

Uniformed Services Leave Frequently Asked Questions

Who is eligible for military leave pay and benefits?

King County employees are afforded certain rights and privileges related to uniformed service.

All employees called to active duty, active-duty training, or annual training receive:

- Up to 21 days paid uniformed services leave per military fiscal year (RCW 38.40.060).
- Re-employment rights under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).

Comprehensive leave eligible positions also receive: (STT and administrative intern positions are not eligible)

- Differential pay while called to active duty or active-duty training.
- Continued medical, dental, vision, and basic life insurance benefits.
- Continued accrual of sick and vacation leave.
- King County Code 3.12.260, 3.12.262.

What kind of notice must an employee give the County about their need for uniformed services leave?

Employees are required to give their employing county agency advance notice of their need for uniformed services leave unless giving such notice is prevented by military necessity or is otherwise impossible or unreasonable under all the circumstances. Written notice is preferable, though verbal notification is acceptable. Notice¹ should be provided as soon as reasonable under the circumstances. If feasible to do so, an employee should provide thirty days advance notice.

Does the agency need to obtain new orders/documentation when the days requested for annual training do not match the original training schedule the employee previously submitted, and the employee is eligible for paid leave or requesting differential pay?

Yes. Annual training days that do not match the original training schedule submitted require new orders or documentation that clearly documents the change in training days. This could be something as simple as a copy of the email from the military requesting the employee train on a certain day. Upload a copy of this documentation to the employee's file on SharePoint.

How often should an employee complete and submit the County's *Uniformed Services Leave Form*?

To receive pay or benefits under state law or the County code, an employee should submit a completed form when they initially submit their orders or training/drill schedules **and** every year before October 1st, which is the beginning of the military fiscal year.

If an employee is deployed and cannot be reached, can the employee's Power of Attorney (POA) or the agency's Military Leave Coordinator complete and sign the annual *Uniformed Services Leave form* on the employee's behalf?

¹ 20 CFR § 1002.86

Leave Administration Guideline I Uniformed Services FAQ



King County

DHR Leave Administration Team

The Power of Attorney may sign on the employee's behalf. For active duty leave, those receiving pay and/or benefits from the County must provide a signed/updated *Uniformed Services Leave* form at least annually.

In the event that the Agency's Military Leave Coordinator is unable to obtain an updated *Uniformed Services Leave* form while the employee is on active duty, the County will process the employee's elections for the current military fiscal year based on the employee's elections from the previous military fiscal year. If this rare situation occurs, the Agency's Military Leave Coordinator completes an updated *Uniformed Services Leave* form on the employee's behalf and attaches a copy of the form from the previous military fiscal year. Military Leave Coordinators or other King County employees cannot sign on behalf of the employee.

When does an employee released from uniformed services leave have to report back to work?²

It depends on how long the employee was on uniformed services leave. If deployed:

- **Less than 31 days:** By the beginning of the first regularly scheduled work period on the first full calendar day following the completion of the period of service, and after the expiration of eight hours for safe transportation. If this is impossible or unreasonable through no fault of the employee, then as soon as possible.
- **Between 31-180 days:** The employee must apply (written or verbal) for reemployment no later than 14 days after completion of military service. If this is impossible or unreasonable through no fault of the employee, then as soon as possible.
- **181 days or more:** The employee must apply (written or verbal) for reemployment no later than 90 days after completion of military service.

If the employee needs rest/sleep time beyond these report-back-to-work periods, the employee may request approval to use vacation, compensatory time, or other similar leave (except sick leave). These time periods may be extended for up to two years if the employee was hospitalized or is recovering from illness or injury incurred or aggravated by uniformed service. Additional time may be provided to accommodate circumstances beyond the employee's control that make reporting impossible or unreasonable³.

