CIVIL SERVICE COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

LONDON N. BREED
MAYOR

Sent via Electronic Mail

April 4, 2024

NOTICE OF CIVIL SERVICE COMMISSION MEETING

SUBJECT: PROPOSED AMENDMENTS TO RULE SERIES 020 LEAVES OF ABSENCE.

The above matter will be considered by the Civil Service Commission at a hybrid meeting (in-person and virtual) in Room 400, City Hall, 1 Dr. Goodlett Place, San Francisco, California 94102 and through Cisco WebEx to be held on **April 15, 2024, at 2:00 p.m.**

This item will appear on the Regular Agenda. Please refer to the attached notice for procedural and other information about Commission hearings.

Attendance by you or an authorized representative is recommended. Should you or your representative not attend, the Commission will rule on the information previously submitted and testimony provided at its meeting. All calendared items will be heard and resolved at this time unless good reasons are presented for a continuance.

CIVIL SERVICE COMMISSION

SANDRA ENG
Executive Office

Attachments

Cc: All Departments
All Unions
Commission File
Commissioners' Binder
Chron

NOTICE OF COMMISSION HEARING POLICIES AND PROCEDURES

A. Commission Office

The Civil Service Commission office is located at, 25 Van Ness Avenue, Suite 720, San Francisco, CA 94102. The telephone number is (628) 652-1100. The fax number is (628) 652-1109. The email address is civilservice@sfgov.org and the web address is www.sfgov.org/civilservice/. Office hours are from 8:00 a.m. to 5:00 p.m., Monday through Friday.

B. Policy Requiring Written Reports

It is the policy of the Civil Service Commission that except for appeals filed under Civil Service Commission Rule 111A Position-Based Testing, all items appearing on its agenda be supported by a written report prepared by Commission or departmental staff. All documents referred to in any Agenda Document are posted adjacent to the Agenda, or if more than one (1) page in length, available for public inspection and copying at the Civil Service Commission office. Reports from City and County personnel supporting agenda items are submitted in accordance with the procedures established by the Executive Officer. Reports not submitted according to procedures, in the format and quantity required, and by the deadline, will not be calendared.

C. Policy on Written Submissions by Appellants

All written material submitted by appellants to be considered by the Commission in support of an agenda item shall be submitted to the Commission office, no later than 5:00 p.m. on the fourth (4^{th}) business day preceding the Commission meeting for which the item is calendared (ordinarily, on Tuesday). An original copy on 8 1/2-inch X 11 inch paper, three-hole punched on left margin, and page numbered in the bottom center margin, shall be provided. Written material submitted for the Commission's review becomes part of a public record and shall be open for public inspection.

D. Policy on Materials being Considered by the Commission

Copies of all staff reports and materials being considered by the Civil Service Commission are available for public view 72 hours prior to the Civil Service Commission meeting on the Civil Service Commission's website at https://sf.gov/civilservice and in its office located at 25 Van Ness Avenue, Suite 720, San Francisco, CA 94102. If any materials related to an item on this agenda have been distributed to the Civil Service Commission after distribution of the agenda packet, those materials will be available for public inspection at the Civil Service Commission's during normal office hours (8:00 a.m. to 5:00 p.m. Monday through Friday).

E. Policy and Procedure for Hearings to be Scheduled after 5:00 p.m. and Requests for Postponement

A request to hear an item after 5:00 p.m. should be directed to the Executive Officer as soon as possible following the receipt of notification of an upcoming hearing. Requests may be made by telephone at (628) 652-1100 and confirmed in writing or by fax at (628) 652-1109.

A request for a postponement (continuance) to delay an item to another meeting may be directed to the Commission Executive Officer by telephone or in writing. Before acting, the Executive Officer may refer certain requests to another City official for recommendation. Telephone requests must be confirmed in writing prior to the meeting. Immediately following the "Announcement of Changes" portion of the agenda at the beginning of the meeting, the Commission will consider a request for a postponement that has been previously denied. Appeals filed under Civil Service Commission Rule 111A Position-Based Testing shall be considered on the date it is calendared for hearing except under extraordinary circumstances and upon mutual agreement between the appellant and the Department of Human Resources.

F. Policy and Procedure on Hearing Items Out of Order

Requests to hear items out of order are to be directed to the Commission President at the beginning of the agenda. The President will rule on each request. Such requests may be granted with mutual agreement among the affected parties.

G. Procedure for Commission Hearings

All Commission hearings on disputed matters shall conform to the following procedures: The Commission reserves the right to question each party during its presentation and, in its discretion, to modify any time allocations and requirements.

If a matter is severed from the *Consent Agenda* or the *Ratification Agenda*, presentation by the opponent will be for a maximum time limit of five (5) minutes and response by the departmental representative for a maximum time limit of five (5) minutes. Requests by the public to sever items from the [*Consent Agenda* or] *Ratification Agenda* must be provided with justification for the record.

For items on the *Regular Agenda*, presentation by the departmental representative for a maximum time of five (5) minutes and response by the opponent for a maximum time limit of five (5) minutes.
For items on the *Separations Agenda*, presentation by the department followed by the employee or employee's representative shall be for a maximum time limit of ten (10) minutes for each party unless extended by the Commission.
Each presentation shall conform to the following:

1. Opening summary of case (brief overview);
2. Discussion of evidence;
3. Corroborating witnesses, if necessary; and
4. Closing remarks.

The Commission may allocate five (5) minutes for each side to rebut evidence presented by the other side.

H. Policy on Audio Recording of Commission Meetings

As provided in the San Francisco Sunshine Ordinance, all Commission meetings are audio recorded in digital form. These audio recordings of open sessions are available starting on the day after the Commission meeting on the Civil Service Commission website at www.sfgov.org/civilservice/.

I. Speaking before the Civil Service Commission

Speaker cards are not required. The Commission will take in-person public comment on all items appearing on the agenda at the time the item is heard. The Commission will take public comment on matters not on the Agenda, but within the jurisdiction of the Commission during the "Requests to Speak" portion of the regular meeting. Maximum time will be three (3) minutes. A subsequent comment after the three (3) minute period is limited to one (1) minute. The timer shall be in operation during public comment. Upon any specific request by a Commissioner, time may be extended. People who have received an accommodation due to a disability (as described below) may provide their public comments remotely. The Commission will also allow public comment from members of the public who choose to participate remotely. It is possible that the Commission may experience technical challenges that interfere with the ability of members of the public to participate in the meeting remotely. If that happens, the Commission will attempt to correct the problem, but may continue the hearing so long as people attending in-person are able to observe and offer public comment.

J. Public Comment and Due Process

During general public comment, members of the public sometimes wish to address the Civil Service Commission regarding matters that may come before the Commission in its capacity as an adjudicative body. The Commission does not restrict this use of general public comment. To protect the due process rights of parties to its adjudicative proceedings, however, the Commission will not consider, in connection with any adjudicative proceeding, statements made during general public comment. If members of the public have information that they believe to be relevant to a mater that will come before the Commission in its adjudicative capacity, they may wish to address the Commission during the public comment portion of that adjudicative proceeding. The Commission will not consider public comment in connection with an adjudicative proceeding without providing the parties an opportunity to respond.

K. Policy on use of Cell Phones, Pagers and Similar Sound-Producing Electronic Devices at and During Public Meetings

The ringing and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices.

Information on Disability Access

The Civil Service Commission normally meets in Room 400 (Fourth Floor) City Hall, 1 Dr. Carlton B. Goodlett Place. However, meetings not held in this room are conducted in the Civic Center area. City Hall is wheelchair accessible. The closest accessible BART station is the Civic Center, located 2 ½ blocks from City Hall. Accessible MUNI lines serving City Hall are 47 Van Ness Avenue, 9 San Bruno and 71 Haight/Noriega, as well as the METRO stations at Van Ness and Market and at Civic Center. For more information about MUNI accessible services, call (415) 923-6142. Accessible curbside parking has been designated at points in the vicinity of City Hall adjacent to Grove Street and Van Ness Avenue.

The following services are available on request 48 hours prior to the meeting; except for Monday meetings, for which the deadline shall be 4:00 p.m. of the last business day of the preceding week. For American Sign Language interpreters or the use of a reader during a meeting, a sound enhancement system, and/or alternative formats of the agenda and minutes, please contact the Commission office to make arrangements for the accommodation. Late requests will be honored, if possible.

Individuals with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities should call our ADA coordinator at (628) 652-1100 or email civilservice @sfgov.org to discuss meeting accessibility. In order to assist the City's efforts to accommodate such people, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City to accommodate these individuals.

Know your Rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code)

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils, and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, or to obtain a free copy of the Sunshine Ordinance, contact Victor Young, Administrator of the Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102-4689 at (415) 554-7724, by fax: (415) 554-7854, by e-mail: sotf@sfgov.org, or on the City's website at www.sfgov.org/bdsupvrs/sunshine.

San Francisco Lobbyist Ordinance

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance (San Francisco Campaign and Governmental Conduct Code Section 2.100) to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the San Francisco Ethics Commission at 25 Van Ness Ave., Suite 220, San Francisco, CA 94102, telephone (415) 252-3100, fax (415) 252-3112 and web site https://sfethics.org/.

CIVIL SERVICE COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

LONDON N. BREED
MAYOR

Date: April 15, 2024

To: Civil Service Commission

From: Sandra Eng, Executive Officer

Subject: Proposed Amendments to Civil Service Commission Rule Series 020 Leaves of Absence

Authority

Charter Section 10.101 General Powers and Duties states in part,

"…Changes to the rules may be proposed by members of the Commission, the Executive Assistant or the Human Resources Director and approved or rejected by the Commission. The Commission may, upon ten days' notice, make changes in the rules, which changes shall thereupon be printed and be in force; provided that no such changes in rules shall affect a case pending before the Commission…"

Civil Service Commission Rule Series 001.5 Amendment of Rules states,

"The Commission may at any time amend these Rules. Any such proposed amendment shall be posted for a minimum of ten (10) consecutive calendar days prior to adoption. Upon adoption, changes in the Rules shall be in effect and shall be printed. No change in the Rules shall affect a case pending before the Civil Service Commission."

Proposed Amendments to Rule Series 020 Leaves of Absence

Due to updates and a review of the state and federal laws, the Civil Service Commission must amend Rule Series 020 Leaves of Absence to align with the laws. With the recommendation from the Assistant Director of Employee Leave Program, Janie White, the proposed rule amendments (Attachment A) will align with the following laws:

California Bereavement Leave Law Effective January 1, 2023	Cal. Government Code § 12945.7 (Attachment B)
California Reproductive Loss Leave Law Effective January 1, 2024	Cal. Government Code § 12945.6 (Attachment C)
Military Leave, Pay, and Return to Work	The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) (Attachment D) 38 United State Code sections 4301–4334 20 Code of Federal Regulations Part 1002 California Military and Veterans Code sections 389 – 395.10 (Attachment E)

Recommendation:

Accept the Executive Officer's staff report; incorporate any changes made by the Civil Service Commission; and direct the Executive Officer to post the proposed revisions to Civil Service Rules Series 020 Leaves of Absence in accordance with the Charter and Civil Service Rules for adoption following meet and discuss with the affected labor unions and interested stakeholders.

ATTACHMENT A

Rule 120
Leaves of Absence

Applicability: Rule 120 shall apply to officers and employees in all classes, except the Uniformed Ranks of the Police and Fire Departments and MTA Service-Critical classes; or as noted or as specifically excluded, or except as may be superseded by a collective bargaining agreement for those employees subject to Charter Section A8.409. However, all definitions in Rule 120 are applicable to employees in all classes; excluding only the Uniformed Ranks of the Police and Fire Departments and the MTA Service-Critical classes as covered in Volumes II, III and IV.

Rule 120
Leaves of Absence

Article I: Leaves of Absence - General Requirements

Applicability: Rule 120 shall apply to officers and employees in all classes, except the Uniformed Ranks of the Police and Fire Departments and MTA Service-Critical classes; or as noted or as specifically excluded, or except as may be superseded by a collective bargaining agreement for those employees subject to Charter Section A8.409. However, all definitions in Rule 120 are applicable to employees in all classes; excluding only the Uniformed Ranks of the Police and Fire Departments and the MTA Service-Critical classes as covered in Volumes II, III and IV.

Sec. 120.1 Leaves of Absence - General Requirements

120.1.1 Leaves of absence, hereinafter referred to in this Rule as "leave," shall be governed by the provisions of this Rule. For the purpose of this Rule, "appointing officer" shall mean all elected officials; all department heads designated by the Charter as appointing officers; and all Boards and Commissions when officiating as appointing officers.

120.1.2 Requests for leave shall be subject to the approval of the appointing officer or designee. The decision of the appointing officer or designee is final unless provision for appeal is specifically granted in this Rule. Such requests for appeal shall be processed in accordance with the appeal procedure provided in this Rule. Requests for military, maternity, or witness or jury duty leave shall be granted as provided herein.

120.1.3 Beginning January 1, 2016, amendments to California Labor Code Section 233 (Kin Care Law) authorize employees to use available accrued sick leave each calendar year to care for a “family member”, or themselves, in an amount equal to one-half of their annual accrual. Under the Kin Care Law, available accrued sick leave must be granted upon the employee’s oral or written request and the employer shall not deny the right to take such leave, or impose conditions for granting such leave, including the requirement of medical certification.

120.1.4 Except for vacation leave, witness or jury duty leave, compulsory sick leave, disability leave or unpaid administrative leave, an employee requesting a leave for more than five (5) working days shall submit such request to the appointing officer or designee on the form prescribed by the Human Resources Director. Requests for sick leave in excess of five (5) continuous working days shall be certified by a licensed medical doctor, doctor of dental surgery, doctor of podiatric medicine, licensed clinical psychologist, Christian Science Practitioner or licensed doctor of chiropractic. Verification of sick leave with pay for less than five (5)

Sec. 120.1 Leaves of Absence - General Requirements (cont.)

120.1.4 cont.

working days (seven (7) calendar days in the case of part-time employees) as provided elsewhere in this Rule shall be required on an individual basis only and shall be based upon an evaluation of an employee's leave use. For employees taking sick leave pursuant to Administrative Code Chapter 12W, Labor Code Sections 245-249 or Labor Code 233, the City may take reasonable measures to verify or document that an employee's use of sick leave is taken in accordance with Administrative Code Chapter 12W, Labor Code Sections 245-249 or Labor Code Section 233.

120.1.5 The Human Resources Director may direct that leave requests be retained in the department and maintained in a manner so as to be readily available for audit, review or analysis by Department of Human Resources and Office of Labor Standards Enforcement staff.

120.1.6 Except as otherwise provided in these Rules, leave granted for the period stated on the prescribed form may be extended or abridged only with the approval of the appointing officer or designee. An employee who does not return to work on the approved date shall be deemed as away without official leave and shall be subject to automatic resignation as provided elsewhere in these Rules.

120.1.7 Except when an employee requesting sick leave has accumulated unused sick leave with pay credits and except for employees eligible for military leave with pay, organ or bone marrow donor leave with pay, witness or jury duty leave, disability leave or leave due to battery as provided elsewhere in this Rule, or for authorized holiday or vacation, leaves shall be without pay.

120.1.8 Refer to the Probationary Period Rule on leave during the probationary period.

120.1.9 Exempt employees shall be granted paid sick leave on the ninetieth (90^{th}) day of service. The decision of the appointing officer shall be final and not subject to appeal.

120.1.10 An appointee shall not be required to sign a resignation form as a condition of approval of a leave.

120.1.11 Leaves granted under this Rule shall be indicated on time rolls as designated by the Controller.

120.1.12 An authorized leave granted under this Rule shall not be considered as a break in the continuous service of an employee.

Rule 120
Leaves of Absence

Article II: Sick Leave - General Provisions

Applicability: Rule 120 shall apply to officers and employees in all classes, except the Uniformed Ranks of the Police and Fire Departments and MTA Service-Critical classes; or as noted or as specifically excluded, or except as may be superseded by a collective bargaining agreement for those employees subject to Charter Section A8.409. However, all definitions in Rule 120 are applicable to employees in all classes; excluding only the Uniformed Ranks of the Police and Fire Departments and the MTA Service-Critical classes as covered in Volumes II, III and IV.

Sec. 120.2 Eligibility for Sick Leave

Subject to the provisions of this Rule, employees and officers (hereinafter called "employees") who are absent from their duties due to their own illness or disability, or that of a qualifying family member, including preventive care, such as medical or dental appointments, and employees who are victims of domestic violence, sexual assault or stalking, are eligible for sick leave.

Sec. 120.3 Sick Leave - Exclusions from Eligibility

This Rule shall not apply to certificated employees of the School Districts, employees under personal services contracts, elective officers, and members of Boards and Commissions.

Sec. 120.4 Verification of Sick Leave

120.4.1 The appointing officer or designee to whom application for sick leave is made may make such independent investigation as to the necessity for sick leave as is deemed proper under these rules and federal, state and local law and may require certification for any period of sick leave, provided that the employee has been previously notified in writing that such certification for absence of less than five (5) working days shall be required. For employees taking sick leave pursuant to Administrative Code Chapter 12W, Labor Code Sections 245-249 or Labor Code Section 233, the City may take reasonable measures to verify or document that an employee's use of sick leave is taken in accordance with Administrative Code Chapter 12W, Labor Code Sections 245-249 or Labor Code Section 233.

120.4.2 The Human Resources Director may at any time make such independent investigation as may be deemed proper regarding the illness of any person on sick leave.

Sec. 120.5 Retirement Automatically Terminates Sick Leave

Sick leave shall automatically terminate on the effective date of an employee's retirement.

Sec. 120.6 Abridgment of Sick Leave

Sick leaves granted in excess of five (5) working days may be abridged if the employee presents to the appointing officer or designee medical evidence of capability to resume all the duties of the position.

Sec. 120.7 Definition of Sick Leave

A leave granted under this Rule for one of the following reasons shall be known as "sick leave":

120.7.1 Sick Leave - Medical Reasons

Absence for diagnosis, care or treatment of a health condition, including alcoholism, or preventive care, and for employees who are victims of domestic violence, sexual assault or stalking, but excluding illness or injury arising out of and in the course of City and County employment; Absence due to illness or injury arising out of and in the course of employment is administered either under the Rules of the Retirement Board and is referred to as "disability leave" and may be supplemented as provided elsewhere in this Rule or under the provisions of this Rule and the Administrative Code for those employees injured by battery ("leave due to battery.

120.7.2 Sick Leave - Quarantine

Absence during a period of quarantine established and declared by the Department of Public Health or other authority.

