ability to perform the essential functions of the position) despite the city/BLW's reasonable efforts to requalify such individual (including re-training) and reemployment would cause the city/BLW undue hardship;
4. The returning employee was not released from service under honorable conditions (see 38 U.S.C. Section 4304). NOTE: Reemployment rights are restored upon upgrade of discharge to service under honorable conditions.

F. Reemployment Rights.

All regular employees on military leave will retain a right to reemployment for up to five years of cumulative service, with exceptions listed in 38 U.S.C. Section 4312.

1. An employee who is called to active service for less than 90 days is entitled to:
 - a. Reemployment in the position in which the employee would have been employed if the continuous employment of such person with the city/BLW had not been interrupted by such service, the duties of which the person is qualified to perform; or
 - b. Reemployment in the position in which the employee was employed on the date of the commencement of the service in the uniformed services, but only if the employee is not qualified to perform the duties of the position referred to above after reasonable efforts by the city/BLW to qualify the employee.
2. An employee who is called to active service for more than 90 days is entitled to:
 - a. Reemployment in the position of employment in which the person would have been employed if the continuous employment of such person with the city/BLW had not been interrupted by such service, or a position of like seniority, status or pay, the duties of which the person is qualified to perform; or
 - b. Reemployment in the position in which the person was employed on the date of the commencement of the service in the uniformed services, or a position of like seniority, status, and pay, the duties of which the person is qualified to perform, only if the person is not qualified to perform the duties of a position referred to above after reasonable efforts by the city/BLW to qualify the person.

3. In the case of a person who has a disability incurred in, or aggravated during such service, and who, after reasonable efforts by the city/BLW to accommodate the disability, is not qualified due to such disability to be employed in the position of employment in which the person would have been employed, the employee is entitled to:

a. Reemployment in any other position which is equivalent in seniority, status and pay, the duties of which the employee is qualified to perform or would become qualified to perform with reasonable efforts by the city/BLW; or

b. Reemployment in a position which is the nearest approximation to a position referred to above in terms of seniority, status and pay consistent with circumstances of such person's case.

4. The employee will not be penalized for having been on duty and shall be entitled to the seniority and other rights and benefits determined by seniority that the employee had on the date of the commencement of service in the uniformed services plus the additional seniority and rights and benefits that such person would have attained if the person had remained continuously employed. The returning employee shall also be entitled to any increase in base salary accorded his position, excluding performance increases, which would normally be accorded to the incumbent in the position.

5. Reemployment will not be dependent upon the laying off of another person who was hired at an earlier date than the date of the person returning from military leave in the same or similar position.

6. The city/BLW will make reasonable efforts to refresh or update the skills of the returning employees from military leave by providing refresher training and any training the employee would have received if he or she would have remained on the job.

G. Paid Leaves of Absence.

1. All employees are entitled to leave of absence without loss of pay, leave benefits, or service time on all days which they are engaged in ordered military duty up to a maximum of 18 working days in any one federal fiscal year (October 1 – September 30). A shift of 12 hours or less constitutes one workday for the purposes of this policy. For fire personnel who work a 24-hour shift, a maximum of nine shifts or 216 hours will be allowable for paid military leave during any one federal fiscal year. In the event the Governor declares an emergency and orders any employee to ordered military duty as a member of the National Guard, any such employee, while performing such duty, shall be paid his salary or other compensation as an employee for a period not exceeding 30 days in any one federal fiscal year (October 1 – September 30).

2. Leaves of absence exceeding 18 working days (or 216 hours for fire personnel) in any one federal fiscal year shall be granted for assignment to duty functions of a military character, without pay, but not less in service time. For National Guard members who are ordered by the Governor to perform military duty for a declared emergency, leaves of absence exceeding 30 working days (or 360 hours for fire personnel) in any one federal fiscal year shall be granted, without pay, but not less in service time.

Section 2: It is hereby declared to be the intention of this Ordinance that its sections, paragraphs, sentences, clauses and phrases are severable, and if any section, paragraph, sentence, clause or phrase of this Ordinance is declared to be unconstitutional or invalid, it shall not affect any of the remaining sections, paragraphs, sentences, clauses or phrases of this Ordinance.

Section 3: All Ordinances or parts of Ordinances in conflict with this Ordinance are hereby repealed.

Section 4: This Ordinance shall take effect on October 14, 2015.

DATE: October 14, 2015 APPROVED: R. Steve Tumlin, Mayor
R. Steve Tumlin, Mayor

ATTEST: Stephanie Guy
Stephanie Guy, City Clerk

Approved as to form: Douglas R. Haynie
Douglas R. Haynie, City Attorney