If the employee is on uniformed services leave for more than 30 days and did not provide uniformed services documentation when the leave commenced, the employee may be required to provide documentation to establish that (a) The reemployment application is timely; (b) The employee has not exceeded the five-year limit on the duration of service (subject to certain exceptions); and (c) the employee's separation or dismissal from service was not disqualifying. This documentation⁴ could include training/drill schedules or active-duty orders.

What type of position is provided to an employee on uniformed services leave upon reemployment?

As a general rule, the employee should be reemployed in the same position or a similar position. The

² 20 CFR § 1002.115

³ 20 CFR § 1002.116

⁴ 20 CFR § 1002.121



County is not required to hold the specific position vacant and may fill it while the employee is on uniformed services leave. However, if the employee seeks reemployment and a similar position is not available, the County may be required to lay off a newer employee to provide a position for the employee returning from uniformed service. The term “same position” may include reemployment in a job position they would have attained with reasonable certainty if not for the absence due to uniformed service.⁵

What if a former employee on the County’s layoff referral list is called into Uniform Service?

If a career service employee is laid off due to lack of work or funds and is involuntarily called up to uniformed service during the two year recall period, the County will place in abeyance the layoff referral rights for a period equal to the amount of time of uniformed service. However, the former employee must report to the layoff/recall coordinator within the following timeframes:

- **Less than 31 days:** If the uniformed services leave period is 30 days or less, the former employee must report to the layoff/recall coordinator the next business day after their discharge from uniformed service and inform the coordinator that they are available for referral.
- **Between 31 and 180 days:** If the uniformed services leave period is 31-180 days, the former employee must report to the layoff/recall coordinator within 14 days of discharge from uniformed service and inform the coordinator that they are available for referral.
- **181 days or more:** If the uniformed services leave period is more than 180 days, the former employee must report to the layoff/recall coordinator within 90 days of discharge from uniformed service and inform the coordinator that they are available for referral.

What benefits and rights are available under military leave?

USERRA: This federal law mainly provides reemployment rights. Uniformed services means the Armed Forces; 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. For purposes of USERRA coverage only, service as an intermittent disaster response appointee of the NDMS when federally activated or attending authorized training in support of their Federal mission is deemed “service in the uniformed services,” although such appointee is not a member of the “uniformed services” as defined by USERRA⁶. USERRA protections also cover FEMA reservists.

King County Code: KCC provides supplemental pay and access to benefits when called to active duty or active duty training. Eligibility is defined as an employee who is eligible for comprehensive leave benefits who volunteers or is ordered to serve active duty, active duty training or physical fitness determination in the United States Uniformed Services, which includes but is not limited to the Armed Services, the Washington National Guard and the United States Public Health Service Commissioned Corps and its reserve⁷. This also includes FEMA reservists.

⁵ 20 C.F.R. § 1002.191

⁶ 20 CFR § 1002.5

⁷ KCC 3.12.260; KCC 3.12.262



Washington State: State law provides up to 21 days of paid military leave per military fiscal year so that the employee may report for required military duty, training, or drills⁸. The employee must be a member of the Washington national guard or of the army, navy, air force, coast guard, or marine corps reserve of the United States, or of any organized reserve or armed forces of the United States.

What if the employee volunteered for training or active duty? Does the fact that an employee's uniformed service is voluntary make a difference when considering whether to approve the leave and/or provide uniformed services pay and benefits?

No. Voluntary uniformed services leave should be treated the same as involuntary uniformed services leave.

What kind of pay and benefits does an employee receive while on uniformed services leave?