120.7.3 Sick Leave - Bereavement

Absence because of the death of the employee's spouse or domestic partner, parents, ~~step parents~~stepparents, grandparents, parents-in-law or parents of a domestic partner, sibling, child, ~~step child~~stepchild, adopted child, grandchild, a child for whom the employee has parenting responsibilities, aunt or uncle, legal guardian, or any person who is permanently residing in the household of the employee. Such leave shall not exceed ~~three (3)~~five (5) working days and shall be taken within ~~thirty (30) calendar days~~three (3) months after the date of death~~; however, two (2) additional working days shall be granted in conjunction~~

Sec. 120.7 Definition of Sick Leave (cont.)

120.7.3 Sick Leave – Bereavement (cont.)

~~with the bereavement leave if travel outside the State of California is required as a result of the death.~~

For absence because of the death of any other person to whom the employee may be reasonably deemed to owe respect; leave shall be for not more than one (1) working day; however, two (2) additional working days shall be granted if travel outside the State of California is required as a result of the person's death.

The appointing officer or designee to whom a request for bereavement leave under this rule is made may request verification of a qualifying family member's death within 30 days of the first day of the employee's leave, as authorized by California Government Code section 12945.7(f).

120.7.4 Sick Leave – Reproductive Loss

Absence because of the failure to achieve successful completion of an act that would have resulted in the employee becoming a parent by the birth, placement, or adoption of a child. Qualifying reproductive losses include failed adoption, failed surrogacy, miscarriage, stillbirth, and unsuccessful assisted reproduction, such as intrauterine insemination, embryo transfer, or other assisted reproductive technology. Such leave shall not exceed five (5) working days and shall be taken within three (3) months after the qualifying reproductive loss. Paid sick leave granted for this purpose shall not exceed 20 workdays within a rolling 12-month period.

120.7.~~4~~5 Sick Leave - Maternity

Absence due to the employee's pregnancy or convalescent period following childbirth. Such leave shall not exceed six (6) months provided that such leave may be extended for permanent employees if a physician certifies that a longer convalescence period is required. Such extensions shall be subject to the provisions of this Rule governing sick leave without pay.

~~120.7.5~~ 120.7.6 Sick Leave - Parental Leave

Absence due to the birth of a child to the employee, the employee's spouse, or the employee's domestic partner or assumption by the employee of parenting or child rearing responsibilities either by adoption or foster care.

120.7.~~6~~7 Sick Leave - Illness or Medical Appointment of a Family Member

Absence for diagnosis, care or treatment of a health condition or injury, or for preventive care for an employee's family member, defined as follows:

1. A child, which for the purposes of this section means a biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis. This definition of a child is applicable regardless of age or dependency status.
2. A biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child.
3. A spouse.
4. A registered domestic partner.
5. A grandparent.
6. A grandchild.
7. A sibling.

120.7.~~7~~8 Sick Leave Pursuant to Administrative Code Chapter 12W

1) Absence due to the illness, injury, medical care, treatment, diagnosis or medical appointment of the employee; employee's child; parent; legal guardian or ward; sibling; grandparent; grandchild; and spouse, registered domestic partner under any state law, or "designated person." The aforementioned child, parent, sibling, grandparent, and grandchild relationships include not only biological relationships but also relationships resulting from adoption; step-relationships; and foster care relationships. "Child" includes a child of a domestic partner and a child of a person standing in loco parentis.

2) For the purpose of this section, the definition of "designated person" is: one person designated by an employee who has no spouse or registered domestic partner, as the person for whom the employee may use paid sick leave to aid or care for under this section. The opportunity to make such a designation shall be extended to the employee no later than the date on which the employee has worked thirty (30) hours after paid sick leave begins to accrue. There shall be a window of ten (10) business days for the employee to make this designation. Thereafter, the opportunity to make such a designation, including the opportunity to change such a designation previously made, shall be extended to the employee on an annual basis, with a window of ten (10) business days for the employee to make the designation.

120.7.~~8~~9 Sick Leave Pursuant to Labor Code Sections 245-249

Absence for the following purposes: (1) diagnosis, care, or treatment of an existing health condition of, or preventive care for an employee or an employee's family member; or (2) for an employee who is a victim of domestic violence, sexual assault, or stalking, described in Labor Code Section 230, subdivision (c) and Labor Code Section 230.1, subdivision (a).

120.7.~~9~~10 Sick Leave - Compulsory

Leave imposed by an appointing officer due to an employee's medical inability or incapacity to perform all the duties of the position as provided elsewhere in this Rule.

Rule 120
Leaves of Absence

Article III: Sick Leave with Pay

Applicability: Rule 120 shall apply to officers and employees in all classes, except the Uniformed Ranks of the Police and Fire Departments and MTA Service-Critical classes; or as noted or as specifically excluded, or except as may be superseded by a collective bargaining agreement for those employees subject to Charter Section A8.409. However, all definitions in Rule 120 are applicable to employees in all classes; excluding only the Uniformed Ranks of the Police and Fire Departments and the MTA Service-Critical classes as covered in Volumes II, III and IV.

Sec. 120.8 Sick Leave with Pay Eligibility

120.8.1 Sick leave with pay may be granted to employees who have accrued paid sick leave on the ninetieth (90th) day of service, except that supplemental disability credits may be used to supplement disability indemnity payments as provided elsewhere in this Rule regardless of length of service and except that an authorized leave of absence with or without pay granted under this Rule shall not be considered as a break in the continuous service of an employee.

120.8.2 A break in service of more than twelve (12) continuous months by any employee other than an employee designated as a "holdover" will cause prior accumulated sick leave with pay credits to be canceled and eligibility for sick leave with pay must be re-established.

120.8.3 Sick leave with pay credits will continue to accrue at the normal rate while an employee is on either furlough or voluntary unpaid time off in accordance with this Rule, for a maximum of up to ten (10) days per fiscal year for imposed furlough or twenty (20) days per fiscal year for voluntary unpaid time off.

Sec. 120.9 Sick Leave with Pay Eligibility Pursuant to Administrative Code Chapter 12W effective February 5, 2007, and Labor Code Sections 245-249 effective July 1, 2015 Applicable to Employees Not Otherwise Qualified for Sick Leave

120.9.1 Sick leave with pay may be granted to said ~~employees,~~employees on the ninetieth (90th) day of service.

Sec. 120.9 Sick Leave with Pay Eligibility Pursuant to Administrative Code Chapter 12W effective February 5, 2007, and Labor Code Sections 245-249 effective July 1, 2015 Applicable to Employees Not Otherwise Qualified for Sick Leave (cont.)

120.9.2 Employees hired on or before February 5, 2007, shall immediately be eligible to accrue and use sick leave with pay credits under this section.

120.9.3 A complete separation in service for twelve (12) continuous months by an employee, other than an employee designated as a "holdover" will cause prior accumulated sick leave with pay credits to be cancelled and eligibility for sick leave with pay must be re-established.

120.9.4 Employees rehired within one (1) year following a separation will not be subject to the ninety (90) calendar day eligibility period and any previously accrued and unused sick leave hours will be reinstated.

Sec. 120.10 Sick Leave with Pay - Maximum Accumulation of Credits

120.10.1 Sick Leave with Pay – Maximum Accumulation of Credits

Sick leave with pay credits shall be cumulative but the accumulated balance of unused sick leave with pay credits for other employees, the hourly equivalent of 130 working days based on the regular daily work schedule as defined, provided that in no case may the total accumulated unused sick leave with pay credit balance exceed l,040 hours. Maximum accumulated sick leave with pay credits shall be reduced proportionately for employees entering a class or position where the regular work schedule is less than the class exiting if such employees have accumulated unused sick leave with pay credits in excess of the maximum allowable for the new class or position. Such employees shall have all such credits restored upon return to a class or position with an increased regular work schedule.

120.10.2 Maximum Accumulation of Credits Pursuant to Administrative Code Chapter 12W effective February 5, 2007, and Labor Code Sections 245-249 effective July 1, 2015 Applicable to Employees Not Otherwise Qualified for Sick Leave

Sick leave with pay credits shall be cumulative but the accumulated balance of unused sick leave with pay credits shall not exceed seventy-two (72) hours under Administrative Code chapter 12W, and forty-eight (48) hours under Labor Code Sections 245-249.

Sec. 120.11 Sick Leave with Pay - Restrictions

120.11.1 Sick leave with pay, beyond that authorized by law, is a privilege recognized by Charter and by Ordinance of the Board of Supervisors and should be requested and granted only in cases of absence because of illness which incapacitates the employee for the performance of duties or as otherwise defined in this Rule.

120.11.2 Except for absences covered under Labor Code Section 233,an appointing officer or designee may require proof of incapacitation before granting sick leave with pay for any period of time and may withhold pay for failure to submit such proof provided that the employee had been previously notified in writing that such proof would be required for absences of less than five (5) working days.

120.11.3 The rate of earning and accumulating sick leave with pay credits and authorization for its use under this Rule shall in no way inhibit or restrict the right of an appointing officer to establish standards of attendance.

Sec. 120.12 Prohibition Against Employment While on Sick Leave with Pay

120.12.1 Employees are prohibited from working in any other employment while on sick leave with pay unless, after considering the medical reason for the sick leave with pay, the appointing officer with the approval of the Human Resources Director, grants permission for the employee to engage in a secondary employment subject to the provisions of these Rules governing such employment.

120.12.2 Violators of this section are subject to disciplinary action as provided in the Charter.

Sec. 120.13 Calculation of Sick Leave with Pay Credits

120.13.1 Unless otherwise provided in this Rule or by ordinance, sick leave with pay credits shall be earned at the rate of .05 hours for each hour of regularly scheduled paid service excluding, overtime exceeding forty (40) hours per week and holiday pay, except that an employee on disability leave shall earn sick leave with pay credits at the normal rate.

120.13.2 Exempt employees shall accrue paid sick leave at a rate of one (1) hour per every thirty (30) hours worked, excluding holiday pay.

120.13.3 When provided in a Memorandum of Understanding, Class 2320 Registered Nurses who are regularly scheduled to work two (2) twelve (12) hour shifts every weekend in the pilot project shall earn sick leave

Sec. 120.13 Calculation of Sick Leave with Pay Credits (cont.)

120.13.3 (cont.)

with pay credits at the rate of .075 hours for each hour of regularly scheduled paid service actually worked during her/his regularly scheduled twelve hour shifts. This Rule shall apply only to those 2320 Registered Nurses who are regularly scheduled to work two 12 hour shifts on weekends in the San Francisco General Hospital Pilot Project.

Sec. 120.14 Disbursement of Sick Leave with Pay Credits

120.14.1 Sick leave with pay credits shall be used and deducted at the minimum rate in units of one hour for those employees whose credits are calculated in hours.

120.14.2 When provided in a Memorandum of Understanding, Class 2320 Registered Nurses who are regularly scheduled to work two (2) twelve (12) hour shifts every weekend in the pilot project, and who use sick leave during any portion of such shifts, shall be entitled to use and deduct sick leave with pay credits at the rate of 1.5 hours for each hour of such sick leave, e.g., sick leave for four (4) hours of a shift = six (6) hours sick leave with pay. The benefits of this Rule shall be available only to a 2320 Registered Nurse who is regularly scheduled to work two (2) twelve (12) hour shifts on weekends in the San Francisco General Hospital Pilot Project, and who is required to use sick leave during some of all of her/his regularly scheduled twelve (12) hour shifts on weekends during the pilot project.

Sec. 120.15 Conversion of Sick Leave with Pay Credits from Days to Hours

Sick leave with pay credit balances shall be converted from days to hours based on the equivalent number of hours in such employee's sick leave with pay credit balances. The equivalent number of hours shall be based on the employee's authorized normal daily work schedule in effect on the effective date of this amended Rule, except if the Human Resources Director determines that such conversion is inequitable and allows another formula to be used.

Sec. 120.16 Employees Injured by Battery

120.16.1 An employee absent because of bodily injury or illness received in the course of employment and caused by an act of criminal violence shall be entitled to sick leave with pay under the provisions of the Administrative Code.

120.16.2 Sick leave with pay under this section shall be known as "leave due to battery" and shall be subject to approval by the Human Resources

Sec. 120.16 Employees Injured by Battery (cont.)

120.16.2 (cont.)

Director. The Human Resources Director shall make such investigation as is deemed appropriate and may include medical examinations by a physician(s) designated by the Human Resources Director.

120.16.3 The decision of the Human Resources Director may be appealed to the Commission whose decision is final.

120.16.4 Authorized sick leave under this section shall not be charged against earned sick leave with pay credits.

Sec. 120.17 Appeal of Denial of Sick Leave with Pay

Denial of sick leave with pay to an appointee who is eligible and qualified for such leave is appealable as provided elsewhere in this Rule.

Sec. 120.18 Reimbursement of Vested and Unused Accumulated Sick Leave with Pay Credits Balance

120.18.1 An employee who had accumulated unused sick leave with pay credits and who had completed the service requirement on or before December 5, 1978, shall upon the effective date of retirement for service or disability, or upon the date of death, or upon the date of separation caused by industrial accident, be reimbursed for the accumulated unused sick leave with pay credit balance which had been earned on or before December 5, l978, and not subsequently used ("vested and unused accumulated sick leave with pay credits") in accordance with the following schedule of service requirements and allowances.

Schedule of Service Requirements and Allowances for Reimbursement of Vested and Unused Accumulated Sick Leave with Pay Credit Balance at the Time of Retirement, Separation Because of Accident or Death	
Service Requirement	**Amount of Cash Reimbursement**
15 or more years of service	100%
More than 5 continuous years but less than 15 continuous years of service	50%
Up to and including 5 continuous years of service	33.3%

Sec. 120.18 Reimbursement of Vested and Unused Accumulated Sick Leave with Pay Credits Balance (cont.)

120.18.2 Reimbursement for the vested and unused accumulated sick leave with pay credit balance shall be further subject to the following:

1) The Human Resources Director shall administer the provisions of this section.

2) Deduction shall be made from the unused accumulated sick leave with pay credit balance which existed on December 5, l978, in an amount proportional to any credits used of that balance. Reimbursement shall be made only for the adjusted amount with all credits from the December 5, l978, balance subsequently used being deducted.

3) Reimbursement for the vested and unused accumulated sick leave with pay credit balance shall be payable at the time of retirement, separation caused by industrial accident or death, or at a later date when so selected by the employee, but within one (1) year of such retirement, separation or death.

4) Reimbursement is to be computed at the base rate of pay of an employee's permanent class, at the base rate of pay of the class of a temporary or provisional employee with no permanent status, or at the base rate of pay in a temporary or provisional appointment of an employee with permanent status in another class who has held such temporary or provisional appointment continuously for one (1) or more years at the time of separation.

5) No reimbursement shall be made for unused sick leave with pay credits earned on or after December 6, l978.

6) The enactment of this section is not intended to constitute additional compensation, nor be a part of the rate of pay of the employee, but is reimbursement for the vested and unused accumulated sick leave with pay credit balance to which an employee would have been entitled if the employee had not retired, separated due to industrial injury or died.

Rule 120
Leaves of Absence

Article IV: Sick Leave without Pay

Applicability: Rule 120 shall apply to officers and employees in all classes, except the Uniformed Ranks of the Police and Fire Departments and MTA Service-Critical classes; or as noted or as specifically excluded, or except as may be superseded by a collective bargaining agreement for those employees subject to Charter Section A8.409. However, all definitions in Rule 120 are applicable to employees in all classes; excluding only the Uniformed Ranks of the Police and Fire Departments and the MTA Service-Critical classes as covered in Volumes II, III and IV.

Sec. 120.19 Sick Leave without Pay - Eligibility

Subject to the provisions of this section, sick leave without pay may be granted to employees who are not eligible for sick leave with pay or, subject to the approval of the appointing officer or designee, employees may choose not to use their sick leave with pay credits.

Sec. 120.20 Sick Leave without Pay - Temporary and Provisional Employees

Sick leave without pay may be granted to temporary or provisional employees. Such leave shall be renewed monthly and shall not be extended beyond three (3) calendar months except for sick leave - maternity.

Sec. 120.21 Sick Leave without Pay - Permanent Employees

Sick leave without pay may be approved for permanent employees for the period of the illness provided that requests for prolonged leave shall be renewed every three (3) months and provided further that such leave shall not be extended beyond a period of one (1) continuous year unless there is a reasonable probability that additional leave will enable the employee to return to employment within a reasonable time.

Sec. 120.22 Prohibition Against Employment While on Sick Leave Without Pay

120.22.1 Employees are prohibited from working in any other employment when on sick leave without pay unless, after considering the medical reason for the sick leave without pay, the appointing officer with the approval of the Human Resources Director, grants permission for the employee to engage in outside employment.

120.22.2 Violators of this section are subject to disciplinary action.

Rule 120
Leaves of Absence

Article V: Compulsory Sick Leave

Applicability: Rule 120 shall apply to officers and employees in all classes, except the Uniformed Ranks of the Police and Fire Departments and MTA Service-Critical classes; or as noted or as specifically excluded, or except as may be superseded by a collective bargaining agreement for those employees subject to Charter Section A8.409. However, all definitions in Rule 120 are applicable to employees in all classes; excluding only the Uniformed Ranks of the Police and Fire Departments and the MTA Service-Critical classes as covered in Volumes II, III and IV.

Sec. 120.23 Compulsory Sick Leave

120.23.1 An appointing officer or designee who has reason to believe that an employee is not medically or physically competent to perform assigned duties, and if allowed to continue in employment or return from leave may represent a risk to co-workers, the public and the employee, may require the employee to present a medical report from a physician designated by the Human Resources Director certifying the employee's medical or physical competency to perform the required duties.

120.23.2 If the employee refuses to obtain such physician's certificate or if as a result of a medical evaluation, the employee is found not to be medically or physically competent, the appointing officer or designee may place the employee on compulsory sick leave and shall immediately report such action to the Human Resources Director.

120.23.3 An employee shall remain on compulsory sick leave until such time as the employee is found to be competent to return to duty by a physician designated by the Human Resources Director, but such leave shall not exceed the maximum period of sick leave provided in this Rule.

120.23.4 The employee placed on sick leave under the provisions of this section may appeal as provided under the appeal provisions of the Medical Examination Rule.

120.23.5 An employee placed on compulsory sick leave is ineligible for employment with the City and County and shall be placed under waiver on all lists on which the employee's name appears and shall otherwise be unemployable.

Rule 120
Leaves of Absence

Article VI: Disability Leave

Applicability: The provisions of Rule 120 apply to all officers and employees except for the Uniformed Ranks of the Police and Fire Departments or MTA Service-Critical Classes; or as noted or as specifically excluded, or except as may be superseded by a collective bargaining agreement for those employees subject to Charter Section A8.409. However, all definitions in this Rule are applicable to employees in all classes; excluding only the Uniformed Ranks of the Police and Fire Departments and the MTA Service-Critical Classes as covered in Volumes II, III and IV.

Sec. 120.24 Disability Leave

120.24.1 Absence due to illness or injury arising out of and in the course of employment is defined as "disability leave" and is administered under the State Workers' Compensation Laws and the Rules of the Retirement Board.

120.24.2 An employee who is absent because of disability leave and who is receiving disability indemnity payments may request, by submitting a signed option statement to the employee's department no later than ninety (90) days following the employee's release from disability leave, that the amount of disability indemnity payment be supplemented with salary to be charged against the employee's supplemental disability credits so as to equal the full salary the employee would have earned for the regular work schedule. The regular work schedule shall be that schedule in effect at the commencement of the disability leave.

120.24.3 Supplemental disability credits shall be an account separate from, but equivalent to, the employee's accumulated unused sick leave with pay credit balance except that the supplemental disability credit account shall be adjusted as provided below.

120.24.4 Failure to exercise the option to supplement disability indemnity payments within ninety (90) calendar days following release from disability leave will preclude later requests.

120.24.5 Supplemental disability credits shall be used at the minimum rate in units of one (1) hour.

120.24.6 The employee's department shall submit separate time rolls to reflect this action only after the Retirement System certifies the amount of disability indemnity payment, if any, for the period.

Sec. 120.24 Disability Leave (cont.)

120.24.7 Salary may be paid on regular time rolls and charged against the unused sick leave with pay credit balance during any period prior to the commencement of the determination of eligibility for disability indemnity payment without requiring a signed option by the employee.

120.24.8 When an employee has used sick leave with pay credits and the Retirement System subsequently determines that the employee was entitled to disability indemnity payment for the period of absence, provision shall be made for adjusting the employee's sick leave with pay credit balance and for reimbursing the appropriate City fund for the amount of sick leave with pay credits charged and paid.

120.24.9 An employee who uses supplemental disability credits to supplement disability indemnity payments shall, while on disability leave, earn supplemental disability credits at the same rate as sick leave with pay credits.

120.24.10 Upon return to duty, an employee who has used supplemental disability credits shall earn sick leave with pay credits at the normal rate and shall earn supplemental disability credits at twice the rate that sick leave with pay credits are earned until such time as the total hours of supplemental disability credits used are regained.

120.24.11 Should an employee suffer a recurrence or a new injury before all supplemental disability credits are regained, the supplemental disability credit balance shall be that balance existing at the beginning of the pay period in which the recurrence or new injury occurs and shall be adjusted for the amount of supplemental disability credits subsequently earned and sick leave with pay credits subsequently used.

Sec. 120.25 Use of Sick Leave with Pay Credits to Supplement State Disability Insurance

120.25.1 Sick leave with pay credits shall be used to supplement State Disability Insurance (SDI) at the minimum rate in units of one (1) hour.

120.25.2 SDI payments to an employee who qualifies and who has accumulated and is eligible to use sick leave with pay credits shall be supplemented with sick leave with pay credits so that the total of SDI and sick leave with pay calculated in units of one (1) hour provides up to, but does not exceed, the regular gross salary the employee would have received for the normal work schedule excluding overtime.

Sec. 120.25 Use of Sick Leave with Pay Credits to Supplement State Disability Insurance (cont.)

120.25.3 An employee who wishes not to supplement, or who wishes to supplement with compensatory time or vacation, must submit a written request on a form prescribed by the Human Resources Director to the appointing officer or designee within seven (7) calendar days following the first (1st) date of absence.

120.25.4 Employees who are supplementing SDI earn sick leave with pay credits at the normal rate only for those hours of sick leave with pay credits used.

Rule 120
Leaves of Absence

Article VII: Military, ~~War Effort and Sea Duty~~ Leaves

Applicability: Rule 120 shall apply to officers and employees in all classes, except the Uniformed Ranks of the Police and Fire Departments and MTA Service-Critical classes; or as noted or as specifically excluded, or except as may be superseded by a collective bargaining agreement for those employees subject to Charter Section A8.409. However, all definitions in Rule 120 are applicable to employees in all classes; excluding only the Uniformed Ranks of the Police and Fire Departments and the MTA Service-Critical classes as covered in Volumes II, III and IV.

Sec. 120.26 Military Leave

120.26.1 Military leave is governed by the provisions in the Uniformed Services Employment and Reemployment Rights Act (USERRA),~~of~~ applicable Federal and State laws, and by Charter provisions and by this Rule.

120.26.2 ~~**Time of War – Definition**~~**Active or Inactive Duty Leave for Military Training, Drills, or Fitness-For-Service Examination**

~~The phrase "time of war" is defined elsewhere in these Rules.~~ Leaves of absence shall be granted to officers and employees ordered to fulfill training requirements determined by a proper military authority as necessary for the officer's or employee's professional development, to complete skill training or retraining, or to determine fitness for military service. This includes weekend drills and annual trainings. Approved leave shall include any necessary time for travel to and from the duty or examination location, plus a reasonable amount of leave for rest before reporting to work. See Rule 120.26.4, for time limits on return to work following approved military leaves.

120.26.3 **Active Duty Military Leave** ~~**– Time of War**~~

Leaves of absence shall be granted to officers and employees for service in the armed forces of the United States or the State of California or in service of the Federal Emergency Management Agency (FEMA) for the period that the officer or employee is ordered or retained on active duty. Leave for this purpose shall not exceed five (5) years, unless the officer or employee's service meets conditions in USERRA for an exemption from the five-year service limit. Reasons for extending the five-year military leave limit include:

1. Service beyond five years that is necessary to complete an initial period of service required in the officer or employee's orders.

2. Service from which an officer or employee, through no fault of their own, is unable to obtain a release within the five-year limit.
3. Service for required training for reservists and National Guard members that must be excluded when calculating the five-year limit.
4. Orders for involuntary service, or retention on active duty during domestic emergency or national security related situations.
5. Orders to service, or to remain on active duty (other than for training) because of a war or national emergency declared by the President or Congress.
6. Active duty (other than for training) by volunteers supporting operational missions, other than war or national emergencies, for which selected reservists have been ordered to active duty without their consent.
7. Service by members who are ordered to active duty in support of a critical mission or requirement of the uniformed services as determined by the agency Secretary involved.
8. Federal service by members of the National Guard called into action by the President to suppress an insurrection, repel an invasion, or to execute the laws of the United States.

~~for service on ships operated by or for the United States government in time of war and for a period not to exceed three (3) months after the conclusion of such service, but not later than one (1) year after the cessation of hostilities, except in case of disability incurred while in active service with the armed forces or the merchant marines when such disability shall extend beyond such period~~.

120.26.4 Return to Work Following Approved Military Leave ~~– Time of Peace~~

~~Whenever any officer or employee shall, by order of the government of the United States or by lawful order of any of its departments or officers, or by lawful order of the State of California, or any of its departments or officers, be directed in time of peace to report and serve in the armed forces of the United States, or in the armed forces of the State of California, said officer or employee shall be entitled to a leave of absence from the employee's office or position during the time of such service and for a period not to exceed three (3) months after the expiration thereof.~~ Officers and employees taking military leave must return to work within certain time limits. The time limit for returning to work depends on the duration of the officer or employee's military service, with the exception of leave taken for fitness-for-service examinations.

Military Service of 1 to 30 Days

Any officer or employee absent due to a military service with a duration of one to 30 days must return to work on the first regularly scheduled workday following completion of the officer or employee's military service, after allowance for safe travel home from the military duty

location plus an eight-hour rest period. If, due to no fault of the officer or employee, timely reporting back to work would be impossible or unreasonable, the employee must report to work as soon as possible after the allowed eight-hour rest period.

Fitness-For-Service-Examinations

The time limit for reporting back to work for officers or employees absent due to orders requiring a fitness-for-service examination is the first scheduled workday following completion of the examination plus allowance for safe travel home from the examination location and an eight-hour rest period. This reporting limit applies regardless of the length of absence.

Service of 31 to 180 Days

Any officer or employee absent due to military service with a duration of 31 to 180 days must make an oral or written request to return to work to the appointing officer or designee within 14 days after the completion of service. If submission of the request to return to work is impossible or unreasonable through no fault of the officer or employee, the request must be submitted as soon as possible. Officers and employees requesting return to work must report to work on the date and time designated by the appointing officer or designee.

Service of 181 Days or More

Any officer or employee absent due to military service with a duration of 181 days or more must make an oral or written request to return to work to the appointing officer or designee within 90 days after the completion of service. If submission of the request to return to work is impossible or unreasonable through no fault of the officer or employee, the request must be submitted as soon as possible. Officers and employees requesting return to work must report to work on the date and time designated by the appointing officer or designee.

Service Incurred or Aggravated Disability Leave

Any officer or employee hospitalized or convalescing because of an injury or illness incurred or aggravated during the performance of military service shall have up to two years to return to work. The two-year period will be extended for a minimum time required to accommodate a circumstance beyond an officer or employee's control that would make returning to work within the two-year period impossible or unreasonable. Such officers and employees must comply with the oral or written request timeframes determined by their length of service, after their recovery.

Failure to Request Return to Work or Return to Work Following Military Leave

Any officer or employee who fails to make a timely oral or written request for return to work, or who fails to return to work following a military leave, whether submitting a request to return or not, shall be deemed as away without official leave and shall be subject to rules and policies covering unauthorized absence.

Sec. 120.26 Military Leave (cont.)

120.26.5 Military Leave - Permanent Appointees

Any officer or employee on military leave, who prior to such leave has been appointed to a permanent position in the City and County service, shall be entitled to resume such position at the expiration of the leave, and in determining and fixing rights, seniority, salary, benefits, and otherwise which have accrued and shall inure to the benefit of such officer or employee, the term of military leave shall be considered and accounted as part of the employee's service to the City and County.

120.26.6 Military Leave - Proof of Duty Required for Military Pay

Officers and employees requesting military leave pay pursuant to State of California Military and Veteran's Code section 395.1 shall file with the Human Resources Director a copy of the orders ~~necessitating~~ identifying the type of such service and the duration prior to the effective date of the leave of absence ~~and upon return from such leave shall submit a copy of the discharge or release~~.

120.26.7 Military Leave - Salary While on Temporary Leave

Employees who have been employed by the City and County ~~or any other public agency~~ or have been on military duty for a period of not less than one (1) year continuously prior to the date upon which a temporary military leave not exceeding l80 calendar days begins, shall, as required by the State of California Military and Veterans' Code (Section 395), receive their regular salary or compensation for a period not to exceed thirty (30) calendar days of such military leave in any fiscal year or more than thirty (30) calendar days during any period of continuous military leave.

120.26.8 Military Leave - Probationary Appointees

Refer to the Probationary Period Rule on leave during the probationary period.

120.26.9 Military Leave - Eligible Not Reached for Certification While in Service - Time of War

An eligible on a regular civil service list, who served on active military duty not including reserve service during time of war who presents an honorable discharge or certificate of honorable active service within one (1) year from the date of release from military service, shall be preferred for certification for a period of four (4) years ~~after the cessation of hostilities~~ from the date of discharge in the order of standing upon the eligible list at the time of entrance into military service and before

candidates procuring standing through an examination held subsequent to the entrance of such eligibles into the military service.

Sec. 120.26 Military Leave (cont.)

120.26.10 Military Leave - Eligibles Reached for Certification

If while in the military service, the name of an eligible was reached for certification to a permanent position and the eligible presents an honorable discharge or certificate of honorable active service within l20 days from the date of release from active military duty not including reserve service ~~during time of war~~, the eligible shall be certified to a position in the class for which so reached; and, for all purposes of seniority, the date of certification if appointed, shall be deemed to be the date when the eligible was reached for certification while in the military service. A person appointed in accordance with this section shall serve the required probationary period. An eligible who is offered appointment in accordance with the provisions of this section and who waives appointment and is subsequently certified after withdrawal of waiver shall have seniority as of the date of such certification.

120.26.11 Military Leave - Participants in Written Examinations

Persons who participate in a written examination and who present their orders or other proof of service within 120 days from the date of release from active military service ~~in time of war~~ shall be allowed to participate in the remaining parts of the examination. If they meet all the eligibility qualifications, they shall be certified as of the date they would have been reached for certification in accordance with their rank based on the entire examination.

120.26.12 Military Leave - Employees or Officers Not Subject to Civil Service Examination

Military leave to an elected or appointed officer, appointed for a definite period of time, shall not be extended beyond the period of time for which elected or appointed, provided that if such officer is re-elected or reappointed, then military leave shall be automatically extended for such ensuing period of time.

Military leave to an employee occupying a position exempt from civil service examination shall not extend beyond the period of time for which the employee's appointing officer was elected or appointed.

Sec. 120.27 War Effort Leave

The Board of Supervisors may provide by ordinance that leaves of absence shall be granted to officers and employees during time of war for service directly connected with the prosecution of the war or national defense or preparedness.

~~**Sec. 120.28 Leave for Sea Duty as Licensed Officers**~~

~~In time of war or while any act authorizing compulsory military service or training is in effect, the Board of Supervisors may provide by ordinance that leaves of absence shall be granted to officers and employees for sea duty as licensed officers aboard ships operated by or for the United States government. The Commission shall amend this section to implement such ordinance.~~

Sec. 120.~~29~~28 Leave for Spouse or Registered Domestic Partner During Leave from Deployment of Qualified Member

120.~~29~~28.1 In compliance with the State of California Military and Veterans Code section 395.10, an eligible employee who is a spouse or registered domestic partner of a qualified member of the Armed Forces of the United States, National Guard, or Reserves shall be allowed to take up to ten (10) days of leave during a period of leave from deployment of the qualified member.

120.~~29~~28.2 An "eligible employee" is an employee who meets all of the following conditions:

1) is a spouse or registered domestic partner of a qualified member;

2) works on average twenty (20) or more hours per week and is not an independent contractor;

3) provides notice to the City, within two (2) business days of receiving official notice that the qualified member will be on leave from deployment, of his or her intention to take leave; and

4) submits written documentation to the City, certifying that the qualified member will be on leave from deployment during the time of leave.

120.~~29~~28.3 A "qualified member" is any of the following:

1) A member of the Armed Forces of the United States who has been deployed during a period of military conflict to an area designated as a combat theater or combat zone by the President of the United States; or

2) A member of the National Guard who has been deployed during a period of military conflict; or

3) A member of the Reserves who has been deployed during a period of military conflict.

Rule 120
Leaves of Absence

Article VIII: Unpaid Administrative Leave or Furlough

Applicability: Rule 120 shall apply to officers and employees in all classes, except the Uniformed Ranks of the Police and Fire Departments and MTA Service-Critical classes; or as noted or as specifically excluded, or except as may be superseded by a collective bargaining agreement for those employees subject to Charter Section A8.409. However, all definitions in Rule 120 are applicable to employees in all classes; excluding only the Uniformed Ranks of the Police and Fire Departments and the MTA Service-Critical classes as covered in Volumes II, III and IV.

Sec. 120.~~30~~29 Unpaid Administrative Leave or Furlough

120.~~30~~29.1 General Provisions

1) Notwithstanding the layoff and involuntary leave provisions or any other provisions of these Rules, an appointing officer is authorized to impose unpaid administrative leave (furlough) on any employee within that appointing officer's jurisdiction as provided in this section. The imposition of furloughs shall be subject to receipt of a Projected Deficit Notice (PDN) from the Controller stating that the department's budget will be insufficient to support the department's level of spending through the end of the fiscal year.

2) The authority of the appointing officer to impose furloughs shall be limited to those furloughs necessary to correct the projected deficit identified by the Controller.

3) This Rule shall apply to all employees of the City and County.

4) The Superintendent of the San Francisco Unified School District and the Chancellor of the San Francisco Community College District shall also be authorized to furlough any employee in the classified service upon their individual determinations that, based upon a review of projected revenues and expenditures, the budget will be insufficient to support the District's level of spending through the end of the fiscal year.

5) No provision of Layoff and Involuntary Leave, including but not limited to any provision regarding the order of layoff, displacement of less senior employees, or reinstatement, shall be applicable to any employees furloughed hereunder.

Sec. 120.~~30~~29 Unpaid Administrative Leave or Furlough (cont.)

120.~~30~~29.2 Voluntary Unpaid Time Off

1) Prior to imposing a furlough on any employee, an appointing officer shall attempt to determine, to the extent feasible and with due consideration for the time constraints which may exist for eliminating the projected deficit, the interest of employees within the appointing officer's jurisdiction in taking unpaid personal time off on a voluntary basis.

2) The appointing officer shall have full discretion to approve or deny requests for voluntary unpaid time off based on the operational needs of the department and any court decrees or orders pertinent thereto. The decision of the appointing officer shall be final except in cases where requests for voluntary unpaid time off in excess of ten (10) working days are denied. In such cases, an employee may appeal in accordance with the procedures provided below for appealing imposition of furlough.

3) An employee shall be entitled to take up to ten (10) unpaid days per fiscal year at the rate of no more than five (5) days in a three (3) month period, at the employee's discretion, upon at least fifteen (15) calendar days prior written notice to the employee's appointing officer. Such request shall not be denied except for the reason of a requirement that such position be filled on an overtime or premium pay basis, for essential operational needs or the requirements of a court decree or order.

120.~~30~~29.3 Furloughs

1) Appointing officers are encouraged to furlough entire operational units within departments rather than individual employees; or stagger work hours within an operational unit on a reduced hours basis. The decision of the appointing officer to impose furloughs under this subsection, and the appointing officer's determination of what constitutes an operational unit, shall be final.

2) Where, in the discretion of the appointing officer, furlough of an operational unit as prescribed above is not feasible, individual employees within an operational unit may be furloughed.

3) To the extent practicable, furlough shall be equitably distributed among all of the employees in the affected department or operational unit to which the Projected Deficit Notice (PDN) has application; and~~,~~ among all of the employees in the affected class(es).

Sec. 120.~~30~~29 Unpaid Administrative Leave or Furlough (cont.)

120.~~30~~29.3 Furloughs (cont.)

4) In determining which employees to furlough, an appointing officer shall consider citywide seniority within a class as well as considering the operational needs of the department.

5) In no event shall furlough be imposed upon an employee for more than four (4) days in any three (3) month period or ten (10) days in any fiscal year. Voluntary time off not to exceed a total of five (5) days per quarter or ten (10) days per year, approved pursuant to this section, shall be credited toward the maximum number of furlough days which may be imposed pursuant to this Rule.

6) Employees placed on furlough pursuant to this section shall be notified in writing at least fifteen (15) calendar days in advance of the effective date for the furlough.