To receive pay or benefits while on uniformed services leave, an employee must submit a completed *Uniformed Services Leave form* and active duty orders or training/drill schedules prior to their uniformed services leave provided by RCW 38.40.060, KCC 3.12.260, and KCC 3.12.262, which afford the following:

- Up to 21 days of paid Washington State military leave per military fiscal year (October 1 – September 30) per RCW 38.40.060
- Differential pay when on active duty uniformed services leaves per KCC 3.12.260
- Medical, dental, vision, and basic life insurance benefits after being on uniformed services leave for over 30 days per KCC 3.12.262
- Continued earning of vacation and sick leave accruals while on uniformed services leave per KCC 3.12.262, to include two personal holidays which will be added to the employee's vacation bank in the second full pay period of the calendar year each year
- Employees in Local 587 (part-time transit operators) and TEA-W2 unions are still required to pay for their portion of their benefits to maintain benefit coverage.
- An employee may elect to self-pay and continue the following:
 - Supplemental life insurance (up to 12 months)
 - Basic & supplemental accidental death and dismemberment (AD&D) (up to 12 months)
 - Basic & supplemental long-term disability (LTD) (up to 18 months)
 - Health flexible spending account (FSA) coverage (up to 24 months)

An employee may also want to ensure that all other important forms are updated. Examples include the W-4 form, the direct deposit form and contacting the Washington State Department of Retirement Systems (DRS) to ensure their retirement credits have been processed correctly.

Phone: 1-800-547-6657 Web: www.drs.wa.gov.

Can an employee use paid Washington State military leave (up to 21 days per military fiscal year) to travel to/from their training drills? For example, if an employee had to travel out of state to attend their training drills on Saturday/Sunday, can they take Friday/Monday off as travel days and be paid

⁸ RCW 38.40.060(1)

under state military leave?

Yes, the employee can be paid for their travel time to/from the training drills, if they are able to provide supporting documentation of the need to travel to/from the training location on a scheduled workday. The employee would need to provide a copy of their travel ticket to receive the paid uniformed services day and the documentation needs to be uploaded to the Military Leave SharePoint site.

Does an employee receive premium pays for paid Washington State military leave?

Yes, the employee would be paid the same amount as if they were working their scheduled shift, including premium pays such as longevity pay, firearm pay, shift differential pay, etc.

How does the County calculate the pay differential and how long is it paid?

Per KCC 3.12.260, if an employee eligible for comprehensive leave benefits has exhausted the 21 paid uniformed services days under state law and are called up to active duty or to receive active duty training, they may receive a differential paycheck from the County. Short-term temporary employees are not eligible for comprehensive leave benefits and are not eligible for differential pay. It is calculated by taking an employee's regular base rate of County pay less the amount of regular base rate of uniformed service pay. Premium pays are not included as differential pay is calculated strictly based on the employee's regular base rate of County pay.

In order to receive the differential pay, an employee must provide their uniformed services pay grade statement in addition to supporting documentation verifying uniformed service. An employee on uniformed services leave must also submit appropriate documentation during the military fiscal year when there are changes in their uniformed service pay. This calculation is performed in DHR's Central Payroll Operations.

How long is an employee eligible for uniformed services leave, leave accruals, and health insurance?

Per KCC 3.12.260 and KCC 3.12.260, for the period of time that an employee retains reemployment rights under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), which is generally up to five years, subject to certain exceptions provided under federal law. Short-term temporary employees are not eligible for these benefits under the County Code.

Can agencies enter unpaid military leave TRC codes on the employee's timesheet when an LOA HCM code is entered into the HCM system of PeopleSoft? Is this information accessible through queries?

We have confirmed with the Business Resource Center (BRC) that unpaid military time reporting codes can be entered onto employee timesheets even after an LOA row is entered. Since the time is unpaid, the hours will not be sent to payroll (to be paid) but are viewable on the timesheet and can be queried. It is important to enter unpaid time on the timesheet using the "day" view. If you try to use the "pay period view" or "weekly view", you may be unable to enter unpaid military TRC codes onto the timesheet.

If you are having trouble entering TRC codes on the employee's timesheet, it's likely due to a mid-pay

Leave Administration Guideline | Uniformed Services FAQ

DHR Leave Administration Team



period change to the employee's HCM status. When the employee switches status mid-pay period (i.e., paid to unpaid) the remainder of that pay period might appear to be gray or not available for time entry. To enter the unpaid time, you may need to use the "day" view on the timesheet.