7) The decision to furlough an individual employee within an operational unit shall be final except that an employee given notice of a furlough, which taken together with an employee's prior furloughs in the same fiscal year would exceed five (5) working days within any six (6) month period, may file an appeal. Such appeals must be in writing and filed within three (3) calendar days of the date of the notice of furlough with the Human Resources Director with a copy to the appointing officer. Within three (3) calendar days after receiving the appeal, the Department of Human Resources shall refer the written appeal and the appointing officer's written comments, if any, for determination to the Human Resources Director, the Mayor and the Controller, or their designees, who shall meet on no less than twenty four (24) hours public notice. The determination regarding the appeal shall be rendered within seven (7) calendar days of the date of the appeal. This decision is final and shall not be reconsidered by the Commission. The Human Resources Director shall notify the employee and the appointing officer of the decision prior to the effective date of the furlough.

120.~~30~~29.4 Restrictions on Use of Paid Time Off While on Voluntary Unpaid Time Off or Furlough

1) All voluntary unpaid time off or furlough imposed or granted pursuant to this section shall be without pay.

2) Employees granted voluntary unpaid time off or placed on furlough are precluded from using sick leave with pay credits, vacation credits, compensatory time off credits, floating holidays, training days or any other form of pay for the time period involved.

Sec. 120.~~30~~29 Unpaid Administrative Leave or Furlough (cont.)

120.~~30~~29.5 Imposition of Furlough - Fair Labor Standards Act (FLSA) Restrictions

1) Furlough for employees who are non-exempt under the Fair Labor Standards Act (FLSA) shall be imposed in minimum increments of one (1) hour.

2) Furlough for employees who are exempt under the Fair Labor Standards Act (FLSA) shall be imposed in minimum increments of one (1) day.

120.~~30~~29.6 Vacation and Sick Leave with Pay Accruals While on Voluntary Unpaid Time Off or Furlough

Subject to passage of necessary ordinances by the Board of Supervisors, vacation and sick leave with pay accruals shall continue during a maximum of ten (10) days of furlough in any fiscal year, or a maximum of twenty (20) days for approved voluntary unpaid time off taken pursuant to this Section in any fiscal year.

120.~~30~~29.7 Duration and Revocation of Voluntary Unpaid Time Off or Furlough

Furlough imposed upon an employee shall remain in force for the period specified in the written notice unless sooner revoked by written notice from the appointing officer. Approved voluntary unpaid time off taken pursuant to this section may not be changed by the appointing officer without the employee's consent.

120.~~30~~29.8 Resolution of Disputes

Except as provided elsewhere in this section, the Human Resources Director shall act on all disputes arising out of the application or implementation of the provisions of this section. The decision of the Human Resources Director shall be final and shall not be reconsidered by the Commission.

Rule 120
Leaves of Absence

Article IX: Other Leaves of Absence

Applicability: Rule 120 shall apply to officers and employees in all classes, except the Uniformed Ranks of the Police and Fire Departments and MTA Service-Critical classes; or as noted or as specifically excluded, or except as may be superseded by a collective bargaining agreement for those employees subject to Charter Section A8.409. However, all definitions in Rule 120 are applicable to employees in all classes; excluding only the Uniformed Ranks of the Police and Fire Departments and the MTA Service-Critical classes as covered in Volumes II, III and IV.

Sec. 120.~~31~~30 Leave to Accept Other City and County Position

120.~~31~~30.1 Leave by an employee who has completed the probationary period to accept exempt or temporary appointment in the City and County service may be approved for the duration of such appointment. Such leave by a probationary employee is subject to the provisions of the Rule governing the Probationary Period.

120.~~31~~30.2 Denial of such leave by the appointing officer is appealable as provided elsewhere in this Rule.

Sec. 120.~~32~~31 Educational Leave

120.~~32~~31.1 Educational leave is defined as leave for the purpose of educational or vocational training in a field related to the employee's current position and as any training to which a veteran is entitled pursuant to the laws of the United States or the State of California.

120.~~32~~31.2 Educational leave may be approved for permanent appointees for a period of up to one (1) year. Requests for educational leave of longer than one (1) year must be renewed each year.

120.~~32~~31.3 Denial of educational leave is appealable as provided elsewhere in this Rule.

120.~~32~~31.4 An employee on educational leave shall not accept other employment without approval of the appointing officer and the Human Resources Director, except for employment in vacant positions with the City and County during school vacations.

Sec. 120.~~32~~31 Educational Leave (cont.)

120.~~32~~31.5 As soon as records are available, the employee shall periodically present to the appointing officer a record of completed educational work. These records shall be maintained in such a manner as to be readily available for audit by Department of Human Resources staff. Failure to submit an acceptable record of completed educational work shall subject the employee to disciplinary action as provided in the Charter.

Sec. 120.~~33~~32 Leave for Civilian Service in the National Interest

120.~~33~~32.1 Civilian service in the national interest is defined as leave to serve with a federal, state or other public agency or non-profit organization in a program or in a capacity which the Human Resources Director deems to be in the national or general public interest.

120.~~33~~32.2 Such leave may be approved for permanent appointees for a period of up to one (1) year. Requests for such leave of longer than one (1) year must be renewed each year.

120.~~33~~32.3 Denial of such leave is appealable as provided elsewhere in this Rule.

Sec. 120.~~34~~33 Leave for Employment as an Employee Organization Officer or Representative

120.~~34~~33.1 Leave for employment as an employee organization officer or representative is defined as leave to serve full-time as an officer or representative of an employee organization whose membership includes City employees, or to attend a convention or other type of business meeting of an employee organization as an officer or delegate of the employee organization.

120.~~34~~33.2 Leave for permanent appointees may be approved for the duration of such service.

120.~~34~~33.3 Denial of such leave is appealable as provided elsewhere in this Rule.

Sec. 120.~~35~~34 Family Care Leave

120.~~35~~34.1 Definition of Family

A unit of interdependent and interacting persons, related together over time by strong social and emotional bonds and/or by ties of marriage, birth, and adoption, whose central purpose is to create, maintain, and promote the social, mental, physical and emotional development and ~~well being~~well-being of each of its members.

Sec. 120.~~35~~34 Family Care Leave (cont.)

120.~~35~~34.2 Permanent employees who have one (1) or more years of continuous service in any status may be granted up to (1) year of unpaid family care leave for the following reasons:

1) The birth of a biological child of the employee;

2) The assumption by the employee of parenting or child rearing responsibilities. Family care leave does not apply to an employee who temporarily cares for a child for compensation, such as a paid ~~child care~~childcare worker;

3) The serious illness or health condition of a family member of the employee, the employee's spouse or domestic partner, a parent of the employee or the employee's spouse or domestic partner, the biological or adoptive child of the employee, or a child for whom the employee has parenting or child rearing responsibilities; or

4) The mental or physical impairment of a family member of the employee, the employee's spouse or domestic partner, a parent of the employee or the employee's spouse or domestic partner, the biological or adoptive child of the employee, or a child for whom the employee has parenting or child rearing responsibilities, which impairment renders that person incapable of self-care.

120.~~35~~34.3 Family care leave is unpaid leave. Such leave may be granted in addition to accumulated compensatory time off, vacation time, floating holiday time or sick leave as specified under Sick Leave - Illness or Medical Appointment of Child, Parent, Spouse, or Registered Domestic Partner.

120.~~35~~34.4 Denial of family care leave is appealable as provided elsewhere in this Rule.

Sec. 120.~~36~~35 Witness or Jury Duty Leave

120.~~36~~35.1 An employee who is summoned as a witness on behalf of the City and County or juror for a judicial proceeding shall be entitled to leave with pay less the amount of juror or witness fee paid for the period required for such service (Charter Section A8.400G). An employee who is summoned to serve as a witness in cases which involve outside employment or personal business affairs shall be placed on leave without pay unless vacation leave or compensatory time is requested and granted.

Sec. 120.~~3635~~ Witness or Jury Duty Leave (cont.)

120.~~3635~~.2 Paid witness or jury duty leave shall be only from an employee's scheduled duty time and shall not include hours outside of scheduled hours of work or on days off.

120.~~3635~~.3 Such employees shall notify the appointing officer immediately upon receiving notice of jury duty.

120.~~3635~~.4 An employee who takes vacation leave while on witness or jury duty leave shall receive regular salary.

120.~~3635~~.5 Refer to the Probationary Period Rule on leave during the probationary period.

Sec. 120.~~3736~~ Holiday Leave

Holiday leave shall be as provided by ordinance of the Board of Supervisors.

Sec. 120.~~3837~~ Vacation Leave

Vacation leave shall be as provided in the Charter and by ordinance of the Board of Supervisors.

Sec. 120.~~3938~~ Involuntary Leave of Absence

120.~~3938~~.1 Whenever it becomes necessary to effect a reduction in force due to lack of work or lack of funds which shall result in the displacement of a permanent or probationary appointee from the City and County service, an appointing officer, notwithstanding other provisions of these Rules governing leaves of absence, shall place such employees on a leave of absence of an involuntary nature unless the employee elects to be laid off.

120.~~3938~~.2 Such reductions in force shall be effected by the provisions of this Rule governing seniority and order of layoff.

120.~~3938~~.3 Employees placed on an involuntary leave of absence shall be ranked on the holdover roster for the class from which ~~laid~~ they were laid off and shall be returned to duty as provided in this Rule.

120.~~3938~~.4 Leaves of absence imposed under the provisions of this Rule shall expire upon the return to duty of the holdover, upon the expiration of holdover status, or upon written request of the employee to elect to be laid off while on involuntary leave.

Sec. 120.~~40~~39 Religious Leave

120.~~40~~39.1 Employees may be granted leave when personal religious beliefs require that the employee abstain from work during certain periods of the ~~work day~~workday or work week. Such leave shall be known as "Religious Leave."

120.~~40~~39.2 Religious leave shall be without pay unless the employee elects to use accumulated compensatory time off, vacation time, or floating holiday time.

120.~~40~~39.3 Denial of religious leave is appealable as provided elsewhere in this Rule.

Sec. 120.~~41~~40 Personal Leave

120.~~41~~40.1 Personal leave is defined as leave for reasons other than those covered in other sections of this Rule.

120.~~41~~40.2 Personal leave for permanent employees may be approved for a period of up to twelve (12) months within any two (2)-year period. Personal leave for temporary or provisional employees may be approved only if replacement of the employee is not required and for a maximum of one (1) month.

120.~~41~~40.3 On the request of an appointing officer, the Human Resources Director, may for reasons deemed to be in the best interest of the service approve extension of personal leave for permanent employees beyond a twelve (l2)-month period.

Rule 120
Leaves of Absence

Article X: Appeal Procedures

Applicability: Rule 120 shall apply to officers and employees in all classes, except the Uniformed Ranks of the Police and Fire Departments and MTA Service-Critical classes; or as noted or as specifically excluded, or except as may be superseded by a collective bargaining agreement for those employees subject to Charter Section A8.409. However, all definitions in Rule 120 are applicable to employees in all classes; excluding only the Uniformed Ranks of the Police and Fire Departments and the MTA Service-Critical classes as covered in Volumes II, III and IV.

Sec. 120.~~42~~41 Appeal Procedures

120.~~42~~41.1 Appeals concerning furloughs or voluntary unpaid time off are excluded from appeal under this section and are appealable as provided elsewhere in this Rule.

120.~~42~~41.2 In cases where appeal is specifically granted in this Rule, a dispute concerning the application or implementation of the provisions of this Rule shall be processed EITHER, at the option of the employee:

1) in accordance with the grievance procedure provided by the Human Resources Director for unrepresented employees or in a collective bargaining agreement.

2) by appeal in writing to the Human Resources Director, whose decision shall be final and shall not be reconsidered by the Commission. A decision under one option shall preclude the use of the other option.

Rule 220

Leaves of Absence

Applicability: Rule 220 shall apply to all classes of the Uniformed Ranks of the San Francisco Police Department, except that the provisions of Rule 220 may be superseded in whole or in part by the collective bargaining agreement, except for the definitions in this Rule which are applicable to employees in all classes.

Rule 220

Leaves of Absence

Article I: Leaves of Absence - General Requirements

Applicability: Rule 220 shall apply to all classes of the Uniformed Ranks of the San Francisco Police Department, except that the provisions of Rule 220 may be superseded in whole or in part by the collective bargaining agreement, except for the definitions in this Rule which are applicable to employees in all classes.

Sec. 220.1 Leaves of Absence - General Requirements

220.1.1 Leaves of absence, hereinafter referred to in this Rule as "leave," shall be governed by the provisions of this Rule. For the purpose of this Rule, "appointing officer" shall mean all elected officials; all department heads designated by the Charter as appointing officers; and all Boards and Commissions when officiating as appointing officers.

220.1.2 Requests for leave shall be subject to the approval of the appointing officer or designee. The decision of the appointing officer or designee is final unless provision for appeal is specifically granted in this Rule. Such requests for appeal shall be processed in accordance with the appeal procedure provided in this Rule. Requests for military, maternity, or witness or jury duty leave shall be granted as provided herein.

220.1.3 Beginning January 1, 2016, amendments to California Labor Code Section 233, (Kin Care Law) authorize employees to use available accrued sick leave each calendar year to care for a “family member” or themselves, in an amount equal to one-half of their annual accrual. Under Kin Care Law, available accrued sick leave must be granted upon the employee’s oral or written request and the employer shall not deny the right to take such leave, or impose conditions for granting such leave, including the requirement of medical certification.

220.1.4 Except for vacation leave, witness or jury duty leave, compulsory sick leave, disability leave or unpaid administrative leave, or absences covered under Labor Code Section 233, an employee requesting a leave of absence for more than five (5) working days shall submit such request to the appointing officer or designee on the form prescribed by the Human Resources Director. With the exceptions noted herein, requests for sick leave in excess of five (5) continuous working days shall be certified by a licensed medical doctor, doctor of dental surgery, doctor of podiatric medicine, licensed clinical psychologist, Christian Science Practitioner or licensed doctor of chiropractic. Verification of sick leave

Sec. 220.1 Leaves of Absence - General Requirements (cont.)

220.1.4 cont.
with pay for less than five (5) working days (seven (7) calendar days in the case of part-time employees) as provided elsewhere in this Rule shall be required on an individual basis only and shall be based upon an evaluation of an employee's leave use. For employees taking sick leave pursuant to Administrative Code Chapter 12W, Labor Code Sections 245-249 or Labor Code 233, the City may take reasonable measures to verify or document that an employee's use of sick leave is taken in accordance with Administrative Code Chapter 12W or Labor Code Sections 245-249.

Sec. 220.1 Leaves of Absence - General Requirements (cont.)

220.1.5 The Human Resources Director may direct that leave requests be retained in the department and maintained in a manner so as to be readily available for audit, review or analysis by Department of Human Resources and Office of Labor Standards Enforcement staff.

220.1.6 Except as otherwise provided in these Rules, leave granted for the period stated on the prescribed form may be extended or abridged only with the approval of the appointing officer or designee. An employee who does not return to work on the approved date shall be deemed as away without official leave and shall be subject to automatic resignation as provided elsewhere in these Rules.

220.1.7 Except when an employee requesting sick leave has accumulated unused sick leave with pay credits and except for employees eligible for military leave with pay, organ or bone marrow donor leave with pay witness or jury duty leave, disability leave or leave due to battery as provided elsewhere in this Rule, or for authorized holiday or vacation, leaves shall be without pay.

220.1.8 Refer to the Probationary Period Rule on leave during the probationary period.

220.1.9 Exempt employees shall be granted paid sick leave on the ninetieth (90) day of service. The decision of the appointing officer shall be final and not subject to appeal.

220.1.10 An appointee shall not be required to sign a resignation form as a condition of approval of a leave.

220.1.11 Leaves granted under this Rule shall be indicated on time rolls as designated by the Controller.

220.1.12 An authorized leave granted under this Rule shall not be considered as a break in the continuous service of an employee.

Rule 220
Leaves of Absence

Article II: Sick Leave - General Provisions

Applicability: Rule 220 shall apply to all classes of the Uniformed Ranks of the San Francisco Police Department, except that the provisions of Rule 220 may be superseded in whole or in part by the collective bargaining agreement, except for the definitions in this Rule which are applicable to employees in all classes.

Sec. 220.2 Eligibility for Sick Leave

Subject to the provisions of this Rule, employees and officers (hereinafter called "employees") who are absent from their duties due to their own illness or disability, or that of a qualifying family member, including preventive care, such as medical or dental appointments, and employees who are victims of domestic violence, sexual assault or stalking, are eligible for sick leave.

Sec. 220.3 Sick Leave - Exclusions from Eligibility

220.3.1 Sick leaves granted to members of the Uniformed Ranks of the Police Department shall be regulated by Rules adopted by the Police Commission. These Rules and any amendments thereto shall be subject to the approval of the Civil Service Commission and when so approved by the Civil Service Commission shall be deemed as included in this Rule. Calculation of sick leave with pay credits, reimbursement for vested and unused accumulated sick leave with pay credits and any provision not covered in the Rules of the Police Department shall be as provided in this Rule.

220.3.2 This Rule shall not apply to patrol special officers appointed by the Police Commission, employees under personal services contracts, elective officers, and members of Boards and Commissions.

Sec. 220.4 Verification of Sick Leave

220.4.1 The appointing officer or designee to whom application for sick leave is made may make such independent investigation as to the necessity for sick leave as is deemed proper under these rules and federal, state and local law, and may require certification for any period of sick leave, provided that the employee has been previously notified in writing that such certification for absence of less than five (5) working days shall be required. For employees taking sick leave pursuant to Administrative Code Chapter 12W, Labor Code Sections 245-249 or Labor Code Section 233, the City may take reasonable measures to verify or document that an employee's use of sick leave is taken in accordance with Administrative Code Chapter 12W, Labor Code Sections 245-249 or Labor Code Section 233.

Sec. 220.4 Verification of Sick Leave (cont.)

220.4.2 The Human Resources Director may at any time make such independent investigation as may be deemed proper regarding the illness of any person on sick leave.

Sec. 220.5 Retirement Automatically Terminates Sick Leave

Sick leave shall automatically terminate on the effective date of an employee's retirement.

Sec. 220.6 Abridgment of Sick Leave

Sick leaves granted in excess of five (5) working days may be abridged if the employee presents to the appointing officer or designee medical evidence of capability to resume all the duties of the position.

Sec. 220.7 Definition of Sick Leave

A leave granted under this Rule for One of the following reasons shall be known as "sick leave":

220.7.1 Sick Leave - Medical Reasons

Absence for diagnosis, care or treatment of a health condition, including alcoholism, or preventive care, and for employees who are victims of domestic violence, sexual assault or stalking, but excluding illness or injury arising out of and in the course of City and County employment**.** Absence due to illness or injury arising out of and in the course of employment is administered either under the Rules of the Retirement Board and is referred to as "disability leave" and may be supplemented as provided elsewhere in this Rule or under the provisions of this Rule and the Administrative Code for those employees injured by battery ("leave due to battery").

220.7.2 Sick Leave - Quarantine

Absence during a period of quarantine established and declared by the Department of Public Health or other authority.

220.7.3 Sick Leave - Bereavement

Absence because of the death of the employee's spouse or domestic partner, parents, ~~step parents~~stepparents, grandparents, parents-in-law or parents of a domestic partner, sibling, child, ~~step child~~stepchild, adopted child, grandchild, a child for whom the employee has parenting responsibilities, aunt or uncle, legal guardian, or any person who is

permanently residing in the household of the employee. Such leave shall not exceed ~~three (3)~~five (5) working days and

Sec. 220.7 Definition of Sick Leave (cont.)

220.7.3 Sick Leave – Bereavement (cont.)

shall be taken within ~~thirty (30) calendar days~~ three (3) months after the date of death.~~; however, two (2) additional working days shall be granted in conjunction with the bereavement leave if travel outside the State of California is required as a result of the death.~~

For absence because of the death of any other person to whom the employee may be reasonably deemed to owe respect; leave shall be for not more than one (1) working day; however, two (2) additional working days shall be granted if travel outside the State of California is required as a result of the person's death.

The appointing officer or designee to whom a request for bereavement leave under this rule is made may request verification of a qualifying family member's death within 30 days of the first day of the employee's leave, as authorized by California Government Code section 12945.7(f).

220.7.4 Sick Leave – Reproductive Loss

Absence because of the failure to achieve successful completion of an act that would have resulted in the employee becoming a parent by the birth, placement, or adoption of a child. Qualifying reproductive losses include failed adoption, failed surrogacy, miscarriage, stillbirth, and unsuccessful assisted reproduction, such as intrauterine insemination, embryo transfer, or other assisted reproductive technology. Such leave shall not exceed five (5) working days and shall be taken within three (3) months after the qualifying reproductive loss. Paid sick leave granted for this purpose shall not exceed 20 workdays within a ~~follow~~rolling 12-month period.

220.7.45 Sick Leave - Maternity

Absence due to the employee's pregnancy or convalescent period following childbirth. Such leave shall not exceed six (6) months provided that such leave may be extended for permanent employees if a physician certifies that a longer convalescence period is required. Such extensions shall be subject to the provisions of this Rule governing sick leave without pay.

~~**220.7.5**~~ **220.7.6 Sick Leave - Parental Leave**

Absence due to the birth of a child to the employee, the employee's spouse, or the employee's domestic partner or assumption by the employee of parenting or child rearing responsibilities either by adoption or foster care.

~~220.7.6~~220.7.7 Sick Leave - Illness or Medical Appointment of a Family Member

Absence for diagnosis, care or treatment of a health condition or injury, or for preventive care for an employee's family member, defined as follows:

1) A child, which for the purposes of this section means a biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis. This definition of a child is applicable regardless of age or dependency status.
2) A biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child.
3) A spouse.
4) A registered domestic partner.
5) A grandparent.
6) A grandchild.
7) A sibling.

Sec. 220.7 Definition of Sick Leave (cont.)

220.7.~~7~~8 Sick Leave Pursuant to Administrative Code Chapter 12W

1) Absence due to the illness, injury, medical care, treatment, diagnosis or medical appointment of the employee; employee's child; parent; legal guardian or ward; sibling; grandparent; grandchild; and spouse, registered domestic partner under any state law, or "designated person."

The aforementioned child, parent, sibling, grandparent, and grandchild relationships include not only biological relationships but also relationships resulting from adoption; step-relationships; and foster care relationships. "Child" includes a child of a domestic partner and a child of a person standing in loco parentis.

2) For the purpose of this section, the definition of "designated person" is: one person designated by an employee who has no spouse or registered domestic partner, as the person for whom the employee may use paid sick leave to aid or care for under this section. The opportunity to make such a designation shall be extended to the employee no later than the date on which the employee has worked thirty (30) hours after paid sick leave begins to accrue. There shall be a window of ten (10) business days for the employee to make this designation. Thereafter, the opportunity to make such a designation, including the opportunity to change such a designation previously made, shall be extended to the employee on an annual basis, with a window of ten (10) business days for the employee to make the designation.

220.7.~~8~~9 Sick Leave Pursuant to Labor Code Sections 245-249

Absence for the following purposes: (1) diagnosis, care, or treatment of an existing health condition of, or preventive care for an employee or an employee's family member; or (2) for an employee who is a victim of domestic violence, sexual assault, or stalking, described in Labor Code Section 230, subdivision (c) and Labor Code Section 230.1, subdivision (a).

220.7.~~9~~10 Sick Leave - Compulsory

Leave imposed by an appointing officer due to an employee's medical inability or incapacity to perform all the duties of the position as provided elsewhere in this Rule.

Rule 220
Leaves of Absence

Article III: Sick Leave with Pay

Applicability: Rule 220 shall apply to all classes of the Uniformed Ranks of the San Francisco Police Department, except that the provisions of Rule 220 may be superseded in whole or in part by the collective bargaining agreement, except for the definitions in this Rule which are applicable to employees in all classes.

Sec. 220.8 Sick Leave with Pay Eligibility

220.8.1 Sick leave with pay may be granted to employees who have accrued paid on the ninetieth (90th) day of service except that supplemental disability credits may be used to supplement disability indemnity payments as provided elsewhere in this Rule regardless of length of service and except that an authorized leave of absence with or without pay granted under this Rule shall not be considered as a break in the continuous service of an employee.

220.8.2 A break in service of more than twelve (12) continuous months by any employee other than an employee designated as a "holdover" will cause prior accumulated sick leave with pay credits to be canceled and eligibility for sick leave with pay must be re-established.

220.8.3 Sick leave with pay credits will continue to accrue at the normal rate while an employee is on either furlough or voluntary unpaid time off in accordance with this Rule, for a maximum of up to ten (10) days per fiscal year for imposed furlough or twenty (20) days per fiscal year for voluntary unpaid time off.

Sec. 220.9 Sick Leave with Pay Eligibility Pursuant to Administrative Code Chapter 12W effective February 5, 2007, and Labor Code Sections 245-249 effective July 1, 2015 Applicable to Employees Not Otherwise Qualified for Sick Leave

220.9.1 Sick leave with pay may be granted to said employees, on the ninetieth (90th) day of service.

220.9.2 Employees hired on or before February 5, 2007, shall immediately be eligible to accrue and use sick leave with pay credits under this section.

220.9.3 A complete separation in service for twelve (12) continuous months by an employee, other than an employee designated as a “holdover” will cause prior accumulated sick leave with pay credits to be canceled and eligibility for sick leave with pay must be re-established.

Sec. 220.9 Sick Leave with Pay Eligibility Pursuant to Administrative Code Chapter 12W effective February 5, 2007, and Labor Code Sections 245-249 effective July 1, 2015 Applicable to Employees Not Otherwise Qualified for Sick Leave (cont.)

220.9.4 Employees rehired within one (1) year following a separation will not be subject to the ninety (90) calendar day eligibility period and any previously accrued and unused sick leave hours will be reinstated.

Sec. 220.10 Sick Leave with Pay - Maximum Accumulation of Credits

220.10.1 Sick Leave with Pay – Maximum Accumulation of Credits

Sick leave with pay credits shall be cumulative but the accumulated balance of unused sick leave with pay credits shall not exceed the equivalent of six (6) months which is the hourly equivalent of 130 working days based on the regular daily work schedule as defined, provided that in no case may the total accumulated unused sick leave with pay credit balance exceed l040 hours. Maximum accumulated sick leave with pay credits shall be reduced proportionately for employees entering a class or position where the regular work schedule is less than the class exiting if such employees have accumulated unused sick leave with pay credits in excess of the maximum allowable for the new class or position. Such employees shall have all such credits restored upon return to a class or position with an increased regular work schedule.

220.10.2 Maximum Accumulation of Credits Pursuant to Administrative Code Chapter 12W effective February 5, 2007, and Labor Code Sections 245-249 effective July 1, 2015 Applicable to Employees Not Otherwise Qualified for Sick Leave

Sick leave with pay credits shall be cumulative but the accumulated balance of unused sick leave with pay credits shall not exceed seventy-two (72) hours under Administrative Code Chapter 12W, and forty-eight (48) hours under Labor Code Sections 245-249.

Sec. 220.11 Sick Leave with Pay - Restrictions

220.11.1 Sick leave with pay**,** beyond that authorized by law, is a privilege recognized by Charter and by Ordinance of the Board of Supervisors and should be requested and granted only in cases of absence because of illness which incapacitates the employee for the performance of duties or as otherwise defined in this Rule.

Sec. 220.11 Sick Leave with Pay – Restrictions (cont.)

220.11.2 Except for absences covered under Labor Code Section 233, an appointing officer or designee may require proof of incapacitation before granting sick leave with pay for any period of time and may withhold pay for failure to submit such proof provided that the employee had been previously notified in writing that such proof would be required for absences of less than five (5) working days.

220.11.3 The rate of earning and accumulating sick leave with pay credits and authorization for its use under this Rule shall in no way inhibit or restrict the right of an appointing officer to establish standards of attendance.

Sec. 220.12 Prohibition Against Employment While on Sick Leave with Pay

220.12.1 Employees are prohibited from working in any other employment while on sick leave with pay unless, after considering the medical reason for the sick leave with pay, the appointing officer with the approval of the Human Resources Director, grants permission for the employee to engage in a secondary employment subject to the provisions of these Rules governing such employment.

220.12.2 Violators of this section are subject to disciplinary action as provided in the Charter.

Sec. 220.13 Calculation of Sick Leave with Pay Credits

220.13.1 Unless otherwise provided in this Rule or by ordinance, sick leave with pay credits shall be earned at the rate of .05 hours for each hour of regularly scheduled paid service excluding, overtime exceeding forty (40) hours per week and holiday pay, except that an employee on disability leave shall earn sick leave with pay credits at the normal rate.

220.13.2 Exempt employees shall accrue paid sick leave at a rate of one (1) hour per every thirty (30) hours worked, excluding holiday pay.

Sec. 220.14 Disbursement of Sick Leave with Pay Credits

Sick leave with pay credits shall be used and deducted at the minimum rate in units of one hour for those employees whose credits are calculated in hours.

Sec. 220.15 Conversion of Sick Leave with Pay Credits from Days to Hours

Sick leave with pay credit balances shall be converted from days to hours based on the equivalent number of hours in such employee's sick leave with pay credit balances. The equivalent number of hours shall be based on the employee's authorized normal daily work schedule in effect on the effective date of this amended Rule, except if the Human Resources Director determines that such conversion is inequitable and allows another formula to be used.

Sec. 220.16 Employees Injured by Battery

220.16.1 An employee absent because of bodily injury or illness received in the course of employment and caused by an act of criminal violence shall be entitled to sick leave with pay under the provisions of the Administrative Code.

220.16.2 Sick leave with pay under this section shall be known as "leave due to battery" and shall be subject to approval by the Human Resources Director. The Human Resources Director shall make such investigation as is deemed appropriate and may include medical examinations by a physician(s) designated by the Human Resources Director.

220.16.3 The decision of the Human Resources Director may be appealed to the Commission whose decision is final.

220.16.4 Authorized sick leave under this section shall not be charged against earned sick leave with pay credits.

Sec. 220.17 Appeal of Denial of Sick Leave with Pay

Denial of sick leave with pay to an appointee who is eligible and qualified for such leave is appealable as provided elsewhere in this Rule.

Sec. 220.18 Reimbursement of Vested and Unused Accumulated Sick Leave with Pay Credits Balance

220.18.1 An employee who had accumulated unused sick leave with pay credits and who had completed the service requirement on or before December 5, 1978, shall upon the effective date of retirement for service or disability, or upon the date of death, or upon the date of separation caused by industrial accident, be reimbursed for the accumulated unused sick leave with pay credit balance which had been earned on or before December 5, l978, and not subsequently used ("vested and unused accumulated sick leave with pay credits") in accordance with the following schedule of service requirements and allowances.

Sec. 220.18 Reimbursement of Vested and Unused Accumulated Sick Leave with Pay Credits Balance (cont.)

220.18.1 (cont.)

Schedule of Service Requirements and Allowances for Reimbursement of Vested and Unused Accumulated Sick Leave with Pay Credit Balance at the Time of Retirement, Separation Because of Accident or Death	
Service Requirement	**Amount of Cash Reimbursement**
15 or more years of service	100%
More than 5 continuous years but less than 15 continuous years of service	50%
Up to and including 5 continuous years of service	33.3%

220.18.2 Reimbursement for the vested and unused accumulated sick leave with pay credit balance shall be further subject to the following:

1) The Human Resources Director shall administer the provisions of this section.

2) Deduction shall be made from the unused accumulated sick leave with pay credit balance which existed on December 5, l978, in an amount proportional to any credits used of that balance. Reimbursement shall be made only for the adjusted amount with all credits from the December 5, l978, balance subsequently used being deducted.

3) Reimbursement for the vested and unused accumulated sick leave with pay credit balance shall be payable at the time of retirement, separation caused by industrial accident or death, or at a later date when so selected by the employee, but within one year of such retirement, separation or death.

4) Reimbursement is to be computed at the base rate of pay of an employee's permanent class, at the base rate of pay of the class of a temporary or provisional employee with no permanent status, or at the base rate of pay in a temporary or provisional appointment of an employee with permanent status in another class who has held such temporary or provisional appointment continuously for one or more years at the time of separation.

Sec. 220.18 Reimbursement of Vested and Unused Accumulated Sick Leave with Pay Credits Balance (cont.)

220.18.2 (cont.)

5) No reimbursement shall be made for unused sick leave with pay credits earned on or after December 6, l978.

6) The enactment of this section is not intended to constitute additional compensation, nor be a part of the rate of pay of the employee, but is reimbursement for the vested and unused accumulated sick leave with pay credit balance to which an employee would have been entitled if the employee had not retired, separated due to industrial injury or died.

Rule 220
Leaves of Absence

Article IV: Sick Leave without Pay

Applicability: Rule 220 shall apply to all classes of the Uniformed Ranks of the San Francisco Police Department, except that the provisions of Rule 220 may be superseded in whole or in part by the collective bargaining agreement, except for the definitions in this Rule which are applicable to employees in all classes.

Sec. 220.19 Sick Leave without Pay - Eligibility

Subject to the provisions of this section, sick leave without pay may be granted to employees who are not eligible for sick leave with pay or, subject to the approval of the appointing officer or designee, employees may choose not to use their sick leave with pay credits.

Sec. 220.20 Sick Leave without Pay - Temporary and Provisional Employees

Sick leave without pay may be granted to temporary or provisional employees. Such leave shall be renewed monthly and shall not be extended beyond three (3) calendar months except for sick leave - maternity.

Sec. 220.21 Sick Leave without Pay - Permanent Employees

Sick leave without pay may be approved for permanent employees for the period of the illness provided, however, that requests for prolonged leave shall be renewed every three (3) months and provided further that such leave shall not be extended beyond a period of one (1) continuous year unless there is a reasonable probability that additional leave will enable the employee to return to employment within a reasonable time.

Sec. 220.22 Prohibition Against Employment While on Sick Leave Without Pay

220.22.1 Employees are prohibited from working in any other employment when on sick leave without pay unless, after considering the medical reason for the sick leave without pay, the appointing officer with the approval of the Human Resources Director, grants permission for the employee to engage in outside employment.

220.22.2 Violators of this section are subject to disciplinary action.

Rule 220
Leaves of Absence

Article V: Compulsory Sick Leave

Applicability: Rule 220 shall apply to all classes of the Uniformed Ranks of the San Francisco Police Department, except that the provisions of Rule 220 may be superseded in whole or in part by the collective bargaining agreement, except for the definitions in this Rule which are applicable to employees in all classes.

Sec. 220.23 Compulsory Sick Leave

220.23.1 An appointing officer or designee who has reason to believe that an employee is not medically or physically competent to perform assigned duties, and if allowed to continue in employment or return from leave may represent a risk to co-workers, the public and the employee, may require the employee to present a medical report from a physician designated by the Human Resources Director certifying the employee's medical or physical competency to perform the required duties.

220.23.2 If the employee refuses to obtain such physician's certificate or if as a result of a medical evaluation, the employee is found not to be medically or physically competent, the appointing officer or designee may place the employee on compulsory sick leave and shall immediately report such action to the Human Resources Director.

220.23.3 An employee shall remain on compulsory sick leave until such time as the employee is found to be competent to return to duty by a physician designated by the Human Resources Director, but such leave shall not exceed the maximum period of sick leave provided in this Rule.

220.23.4 The employee placed on sick leave under the provisions of this section may appeal as provided under the appeal provisions of the Medical Examination Rule.

220.23.5 An employee placed on compulsory sick leave is ineligible for employment with the City and County and shall be placed under waiver on all lists on which the employee's name appears and shall otherwise be unemployable.

Rule 220
Leaves of Absence

Article VI: Disability Leave

Applicability: Rule 220 shall apply to all classes of the Uniformed Ranks of the San Francisco Police Department, except that the provisions of Rule 220 may be superseded in whole or in part by the collective bargaining agreement, except for the definitions in this Rule which are applicable to employees in all classes.

Sec. 220.24 Disability Leave

220.24.1 Absence due to illness or injury arising out of and in the course of employment is defined as "disability leave" and is administered under the State Workers' Compensation Laws and the Rules of the Retirement Board.

220.24.2 An employee who is absent because of disability leave and who is receiving disability indemnity payments may request, by submitting a signed option statement to the employee's department no later than ninety (90) days following the employee's release from disability leave, that the amount of disability indemnity payment be supplemented with salary to be charged against the employee's supplemental disability credits so as to equal the full salary the employee would have earned for the regular work schedule. The regular work schedule shall be that schedule in effect at the commencement of the disability leave.

220.24.3 Supplemental disability credits shall be an account separate from, but equivalent to, the employee's accumulated unused sick leave with pay credit balance except that the supplemental disability credit account shall be adjusted as provided below.

220.24.4 Failure to exercise the option to supplement disability indemnity payments within ninety (90) calendar days following release from disability leave will preclude later requests.

220.24.5 Supplemental disability credits shall be used at the minimum rate in units of one (1) hour.

220.24.6 The employee's department shall submit separate time rolls to reflect this action only after the Retirement System certifies the amount of disability indemnity payment, if any, for the period.

220.24.7 Salary may be paid on regular time rolls and charged against the unused sick leave with pay credit balance during any period prior to the commencement of the determination of eligibility for disability indemnity payment without requiring a signed option by the employee.

Sec. 220.24 Disability Leave (cont.)

220.24.7 (cont.)

220.24.8 When an employee has used sick leave with pay credits and the Retirement System subsequently determines that the employee was entitled to disability indemnity payment for the period of absence, provision shall be made for adjusting the employee's sick leave with pay credit balance and for reimbursing the appropriate City fund for the amount of sick leave with pay credits charged and paid.