What happens if someone initially provides verbal notice and does not want military pay/benefits?

Benefits for military leave begin from the first day of military leave. If this rare situation occurs, please contact Brian Czerwinski and your central payroll representative. Verbal orders should still be tracked in the employees' file under the "comments" section on SharePoint.

How is the Washington State military leave (up to 21 days per military fiscal year) calculated for employees that are scheduled to work a shift that begins and ends on different calendar days?

If the employee is scheduled to work a shift that begins on one calendar day and ends on the next calendar day, the employee shall be charged only a single day of military leave (the first calendar day) even though the shift expands two calendar days. If the employee is scheduled to work a shift that begins on one calendar day and ends later than the next calendar day (rare occurrence), the employee shall be charged military leave for each calendar day except the calendar day on which the shift ends. This change became effective on June 7, 2018. From a payroll standpoint, departments would still code all hours as military pay but would need to separately track the number of days used for the up to 21-days of annual Washington State paid military leave.

Can an agency require the employee to complete their initial probation period upon return from military service?

Yes. Agencies can require employees to complete their probationary period.

Can an employee elect to use King County paid accruals (i.e., vacation) on days that they are already receiving pay from King County for the 21-days of annual military leave required by Washington State law?

No. Employees cannot receive additional pay from King County when they are already receiving pay for the 21-days of annual military leave.

When an employee is on active duty and receiving supplemental military pay from King County can they also request to use their King County paid accruals (i.e., vacation) on the same day?

No. The employee may choose to be paid for one or the other but cannot receive both types of King County pay for the same day.

Can an employee on inactive duty training use their King County paid accruals on the same day they are receiving pay from the military?

Yes, after the employee has exhausted their leave provided by Washington State law (21-days). Although the employee is receiving pay from the military, the employee is permitted to use their King County paid accruals (other than sick leave) while on inactive military leave. This assumes that the employee has already exhausted the 21-days of paid military leave that is required by Washington State law.

Leave Administration Guideline I Uniformed Services FAQ



King County

DHR Leave Administration Team

Can an employee who is on active duty leave and who is eligible for the military supplemental pay decline to receive their supplemental pay and instead use their own King County paid accruals?

No. If the employee has provided documentation substantiating eligibility for King County supplemental military leave pay, the employee may not elect to decline the supplemental pay. This assumes that the employee has already exhausted the 21-days of paid military leave that is required by Washington State law.

What happens to an employee's pay during the re-employment period upon returning from active duty?

An employee may choose to use their available King County paid accruals (other than sick leave) during their re-employment period or may choose to go into an unpaid status. The re-employment period is part of USERRA so there is no need to complete a Leave of Absence Without Pay (LWOP) form.

What happens to an employee's medical benefits during the re-employment period upon returning from active duty?

Employee's returning from active duty will continue to receive the same medical benefits (medical, dental, vision, basic life) that they received from King County during deployment through the end of their USERRA re-employment period.

Does time spent on active or inactive military leave count toward the six month return to work period for employees that used paid parental leave?

If an employee is deployed during their required six-months of continued service following their PPL, their six-month "clock" stops and then continues once they return from deployment. This is different from other employment situations where the entire six-month clock would start over from the beginning.

How should an employee be coded once they have returned from active duty and are exercising their re-employment rights (up to 90 calendar days depending upon length of deployment)?

Employees should choose at the beginning of their re-employment period and choose whether or not they want to use available paid accruals. As stated above, employees in the reemployment period maintain the same level of benefits they had during active deployment and can choose to use their own paid accruals but if they do not then they are in an unpaid status.

- Employee using paid accruals: TRCs: Vacation – 200, Sick Leave – 300 (rarely available)
- Employee not using paid accruals: TRC 450 - Unpaid military leave
- Action/Reason: PLA/MTW – This is the best code to use whether or not the employee is using paid accruals. This is in order to maintain medical benefits.

Who should I contact if I have additional questions regarding Uniformed Services Leave?

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