220.24.9 An employee who uses supplemental disability credits to supplement disability indemnity payments shall, while on disability leave, earn supplemental disability credits at the same rate as sick leave with pay credits.

220.24.10 Upon return to duty, an employee who has used supplemental disability credits shall earn sick leave with pay credits at the normal rate and shall earn supplemental disability credits at twice the rate that sick leave with pay credits are earned until such time as the total hours of supplemental disability credits used are regained.

220.24.11 Should an employee suffer a recurrence or a new injury before all supplemental disability credits are regained, the supplemental disability credit balance shall be that balance existing at the beginning of the pay period in which the recurrence or new injury occurs and shall be adjusted for the amount of supplemental disability credits subsequently earned and sick leave with pay credits subsequently used.

Sec. 220.25 Use of Sick Leave with Pay Credits to Supplement State Disability Insurance

220.25.1 Sick leave with pay credits shall be used to supplement State Disability Insurance (SDI) at the minimum rate in units of one (1) hour.

220.25.2 SDI payments to an employee who qualifies and who has accumulated and is eligible to use sick leave with pay credits shall be supplemented with sick leave with pay credits so that the total of SDI and sick leave with pay calculated in units of one-hour provides up to, but does not exceed, the regular gross salary the employee would have received for the normal work schedule excluding overtime.

Sec. 220.25 Use of Sick Leave with Pay Credits to Supplement State Disability Insurance (cont.)

220.25.3 An employee who wishes not to supplement, or who wishes to supplement with compensatory time or vacation, must submit a written request on a form prescribed by the Human Resources Director to the appointing officer or designee within seven (7) calendar days following the first date of absence.

220.25.4 Employees who are supplementing SDI earn sick leave with pay credits at the normal rate only for those hours of sick leave with pay credits used.

Rule 220
Leaves of Absence

Article VII: Military~~, War Effort and Sea Duty~~ Leaves

Applicability: Rule 220 shall apply to all classes of the Uniformed Ranks of the San Francisco Police Department, except that the provisions of Rule 220 may be superseded in whole or in part by the collective bargaining agreement, except for the definitions in this Rule which are applicable to employees in all classes.

Sec. 220.26 Military Leave

220.26.1 Military leave is governed by the provisions in the Uniformed Services Employment and Reemployment Rights Act (USERRA). ~~of~~ applicable Federal and State laws, and by Charter provisions and by this Rule.

220.26.2 ~~**Time of War – Definition**~~**Active or Inactive Duty Leave for Military Training, Drills, or Fitness-For-Service Examination**

~~The phrase "time of war" is defined elsewhere in these Rules.~~Leaves of absence shall be granted to officers and employees ordered to fulfill training requirements determined by a proper military authority as necessary for the officer's or employee's professional development, to complete skill training or retraining, or to determine fitness for military service. This includes weekend drills and annual trainings. Approved leave shall include any necessary time for travel to and from the duty or examination location, plus a reasonable amount of leave for rest before reporting to work. See Rule 220.26.4 for time limits on return to work following approved military leaves.

220.26.3 **Active Duty Military Leave** ~~**– Time of War**~~

Leaves of absence shall be granted to officers and employees for service in the armed forces of the United States or the State of California, or in service of the Federal Emergency Management Agency (FEMA) for the period that the officer or employee is ordered or retained on active duty. Leave for this purpose shall not exceed five (5) years, unless the officer or employee's service meets conditions in USERRA for an exemption from the five-year service limit. Reasons for extending the five-year military leave limit include:

1. Service beyond five years that is necessary to complete an initial period of service required in the officer or employee's orders.
2. Service from which an officer or employee, through no fault of their own, is unable to obtain a release within the five-year limit.
3. Service for required training for reservists and National Guard members that must be excluded when calculating the five-year limit.

4. Orders for involuntary service, or retention on active duty during domestic emergency or national security related situations.
5. Orders to service, or to remain on active duty (other than for training) because of a war or national emergency declared by the President or Congress.
6. Active duty (other than for training) by volunteers supporting operational missions, other than war or national emergencies, for which selected reservists have been ordered to active duty without their consent.
7. Service by members who are ordered to active duty in support of a critical mission or requirement of the uniformed services as determined by the agency Secretary involved.
8. Federal service by members of the National Guard called into action by the President to suppress an insurrection, repel an invasion, or to execute the laws of the United States. ~~or for service on ships operated by or for the United States government in time of war and for a period not to exceed three (3) months after the conclusion of such service, but not later than one year after the cessation of hostilities, except in case of disability incurred while in active service with the armed forces or the merchant marines when such disability shall extend beyond such period.~~

220.26.4 Return to Work Following Approved Military Leave ~~– Time of Peace~~

~~Whenever any officer or employee shall, by order of the government of the United States or by lawful order of any of its departments or officers, or by lawful order of the State of California, or any of its departments or officers, be directed in time of peace to report and serve in the armed forces of the United States, or in the armed forces of the State of California, said officer or employee shall be entitled to a leave of absence from the employee's office or position during the time of such service and for a period not to exceed three (3) months after the expiration thereof.~~ Officers and employees taking military leave must return to work within certain time limits. The time limit for returning to work depends on the duration of the officer or employee's military service, with the exception of leave taken for fitness-for-service examinations.

Military Service of 1 to 30 Days

Any officer or employee absent due to a military service with a duration of one to 30 days must return to work on the first regularly scheduled workday following completion of the officer or employee's military service, after allowance for safe travel home from the military duty location plus an eight-hour rest period. If, due to no fault of the officer or employee, timely reporting back to work would be impossible or unreasonable, the employee must report to work as soon as possible after the allowed eight-hour rest period.

Fitness-For-Service-Examinations

The time limit for reporting back to work for officers or employees absent due to orders requiring a fitness-for-service examination is the first scheduled workday following completion of the examination plus allowance for safe travel home from the examination location and an eight-hour rest period. This reporting limit applies regardless of the length of absence.

Service of 31 to 180 Days

Any officer or employee absent due to military service with a duration of 31 to 180 days must make an oral or written request to return to work to the appointing officer or designee within 14 days after the completion of service. If submission of the request to return to work is impossible or unreasonable through no fault of the officer or employee, the request must be submitted as soon as possible. Officers and employees requesting return to work must report to work on the date and time designated by the appointing officer or designee.

Service of 181 Days or More

Any officer or employee absent due to military service with a duration of 181 days or more must make an oral or written request to return to work to the appointing officer or designee within 90 days after the completion of service. If submission of the request to return to work is impossible or unreasonable through no fault of the officer or employee, the request must be submitted as soon as possible. Officers and employees requesting return to work must report to work on the date and time designated by the appointing officer or designee.

Service Incurred or Aggravated Disability Leave

Any officer or employee hospitalized or convalescing because of an injury or illness incurred or aggravated during the performance of military service shall have up to two years to return to work. The two-year period will be extended for a minimum time required to accommodate a circumstance beyond an officer or employee's control that would make returning to work within the two-year period impossible or unreasonable. Such officers and employees must comply with the oral or written request timeframes determined by their length of service, after their recovery.

Failure to Request Return to Work or Return to Work Following Military Leave

Any officer or employee who fails to make a timely oral or written request for return to work, or who fails to return to work following a military leave, whether submitting a request to return or not, shall be deemed as away without official leave and shall be subject to rules and policies covering unauthorized absence.

Sec. 220.26 Military Leave (cont.)

220.26.5 Military Leave - Permanent Appointees

Any officer or employee on military leave, who prior to such leave has been appointed to a permanent position in the City and County service, shall be entitled to resume such position at the expiration of the leave, and in determining and fixing rights, seniority, salary benefits, and otherwise which have accrued and shall inure to the benefit of such officer or employee, the term of military leave shall be considered and accounted as part of the employee's service to the City and County.

220.26.6 Military Leave - Proof of Duty Required for Military Pay

Officers and employees requesting military leave pay pursuant to State of California Military and Veteran's Code section 395.1 shall file with the Human Resources Director a copy of the orders ~~necessitating~~ identifying the type of such service and the duration prior to the effective date of the leave of absence ~~and upon return from such leave shall submit a copy of the discharge or release~~.

220.26.7 Military Leave - Salary While on Temporary Leave

Employees who have been employed by the City and County ~~or any other public agency~~ or have been on military duty for a period of not less than one year continuously prior to the date upon which a temporary military leave not exceeding l80 calendar days begins shall, as required by the State of California Military and Veterans' Code (Section 395), receive their regular salary or compensation for a period not to exceed thirty (30) calendar days of such military leave in any fiscal year or more than thirty (30) calendar days during any period of continuous military leave.

220.26.8 Military Leave - Probationary Appointees

Refer to the Probationary Period Rule on leave during the probationary period.

220.26.9 Military Leave - Eligible Not Reached for Certification While in Service - Time of War

An eligible on a regular civil service list, who served on active military duty not including reserve service during time of war who presents an honorable discharge or certificate of honorable active service within one (1) year from the date of release from military service, shall be preferred for certification for a period of four (4) years ~~after the cessation of hostilities~~ from the date of discharge in the order of standing upon the eligible list at the time of entrance into military service and before

candidates procuring standing through an examination held subsequent to the entrance of such eligibles into the military service.

Sec. 220.26 Military Leave (cont.)

220.26.10 Military Leave - Eligibles Reached for Certification

If while in the military service, the name of an eligible was reached for certification to a permanent position and the eligible presents an honorable discharge or certificate of honorable active service within one hundred and l20 days from the date of release from active military duty not including reserve service ~~during time of war~~, the eligible shall be certified to a position in the class for which so reached; and, for all purposes of seniority, the date of certification if appointed, shall be deemed to be the date when the eligible was reached for certification while in the military service. A person appointed in accordance with this section shall serve the required probationary period. An eligible who is offered appointment in accordance with the provisions of this section and who waives appointment and is subsequently certified after withdrawal of waiver shall have seniority as of the date of such certification.

220.26.11 Military Leave - Participants in Written Examinations

Persons who participate in a written examination and who present their orders or other proof of service within 120 days from the date of release from active military service ~~in time of war~~ shall be allowed to participate in the remaining parts of the examination. If they meet all the eligibility qualifications, they shall be certified as of the date they would have been reached for certification in accordance with their rank based on the entire examination.

220.26.12 Military Leave - Employees or Officers Not Subject to Civil Service Examination

Military leave to an elected or appointed officer, appointed for a definite period of time, shall not be extended beyond the period of time for which elected or appointed, provided that if such officer is re-elected or reappointed, then military leave shall be automatically extended for such ensuing period of time.

Military leave to an employee occupying a position exempt from civil service examination shall not extend beyond the period of time for which the employee's appointing officer was elected or appointed.

Sec. 220.27 War Effort Leave

The Board of Supervisors may provide by ordinance that leaves of absence shall be granted to officers and employees during time of war for service directly connected with the prosecution of the war or national defense or preparedness.

~~Sec. 220.28 Leave for Sea Duty as Licensed Officers~~

~~In time of war or while any act authorizing compulsory military service or training is in effect, the Board of Supervisors may provide by ordinance that leaves of absence shall be granted to officers and employees for sea duty as licensed officers aboard ships operated by or for the United States government. The Civil Service Commission shall amend this section to implement such ordinance.~~

Sec. 220.289 Leave for Spouse or Registered Domestic Partner During Leave from Deployment of Qualified Member

220.289.1 In compliance with the State of California Military and Veterans Code section 395.10, an eligible employee who is a spouse or registered domestic partner of a qualified member of the Armed Forces of the United States, National Guard, or Reserves shall be allowed to take up to ten (10) days of leave during a period of leave from deployment of the qualified member.

220.289.2 An "eligible employee" is an employee who meets all of the following conditions:

1) is a spouse or registered domestic partner of a qualified member;

2) works on average twenty (20) or more hours per week and is not an independent contractor;

3) provides notice to the City, within two (2) business days of receiving official notice that the qualified member will be on leave from deployment, of his or her intention to take leave; and

4) submits written documentation to the City, certifying that the qualified member will be on leave from deployment during the time of leave.

220.289.3 A "qualified member" is any of the following:

1) A member of the Armed Forces of the United States who has been deployed during a period of military conflict to an area designated as a combat theater or combat zone by the President of the United States; or

2) A member of the National Guard who has been deployed during a period of military conflict; or

3) A member of the Reserves who has been deployed during a period of military conflict.

Rule 220
Leaves of Absence

Article VIII: Unpaid Administrative Leave or Furlough

Applicability: Rule 220 shall apply to all classes of the Uniformed Ranks of the San Francisco Police Department, except that the provisions of Rule 220 may be superseded in whole or in part by the collective bargaining agreement, except for the definitions in this Rule which are applicable to employees in all classes.

Sec. 220.2930 Unpaid Administrative Leave or Furlough

220.2930.1 General Provisions

1) Notwithstanding the layoff and involuntary leave provisions or any other provisions of these Rules, an appointing officer is authorized to impose unpaid administrative leave (furlough) on any employee within that appointing officer's jurisdiction as provided in this section. The imposition of furloughs shall be subject to receipt of a Projected Deficit Notice (PDN) from the Controller stating that the department's budget will be insufficient to support the department's level of spending through the end of the fiscal year.

2) The authority of the appointing officer to impose furloughs shall be limited to those furloughs necessary to correct the projected deficit identified by the Controller.

3) This Rule shall apply to all employees of the City and County.

4) The Superintendent of the San Francisco Unified School District and the Chancellor of the San Francisco Community College District shall also be authorized to furlough any employee in the classified service upon their individual determinations that, based upon a review of projected revenues and expenditures, the budget will be insufficient to support the District's level of spending through the end of the fiscal year.

5) No provision of Layoff and Involuntary Leave, including but not limited to any provision regarding the order of layoff, displacement of less senior employees, or reinstatement, shall be applicable to any employees furloughed hereunder.

Sec. 220.2930 Unpaid Administrative Leave or Furlough (cont.)

220.2930.2 Voluntary Unpaid Time Off

1) Prior to imposing a furlough on any employee, an appointing officer shall attempt to determine, to the extent feasible and with due consideration for the time constraints which may exist for eliminating the projected deficit, the interest of employees within the appointing officer's jurisdiction in taking unpaid personal time off on a voluntary basis.

2) The appointing officer shall have full discretion to approve or deny requests for voluntary unpaid time off based on the operational needs of the department and any court decrees or orders pertinent thereto. The decision of the appointing officer shall be final except in cases where requests for voluntary unpaid time off in excess of ten (10) working days are denied. In such cases, an employee may appeal in accordance with the procedures provided below for appealing imposition of furlough.

3) An employee shall be entitled to take up to ten (10) unpaid days per fiscal year at the rate of no more than five days in a three month period, at the employee's discretion, upon at least fifteen (15) calendar days prior written notice to the employee's appointing officer. Such request shall not be denied except for the reason of a requirement that such position be filled on an overtime or premium pay basis, for essential operational needs or the requirements of a court decree or order.

220.2930.3 Furloughs

1) Appointing officers are encouraged to furlough entire operational units within departments rather than individual employees; or stagger work hours within an operational unit on a reduced hours basis. The decision of the appointing officer to impose furloughs under this subsection, and the appointing officer's determination of what constitutes an operational unit, shall be final.

2) Where, in the discretion of the appointing officer, furlough of an operational unit as prescribed above is not feasible, individual employees within an operational unit may be furloughed.

3) To the extent practicable, furlough shall be equitably distributed among all of the employees in the affected department or operational unit to which the Projected Deficit Notice (PDN) has application; and, all of the employees in the affected class(es).

Sec. 220.2930 Unpaid Administrative Leave or Furlough (cont.)

220.2930.3 Furloughs (cont.)

4) In determining which employees to furlough, an appointing officer shall consider citywide seniority within a class as well as considering the operational needs of the department.

5) In no event shall furlough be imposed upon an employee for more than four (4) days in any three (3) month period or ten (10) days in any fiscal year. Voluntary time off not to exceed a total of five (5) days per quarter or ten (10) days per year, approved pursuant to this section, shall be credited toward the maximum number of furlough days which may be imposed pursuant to this Rule.

6) Employees placed on furlough pursuant to this section shall be notified in writing at least fifteen (15) calendar days in advance of the effective date for the furlough.

7) The decision to furlough an individual employee within an operational unit shall be final except that an employee given notice of a furlough, which taken together with an employee's prior furloughs in the same fiscal year would exceed five (5) working days within any six (6) month period, may file an appeal. Such appeals must be in writing and filed within three (3) calendar days of the date of the notice of furlough with the Human Resources Director with a copy to the appointing officer. Within three (3) calendar days after receiving the appeal, the Department of Human Resources shall refer the written appeal and the appointing officer's written comments, if any, for determination to the Human Resources Director, the Mayor and the Controller, or their designees, who shall meet on no less than 24 hours public notice. The determination regarding the appeal shall be rendered within seven (7) calendar days of the date of the appeal. This decision is final and shall not be reconsidered by the Commission. The Human Resources Director shall notify the employee and the appointing officer of the decision prior to the effective date of the furlough.

Sec. 220.2930 Unpaid Administrative Leave or Furlough (cont.)

220.2930.4 Restrictions on Use of Paid Time Off While on Voluntary Unpaid Time Off or Furlough

1) All voluntary unpaid time off or furlough imposed or granted pursuant to this section shall be without pay.

2) Employees granted voluntary unpaid time off or placed on furlough are precluded from using sick leave with pay credits, vacation credits, compensatory time off credits, floating holidays, training days or any other form of pay for the time period involved.

220.2930.5 Imposition of Furlough - Fair Labor Standards Act (FLSA) Restrictions

1) Furlough for employees who are non-exempt under the Fair Labor Standards Act (FLSA) shall be imposed in minimum increments of one (1) hour.

2) Furlough for employees who are exempt under the Fair Labor Standards Act (FLSA) shall be imposed in minimum increments of one (1) day.

220.2930.6 Vacation and Sick Leave with Pay Accruals While on Voluntary Unpaid Time Off or Furlough

Subject to passage of necessary ordinances by the Board of Supervisors, vacation and sick leave with pay accruals shall continue during a maximum of ten (10) days of furlough in any fiscal year, or a maximum of twenty (20) days for approved voluntary unpaid time off taken pursuant to this Section in any fiscal year.

220.2930.7 Duration and Revocation of Voluntary Unpaid Time Off or Furlough

Furlough imposed upon an employee shall remain in force for the period specified in the written notice unless sooner revoked by written notice from the appointing officer. Approved voluntary unpaid time off taken pursuant to this section may not be changed by the appointing officer without the employee's consent.

Sec. 220.2930 Unpaid Administrative Leave or Furlough (cont.)

220.2930.8 Resolution of Disputes

Except as provided elsewhere in this section, the Human Resources Director shall act on all disputes arising out of the application or implementation of the provisions of this section. The decision of the Human Resources Director shall be final and shall not be reconsidered by the Commission.

Rule 220
Leaves of Absence

Article IX: Other Leaves of Absence

Applicability: Rule 220 shall apply to all classes of the Uniformed Ranks of the San Francisco Police Department, except that the provisions of Rule 220 may be superseded in whole or in part by the collective bargaining agreement, except for the definitions in this Rule which are applicable to employees in all classes.

Sec. 220.301 ~~01~~ Leave to Accept Other City and County Position

220.301 ~~01~~.1 Leave by an employee who has completed the probationary period to accept exempt or temporary appointment in the City and County service may be approved for the duration of such appointment. Such leave by a probationary employee is subject to the provisions of the Rule governing the Probationary Period.

220.301 ~~01~~.2 Denial of such leave by the appointing officer is appealable as provided elsewhere in this Rule.

Sec. 220.312 ~~12~~ Educational Leave

220.312 ~~12~~.1 Educational leave is defined as leave for the purpose of educational or vocational training in a field related to the employee's current position and as any training to which a veteran is entitled pursuant to the laws of the United States or the State of California.

220.312 ~~12~~.2 Educational leave may be approved for permanent appointees for a period of up to one (1) year. Requests for educational leave of longer than one year must be renewed each year.

220.312 ~~12~~.3 Denial of educational leave is appealable as provided elsewhere in this Rule.

220.312 ~~12~~.4 An employee on educational leave shall not accept other employment without approval of the appointing officer and the Human Resources Director, except for employment in vacant positions with the City and County during school vacations.

Sec. 220.312 Educational Leave (cont.)

220.312.5 As soon as records are available, the employee shall periodically present to the appointing officer a record of completed educational work. These records shall be maintained in such a manner as to be readily available for audit by Department of Human Resources staff. Failure to submit an acceptable record of completed educational work shall subject the employee to disciplinary action as provided in the Charter.

Sec. 220.323 Leave for Civilian Service in the National Interest

220.323.1 Civilian service in the national interest is defined as leave to serve with a federal, state or other public agency or non-profit organization in a program or in a capacity which the Human Resources Director deems to be in the national or general public interest.

220.323.2 Such leave may be approved for permanent appointees for a period of up to one (1) year. Requests for such leave of longer than one (1) year must be renewed each year.

220.323.3 Denial of such leave is appealable as provided elsewhere in this Rule.

Sec. 220.334 Leave for Employment as an Employee Organization Officer or Representative

220.334.1 Leave for employment as an employee organization officer or representative is defined as leave to serve full-time as an officer or representative of an employee organization whose membership includes City employees, or to attend a convention or other type of business meeting of an employee organization as an officer or delegate of the employee organization.

220.334.2 Leave for permanent appointees may be approved for the duration of such service.

220.334.3 Denial of such leave is appealable as provided elsewhere in this Rule.

Sec. 220.345 Family Care Leave

220.345.1 Definition of Family

A unit of interdependent and interacting persons, related together over time by strong social and emotional bonds and/or by ties of marriage, birth, and adoption, whose central purpose is to create, maintain, and promote the social, mental, physical and emotional development and well being of each of its members.

220.345.2 Permanent employees who have one (1) or more years of continuous service in any status may be granted up to one year of unpaid family care leave for the following reasons:

1) The birth of a biological child of the employee;

2) The assumption by the employee of parenting or child rearing responsibilities. Family care leave does not apply to an employee who temporarily cares for a child for compensation, such as a paid child care worker;

3) The serious illness or health condition of a family member of the employee, the employee's spouse or domestic partner, a parent of the employee or the employee's spouse or domestic partner, the biological or adoptive child of the employee, or a child for whom the employee has parenting or child rearing responsibilities; or

4) The mental or physical impairment of a family member of the employee, the employee's spouse or domestic partner, a parent of the employee or the employee's spouse or domestic partner, the biological or adoptive child of the employee, or a child for whom the employee has parenting or child rearing responsibilities, which impairment renders that person incapable of self-care.

220.345.3 Family care leave is unpaid leave. Such leave may be granted in addition to accumulated compensatory time off, vacation time, floating holiday time or sick leave as specified under Sick Leave - Illness or Medical Appointment of Child, Parent, Spouse or Domestic Partner.

220.345.4 Denial of family care leave is appealable as provided elsewhere in this Rule.

Sec. 220.356 Witness or Jury Duty Leave

220.356.1 An employee who is summoned as a witness on behalf of the City and County or juror for a judicial proceeding shall be entitled to leave with pay less the amount of juror or witness fee paid for the period required for such service (Charter Section A8.400G). An employee who is summoned to serve as a witness in cases which involve outside employment or personal business affairs shall be placed on leave without pay unless vacation leave or compensatory time is requested and granted.

220.356.2 Paid witness or jury duty leave shall be only from an employee's scheduled duty time and shall not include hours outside of scheduled hours of work or on days off.

220.356.3 Such employees shall notify the appointing officer immediately upon receiving notice of jury duty.

220.356.4 An employee who takes vacation leave while on witness or jury duty leave shall receive regular salary.

220.356.5 Refer to the Probationary Period Rule on leave during the probationary period.

Sec. 220.367 Holiday Leave

Holiday leave shall be as provided by ordinance of the Board of Supervisors.

Sec. 220.378 Vacation Leave

Vacation leave shall be as provided in the Charter and by ordinance of the Board of Supervisors.

Sec. 220.389 Involuntary Leave of Absence

220.389.1 Whenever it becomes necessary to effect a reduction in force due to lack of work or lack of funds which shall result in the displacement of a permanent or probationary appointee from the City and County service, an appointing officer, notwithstanding other provisions of these Rules governing leaves of absence, shall place such employees on a leave of absence of an involuntary nature unless the employee elects to be laid off.

Sec. 220.389 Involuntary Leave of Absence (cont.)

220.389.2 Such reductions in force shall be effected by the provisions of this Rule governing seniority and order of layoff.

220.389.3 Employees placed on an involuntary leave of absence shall be ranked on the holdover roster for the class from which laid off and shall be returned to duty as provided in this Rule.

220.389.4 Leaves of absence imposed under the provisions of this Rule shall expire upon the return to duty of the holdover, upon the expiration of holdover status, or upon written request of the employee to elect to be laid off while on involuntary leave.

Sec. 220.3940 Religious Leave

220.3940.1 Employees may be granted leave when personal religious beliefs require that the employee abstain from work during certain periods of the ~~work day~~workday or work week. Such leave shall be known as "Religious Leave."

220.3940.2 Religious leave shall be without pay unless the employee elects to use accumulated compensatory time off, vacation time, or floating holiday time.

220.3940.3 Denial of religious leave is appealable as provided elsewhere in this Rule.

Sec. 220.41 Personal Leave

220.401.1 Personal leave is defined as leave for reasons other than those covered in other sections of this Rule.

220.401.2 Personal leave for permanent employees may be approved for a period of up to 12 months within any two-year period. Personal leave for temporary or provisional employees may be approved only if replacement of the employee is not required and for a maximum of one month.

220.401.3 On the request of an appointing officer, the Human Resources Director, may for reasons deemed to be in the best interest of the service approve extension of personal leave for permanent employees beyond a l2 month period.

Rule 220
Leaves of Absence

Article X: Appeal Procedures

Applicability: Rule 220 shall apply to all classes of the Uniformed Ranks of the San Francisco Police Department, except that the provisions of Rule 220 may be superseded in whole or in part by the collective bargaining agreement, except for the definitions in this Rule which are applicable to employees in all classes.

Sec. 220.41~~2~~ Appeal Procedures

220.41~~2~~.1 Appeals concerning furloughs or voluntary unpaid time off are excluded from appeal under this section and are appealable as provided elsewhere in this Rule.

220.41~~2~~.2 In cases where appeal is specifically granted in this Rule, a dispute concerning the application or implementation of the provisions of this Rule shall be processed EITHER, at the option of the employee:

1) in accordance with the grievance procedure provided by the Human Resources Director for unrepresented employees or in a collective bargaining agreement.

2) by appeal in writing to the Human Resources Director, whose decision shall be final and shall not be reconsidered by the Commission. A decision under one option shall preclude the use of the other option.

Rule 320
Leaves of Absence

Applicability: Rule 320 shall apply to all classes of the Uniformed Ranks of the San Francisco Fire Department, except that the provisions of Rule 320 may be superseded in whole or in part by the collective bargaining agreement, except for the definitions in this Rule which are applicable to employees in all classes.

Article I: Leaves of Absence - General Requirements

Article II: Sick Leave - General Provisions

Article III: Sick Leave With Pay

Article IV: Sick Leave Without Pay

Article V: Compulsory Sick Leave

Article VI: Disability Leave

Article VII: Military~~, War Effort and Sea Duty~~ Leaves

Article VIII: Unpaid Administrative Leave or Furlough

Article IX: Other Leaves of Absence

Article X: Appeal Procedures

Rule 320
Leaves of Absence

Article I: Leaves of Absence - General Requirements

Applicability: Rule 320 shall apply to all classes of the Uniformed Ranks of the San Francisco Fire Department, except that the provisions of Rule 320 may be superseded in whole or in part by the collective bargaining agreement, except for the definitions in this Rule which are applicable to employees in all classes.

Sec. 320.1 Leaves of Absence - General Requirements

320.1.1 Leaves of absence, hereinafter referred to in this Rule as "leave," shall be governed by the provisions of this Rule. For the purpose of this Rule, "appointing officer" shall mean all elected officials; all department heads designated by the Charter as appointing officers; and all Boards and Commissions when officiating as appointing officers.

320.1.2 Requests for leave shall be subject to the approval of the appointing officer or designee. The decision of the appointing officer or designee is final unless provision for appeal is specifically granted in this Rule. Such requests for appeal shall be processed in accordance with the appeal procedure provided in this Rule. Requests for military, maternity, or witness or jury duty leave shall be granted as provided herein.

320.1.3 Beginning January 1, 2016, amendments to California Labor Code Section 233 (Kin Care Law) authorize employees to use available accrued sick leave each calendar year to care for a “family member” or themselves, in an amount equal to one-half of their annual accrual. Under the Kin Care Law, available accrued sick leave must be granted upon the employee’s oral or written request and the employer shall not deny the right to take such leave, or impose conditions for granting such leave, including the requirement of medical certification.

320.1.4 Except for vacation leave, witness or jury duty leave, compulsory sick leave, disability leave or unpaid administrative leave or absences covered under Labor Code Section 233, an employee requesting a leave for more than five (5) working days shall submit such request to the appointing officer or designee on the form prescribed by the Human Resources Director. With the exceptions noted herein, requests for sick leave in excess of five (5) continuous working days shall be certified by a licensed medical doctor, doctor of dental surgery, doctor of podiatric medicine, licensed clinical psychologist, Christian Science Practitioner or licensed doctor of chiropractic. Verification of sick leave with pay

Sec. 320.1 Leaves of Absence - General Requirements (cont.)

320.1.4 cont.
for less than five (5) working days (seven (7) calendar days in the case of part-time employees) as provided elsewhere in this Rule shall be required on an individual basis only and shall be based upon an evaluation of an employee's leave use. For employees taking sick leave pursuant to Administrative Code Chapter 12W Labor Code Sections 245-249 or Labor Code Section 233, the City may take reasonable measures to verify or document that an employee's use of sick leave is taken in accordance with Administrative Code Chapter 12W, Labor Code Sections 245-249 or Labor Code Section 233.

Sec. 320.1 Leaves of Absence - General Requirements (cont.)

320.1.5 The Human Resources Director may direct that leave requests be retained in the department and maintained in a manner so as to be readily available for audit, review or analysis by Department of Human Resources and Office of Labor Standards Enforcement staff.

320.1.6 Except as otherwise provided in these Rules, leave granted for the period stated on the prescribed form may be extended or abridged only with the approval of the appointing officer or designee. An employee who does not return to work on the approved date shall be deemed as away without official leave and shall be subject to automatic resignation as provided elsewhere in these Rules.

320.1.7 Except when an employee requesting sick leave has accumulated unused sick leave with pay credits and except for employees eligible for military leave with pay, organ or bone marrow donor leave with pay, witness or jury duty leave, disability leave or leave due to battery as provided elsewhere in this Rule, or for authorized holiday or vacation, leaves shall be without pay.

320.1.8 Refer to the Probationary Period Rule on leave during the probationary period.

320.1.9 Exempt employees shall be granted paid sick leave on the ninetieth (90^{th}) day of service. The decision of the appointing officer shall be final and not subject to appeal.

320.1.10 An appointee shall not be required to sign a resignation form as a condition of approval of a leave.

320.1.11 Leaves granted under this Rule shall be indicated on time rolls as designated by the Controller.

320.1.12 An authorized leave granted under this Rule shall not be considered as a break in the continuous service of an employee.

Rule 320
Leaves of Absence

Article II: Sick Leave - General Provisions

Applicability: Rule 320 shall apply to all classes of the Uniformed Ranks of the San Francisco Fire Department, except that the provisions of Rule 320 may be superseded in whole or in part by the collective bargaining agreement, except for the definitions in this Rule which are applicable to employees in all classes.

Sec. 320.2 Eligibility for Sick Leave

Subject to the provisions of this Rule, employees and officers (hereinafter called "employees") who are absent from their duties due to their own illness or disability, or that of a qualifying family member, including preventive care, such as medical or dental appointments, and employees who are victims of domestic violence, sexual assault or stalking, are eligible for sick leave.

Sec. 320.3 Sick Leave - Exclusions from Eligibility

320.3.1 Sick leaves granted to members of the Uniformed Ranks of the Fire Department shall be regulated by Rules adopted by the Fire Commission. These Rules and any amendments thereto shall be subject to the approval of the Civil Service Commission and when so approved by the Civil Service Commission shall be deemed as included in this Rule. Calculation of sick leave with pay credits, reimbursement for vested and unused accumulated sick leave with pay credits and any provision not covered in the Rules of the Fire Department shall be as provided in this Rule.

320.3.2 This Rule shall not apply to certificated employees of the School Districts, patrol special officers appointed by the Police Commission, employees under personal services contracts, elective officers, and members of Boards and Commissions.

Sec. 320.4 Verification of Sick Leave

320.4.1 The appointing officer or designee to whom application for sick leave is made may make such independent investigation as to the necessity for sick leave as is deemed proper under these rules and federal, state and local law and may require certification for any period of sick leave, provided that the employee has been previously notified in writing that such certification for absence of less than five (5) working days shall be required.

Sec. 320.4 Verification of Sick Leave (cont.)

320.4.1 (cont.)
For employees taking sick leave pursuant to Administrative Code Chapter 12W, Labor Code Sections 245-249 or Labor Code Section 233, the City may take reasonable measures to verify or document that an employee's use of sick leave is taken in accordance with Administrative Code Chapter 12W, Labor Code Sections 245-249 or Labor Code Section 233.

320.4.2 The Human Resources Director may at any time make such independent investigation as may be deemed proper regarding the illness of any person on sick leave.

Sec. 320.5 Retirement Automatically Terminates Sick Leave

Sick leave shall automatically terminate on the effective date of an employee's retirement.

Sec. 320.6 Abridgment of Sick Leave

Sick leaves granted in excess of five (5) working days may be abridged if the employee presents to the appointing officer or designee medical evidence of capability to resume all the duties of the position.

Sec. 320.7 Definition of Sick Leave

A leave granted under this Rule for one of the following reasons shall be known as "sick leave":

320.7.1 Sick Leave - Medical Reasons

Absence, for diagnosis, care or treatment of a health condition, including alcoholism , or preventive care, and for employees who are victims of domestic violence, sexual assault or stalking, but excluding illness or injury arising out of and in the course of City and County employment. Absence due to illness or injury arising out of and in the course of employment is administered either under the Rules of the Retirement Board and is referred to as "disability leave" and may be supplemented as provided elsewhere in this Rule or under the provisions of this Rule and the Administrative Code for those employees injured by battery ("leave due to battery").

320.7.2 Sick Leave - Quarantine

Absence during a period of quarantine established and declared by the Department of Public Health or other authority.

Sec. 320.7 Definition of Sick Leave (cont.)

320.7.3 Sick Leave - Bereavement

Absence because of the death of the employee's spouse or domestic partner, parents, ~~step-parents~~stepparents, grandparents, parents-in-law or parents of a domestic partner, sibling, child, ~~step-child~~stepchild, adopted child, grandchild, a child for whom the employee has parenting responsibilities, aunt or uncle, legal guardian, or any person who is permanently residing in the household of the employee. Such leave shall not exceed ~~three (3)~~five (5) working days and shall be taken ~~within thirty (30) calendar days~~three (3) months after the date of death~~; however, two (2) additional working days shall be granted in conjunction with the bereavement leave if travel outside the State of California is required as a result of the death~~.

For absence because of the death of any other person to whom the employee may be reasonably deemed to owe respect; leave shall be for not more than one (1) working day; however, two (2) additional working days shall be granted if travel outside the State of California is required as a result of the person's death.

The appointing officer or designee to whom a request for bereavement leave under this rule is made may request verification of a qualifying family member's death within 30 days of the first day of the employee's leave, as authorized by California Government Code section 12945.7(f).

~~1~~320.7.4 Sick Leave – Reproductive Loss

Absence because of the failure to achieve successful completion of an act that would have resulted in the employee becoming a parent by the birth, placement, or adoption of a child. Qualifying reproductive losses include failed adoption, failed surrogacy, miscarriage, stillbirth, and unsuccessful assisted reproduction, such as intrauterine insemination, embryo transfer, or other assisted reproductive technology. Such leave shall not exceed five (5) working days and shall be taken within three (3) months after the qualifying reproductive loss. Paid sick leave granted for this purpose shall not exceed 20 workdays within a rolling 12-month period.

320.7.~~5~~4 Sick Leave - Maternity

Absence due to the employee's pregnancy or convalescent period following childbirth. Such leave shall not exceed six (6) months provided that such leave may be extended for permanent employees if a physician certifies that a longer convalescence period is required. Such extensions

shall be subject to the provisions of this Rule governing sick leave without pay.

320.7.6~~5~~ Sick Leave – Parental Leave

Absence due to the birth of a child to the employee, the employee's spouse, or the employee's domestic partner or assumption by the employee of parenting or child rearing responsibilities either by adoption or foster care.

320.7.7~~6~~ Sick Leave - Illness or Medical Appointment of a Family Member

Absence for diagnosis, care or treatment of a health condition or injury, or for preventive care for an employee's family member, defined as follows:

1. A child, which for the purposes of this section means a biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis. This definition of a child is applicable regardless of age or dependency status.

Sec. 320.7 Definition of Sick Leave (cont.)

320.7.7~~6~~ Sick Leave - Illness or Medical Appointment of a Family Member (cont.)

2. biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child.
3. spouse.
4. A registered domestic partner.
5. A grandparent.
6. A grandchild.
7. A sibling.

320.7.8~~7~~ Sick Leave Pursuant to Administrative Code Chapter 12W

1) Absence due to the illness, injury, medical care, treatment, diagnosis or medical appointment of the employee; employee's child; parent, legal guardian or ward; sibling; grandparent; grandchild; and spouse, registered domestic partner under any state law, or "designated person."

The aforementioned child, parent, sibling, grandparent, and grandchild relationships include not only biological relationships but also relationships resulting from adoption; step-relationships; and foster care relationships. "Child" includes a child of a domestic partner and a child of a person standing in loco parentis.

2) For the purpose of this section, the definition of "designated person" is: one person designated by an employee who has no spouse or registered domestic partner, as the person for whom the employee may use paid sick leave to aid or care for under this section. The opportunity to make such a designation shall be extended to the employee no later than the date on which the employee has worked thirty (30) hours after paid sick leave begins to accrue. There shall be a window of ten (10) business days for the employee to make this designation. Thereafter, the opportunity to make such a designation, including the opportunity to change such a designation previously made, shall be extended to the employee on an annual basis, with a window of ten (10) business days for the employee to make the designation.

320.7.9~~8~~ Sick Leave Pursuant to Labor Code Sections 245-249

Absence for the following purposes: (1) diagnosis, care, or treatment of an existing health condition of, or preventive care for an employee or an employee's family member; or (2) for an employee who is a victim of domestic violence, sexual assault, or stalking, described in Labor Code Section 230, subdivision (c) and Labor Code Section 230.1, subdivision (a).

Sec. 320.7 Definition of Sick Leave (cont.)

320.7.10~~9~~ Sick Leave - Compulsory

Leave imposed by an appointing officer due to an employee's medical inability or incapacity to perform all the duties of the position as provided elsewhere in this Rule.

Rule 320
Leaves of Absence

Article III: Sick Leave with Pay

Applicability: Rule 320 shall apply to all classes of the Uniformed Ranks of the San Francisco Fire Department, except that the provisions of Rule 320 may be superseded in whole or in part by the collective bargaining agreement, except for the definitions in this Rule which are applicable to employees in all classes.

Sec. 320.8 Sick Leave with Pay Eligibility

320.8.1 Sick leave with pay may be granted to employees who have accrued paid sick leave on the ninetieth (90th) day of service, except that supplemental disability credits may be used to supplement disability indemnity payments as provided elsewhere in this Rule regardless of length of service and except that an authorized leave of absence with or without pay granted under this Rule shall not be considered as a break in the continuous service of an employee.

320.8.2 A break in service of more than twelve (12) continuous months by any employee other than an employee designated as a "holdover" will cause prior accumulated sick leave with pay credits to be canceled and eligibility for sick leave with pay must be re-established.

320.8.3 Sick leave with pay credits will continue to accrue at the normal rate while an employee is on either furlough or voluntary unpaid time off in accordance with this Rule, for a maximum of up to ten (10) days per fiscal year for imposed furlough or twenty (20) days per fiscal year for voluntary unpaid time off.

Sec. 320.9 Sick Leave with Pay Eligibility Pursuant to Administrative Code Chapter 12W effective February 5, 2007, and Labor Code Sections 245-249 effective July 1, 2015 Applicable to Employees Not Otherwise Qualified for Sick Leave

320.9.1 Sick leave with pay may be granted to said employees, on the ninetieth (90th) day of service.

320.9.2 Employees hired on or before February 5, 2007, shall immediately be eligible to accrue and use sick leave with pay credits under this section.

320.9.3 A complete separation in service for twelve (12) continuous months by an employee, other than an employee designated as a “holdover” will cause prior accumulated sick leave with pay credits to be canceled and eligibility for sick leave with pay must be re-established.

Sec. 320.9 Sick Leave with Pay Eligibility Pursuant to Administrative Code Chapter 12W effective February 5, 2007, and Labor Code Sections 245-249 effective July 1, 2015 Applicable to Employees Not Otherwise Qualified for Sick Leave (cont.)

320.9.4 Employees rehired within one (1) year following a separation will not be subject to the ninety (90) calendar day eligibility period And any of previously accrued and unused sick leave hours will be reinstated.

Sec. 320.10 Sick Leave with Pay - Maximum Accumulation of Credits

320.10.1 Sick Leave with Pay – Maximum Accumulation of Credits

Sick leave with pay credits shall be cumulative but the accumulated balance of unused sick leave with pay credits shall not exceed the equivalent of six (6) months which is the hourly equivalent of 130 working days based on the regular daily work schedule as defined, provided that in no case may the total accumulated unused sick leave with pay credit balance exceed l040 hours. Maximum accumulated sick leave with pay credits shall be reduced proportionately for employees entering a class or position where the regular work schedule is less than the class exiting if such employees have accumulated unused sick leave with pay credits in excess of the maximum allowable for the new class or position. Such employees shall have all such credits restored upon return to a class or position with an increased regular work schedule.

320.10.2 Maximum Accumulation of Credits Pursuant to Administrative Code Chapter 12W effective February 5, 2007, and Labor Code Sections 245-249 effective July 1, 2015 Applicable to Employee Not Otherwise Qualified for Sick Leave

Sick leave with pay credits shall be cumulative but the accumulated balance of unused sick leave with pay credits shall not exceed seventy-two (72) hours under Administrative Code Chapter 12W and forty-eight (48) hours under Labor Code Sections 245-249.

Sec. 320.11 Sick Leave with Pay - Restrictions

320.11.1 Sick leave with pay**,** beyond that authorized by law, is a privilege recognized by Charter and by Ordinance of the Board of Supervisors and should be requested and granted only in cases of absence because of illness which incapacitates the employee for the performance of duties or as otherwise defined in this Rule.

Sec. 320.11 Sick Leave with Pay – Restrictions (cont.)

320.11.2 Except for absences covered under Labor Code Section 233, an appointing officer or designee may require proof of incapacitation before granting sick leave with pay for any period of time and may withhold pay for failure to submit such proof provided that the employee had been previously notified in writing that such proof would be required for absences of less than five (5) working days.

320.11.3 The rate of earning and accumulating sick leave with pay credits and authorization for its use under this Rule shall in no way inhibit or restrict the right of an appointing officer to establish standards of attendance.

Sec. 320.12 Prohibition Against Employment While on Sick Leave with Pay

320.12.1 Employees are prohibited from working in any other employment while on sick leave with pay unless, after considering the medical reason for the sick leave with pay, the appointing officer with the approval of the Human Resources Director, grants permission for the employee to engage in a secondary employment subject to the provisions of these Rules governing such employment.

320.12 .2 Violators of this section are subject to disciplinary action as provided in the Charter.

Sec. 320.13 Calculation of Sick Leave with Pay Credits

320.13.1 Unless otherwise provided in this Rule or by ordinance, sick leave with pay credits shall be earned at the rate of thirteen (13) working days per completed year of paid service; provided that an employee's balance shall be credited on a pro rata basis based upon the completion of regularly scheduled paid service for the employee's class, excluding overtime, but including holidays and other paid absences.

320.13.2 Exempt employees shall accrue paid sick leave at a rate of one (1) hour per every thirty (30) hours worked, excluding holiday pay.

Sec. 320.14 Disbursement of Sick Leave with Pay Credits

Sick leave with pay credits shall be used and deducted at the minimum rate in units of one (1) hour for those employees whose credits are calculated in hours. The minimum deduction for members of the Uniformed Ranks of the Fire Department shall be determined by departmental Rule.

Sec. 320.15 Employees Injured by Battery

320.15.1 An employee absent because of bodily injury or illness received in the course of employment and caused by an act of criminal violence shall be entitled to sick leave with pay under the provisions of the Administrative Code.

320.15.2 Sick leave with pay under this section shall be known as "leave due to battery" and shall be subject to approval by the Human Resources Director. The Human Resources Director shall make such investigation as is deemed appropriate and may include medical examinations by a physician(s) designated by the Human Resources Director.

320.15.3 The decision of the Human Resources Director may be appealed to the Commission whose decision is final.

320.15.4 Authorized sick leave under this section shall not be charged against earned sick leave with pay credits.

Sec. 320.16 Appeal of Denial of Sick Leave with Pay

Denial of sick leave with pay to an appointee who is eligible and qualified for such leave is appealable as provided elsewhere in this Rule.

Sec. 320.17 Reimbursement of Vested and Unused Accumulated Sick Leave with Pay Credits Balance

320.17.1 An employee who had accumulated unused sick leave with pay credits and who had completed the service requirement on or before December 5, 1978, shall upon the effective date of retirement for service or disability, or upon the date of death, or upon the date of separation caused by industrial accident, be reimbursed for the accumulated unused sick leave with pay credit balance which had been earned on or before December 5, l978, and not subsequently used ("vested and unused accumulated sick leave with pay credits") in accordance with the following schedule of service requirements and allowances.

Sec. 320.17 Reimbursement of Vested and Unused Accumulated Sick Leave with Pay Credits Balance (cont.)

320.17.1 (cont.)

Schedule of Service Requirements and Allowances for Reimbursement of Vested and Unused Accumulated Sick Leave with Pay Credit Balance at the Time of Retirement, Separation Because of Accident or Death	
Service Requirement	**Amount of Cash Reimbursement**
15 or more years of service	100%
More than 5 continuous years but less than 15 continuous years of service	50%
Up to and including 5 continuous years of service	33.3%

320.17.2 Reimbursement for the vested and unused accumulated sick leave with pay credit balance shall be further subject to the following:

1) The Human Resources Director shall administer the provisions of this section.

2) Deduction shall be made from the unused accumulated sick leave with pay credit balance which existed on December 5, l978, in an amount proportional to any credits used of that balance. Reimbursement shall be made only for the adjusted amount with all credits from the December 5, l978, balance subsequently used being deducted.

3) Reimbursement for the vested and unused accumulated sick leave with pay credit balance shall be payable at the time of retirement, separation caused by industrial accident or death, or at a later date when so selected by the employee, but within one year of such retirement, separation or death.

4) Reimbursement is to be computed at the base rate of pay of an employee's permanent class, at the base rate of pay of the class of a temporary or provisional employee with no permanent status, or at the base rate of pay in a temporary or provisional appointment of an employee with

Sec. 320.17 Reimbursement of Vested and Unused Accumulated Sick Leave with Pay Credits Balance (cont.)

320.17.2 (cont.)

permanent status in another class who has held such temporary or provisional appointment continuously for one or more years at the time of separation.

5) No reimbursement shall be made for unused sick leave with pay credits earned on or after December 6, l978.

6) The enactment of this section is not intended to constitute additional compensation, nor be a part of the rate of pay of the employee, but is reimbursement for the vested and unused accumulated sick leave with pay credit balance to which an employee would have been entitled if the employee had not retired, separated due to industrial injury or died.

Rule 320
Leaves of Absence

Article IV: Sick Leave without Pay

Applicability: Rule 320 shall apply to all classes of the Uniformed Ranks of the San Francisco Fire Department, except that the provisions of Rule 320 may be superseded in whole or in part by the collective bargaining agreement, except for the definitions in this Rule which are applicable to employees in all classes.

Sec. 320.18 Sick Leave without Pay - Eligibility

Subject to the provisions of this section, sick leave without pay may be granted to employees who are not eligible for sick leave with pay or, subject to the approval of the appointing officer or designee, employees may choose not to use their sick leave with pay credits.

Sec. 320.19 Sick Leave without Pay - Temporary and Provisional Employees

Sick leave without pay may be granted to temporary or provisional employees. Such leave shall be renewed monthly and shall not be extended beyond three (3) calendar months except for sick leave - maternity.

Sec. 320.20 Sick Leave without Pay - Permanent Employees

Sick leave without pay may be approved for permanent employees for the period of the illness provided, however, that requests for prolonged leave shall be renewed every three (3) months and provided further that such leave shall not be extended beyond a period of one (1) continuous year unless there is a reasonable probability that additional leave will enable the employee to return to employment within a reasonable time.

Sec. 320.21 Prohibition Against Employment While on Sick Leave Without Pay

320.21.1 Employees are prohibited from working in any other employment when on sick leave without pay unless, after considering the medical reason for the sick leave without pay, the appointing officer with the approval of the Human Resources Director, grants permission for the employee to engage in outside employment.

320.21.2 Violators of this section are subject to disciplinary action.

Rule 320
Leaves of Absence

Article V: Compulsory Sick Leave

Applicability: Rule 320 shall apply to all classes of the Uniformed Ranks of the San Francisco Fire Department, except that the provisions of Rule 320 may be superseded in whole or in part by the collective bargaining agreement, except for the definitions in this Rule which are applicable to employees in all classes.

Sec. 320.22 Compulsory Sick Leave

320.22.1 An appointing officer or designee who has reason to believe that an employee is not medically or physically competent to perform assigned duties, and if allowed to continue in employment or return from leave may represent a risk to co-workers, the public and the employee, may require the employee to present a medical report from a physician designated by the Human Resources Director certifying the employee's medical or physical competency to perform the required duties.

320.22.2 If the employee refuses to obtain such physician's certificate or if as a result of a medical evaluation, the employee is found not to be medically or physically competent, the appointing officer or designee may place the employee on compulsory sick leave and shall immediately report such action to the Human Resources Director.

320.22.3 An employee shall remain on compulsory sick leave until such time as the employee is found to be competent to return to duty by a physician designated by the Human Resources Director, but such leave shall not exceed the maximum period of sick leave provided in this Rule.

320.22.4 The employee placed on sick leave under the provisions of this section may appeal as provided under the appeal provisions of the Medical Examination Rule.

320.22.5 An employee placed on compulsory sick leave is ineligible for employment with the City and County and shall be placed under waiver on all lists on which the employee's name appears and shall otherwise be unemployable.

Rule 320
Leaves of Absence

Article VI: Disability Leave

Applicability: Rule 320 shall apply to all classes of the Uniformed Ranks of the San Francisco Fire Department, except that the provisions of Rule 320 may be superseded in whole or in part by the collective bargaining agreement, except for the definitions in this Rule which are applicable to employees in all classes.

Sec. 320.23 Disability Leave

320.23.1 Absence due to illness or injury arising out of and in the course of employment is defined as "disability leave" and is administered under the State Workers' Compensation Laws and the Rules of the Retirement Board.

320.23.2 An employee who is absent because of disability leave and who is receiving disability indemnity payments may request, by submitting a signed option statement to the employee's department no later than ninety (90) days following the employee's release from disability leave, that the amount of disability indemnity payment be supplemented with salary to be charged against the employee's supplemental disability credits so as to equal the full salary the employee would have earned for the regular work schedule. The regular work schedule shall be that schedule in effect at the commencement of the disability leave.

320.23.3 Supplemental disability credits shall be an account separate from, but equivalent to, the employee's accumulated unused sick leave with pay credit balance except that the supplemental disability credit account shall be adjusted as provided below.

320.23.4 Failure to exercise the option to supplement disability indemnity payments within ninety (90) calendar days following release from disability leave will preclude later requests.

320.23.5 Supplemental disability credits shall be used at the minimum rate in units of one (1) hour.

320.23.6 The employee's department shall submit separate time rolls to reflect this action only after the Retirement System certifies the amount of disability indemnity payment, if any, for the period.

Sec. 320.23 Disability Leave (cont.)

320.23.7 Salary may be paid on regular time rolls and charged against the unused sick leave with pay credit balance during any period prior to the commencement of the determination of eligibility for disability indemnity payment without requiring a signed option by the employee.

320.23.8 When an employee has used sick leave with pay credits and the Retirement System subsequently determines that the employee was entitled to disability indemnity payment for the period of absence, provision shall be made for adjusting the employee's sick leave with pay credit balance and for reimbursing the appropriate City fund for the amount of sick leave with pay credits charged and paid.

320.23.9 An employee who uses supplemental disability credits to supplement disability indemnity payments shall, while on disability leave, earn supplemental disability credits at the same rate as sick leave with pay credits.

320.23.10 Upon return to duty, an employee who has used supplemental disability credits shall earn sick leave with pay credits at the normal rate and shall earn supplemental disability credits at twice the rate that sick leave with pay credits are earned until such time as the total hours of supplemental disability credits used are regained.

320.23.11 Should an employee suffer a recurrence or a new injury before all supplemental disability credits are regained, the supplemental disability credit balance shall be that balance existing at the beginning of the pay period in which the recurrence or new injury occurs and shall be adjusted for the amount of supplemental disability credits subsequently earned and sick leave with pay credits subsequently used.

Sec. 320.24 Use of Sick Leave with Pay Credits to Supplement State Disability Insurance

320.24.1 Sick leave with pay credits shall be used to supplement State Disability Insurance (SDI) at the minimum rate in units of one (1) hour.

320.24.2 SDI payments to an employee who qualifies and who has accumulated and is eligible to use sick leave with pay credits shall be supplemented with sick leave with pay credits so that the total of SDI and sick leave with pay calculated in units of one-hour provides up to, but does not exceed, the

Sec. 320.24 Use of Sick Leave with Pay Credits to Supplement State Disability Insurance (cont.)

320.24.2 (cont.)

regular gross salary the employee would have received for the normal work schedule excluding overtime.

320.24.3 An employee who wishes not to supplement, or who wishes to supplement with compensatory time or vacation, must submit a written request on a form prescribed by the Human Resources Director to the appointing officer or designee within (7) calendar days following the first date of absence.

320.24.4 Employees who are supplementing SDI earn sick leave with pay credits at the normal rate only for those hours of sick leave with pay credits used.

Rule 320
Leaves of Absence

Article VII: Military~~, War Effort and Sea Duty~~ Leaves

Applicability: Rule 320 shall apply to all classes of the Uniformed Ranks of the San Francisco Fire Department, except that the provisions of Rule 320 may be superseded in whole or in part by the collective bargaining agreement, except for the definitions in this Rule which are applicable to employees in all classes.

Sec. 320.25 Military Leave

320.25.1 Military leave is governed by the provisions in the Uniformed Services Employment and Reemployment Rights Act (USERRA),~~of~~ applicable Federal and State laws, by Charter provision and by this Rule.

320.25.2 ~~**Time of War - Definition**~~**Active or Inactive Duty Leave for Military Training, Drills, or Fitness-For-Service Examination**

~~The phrase "time of war" is defined elsewhere in these Rules.~~ Leaves of absence shall be granted to officers and employees ordered to fulfill training requirements determined by a proper military authority as necessary for the officer's or employee's professional development, to complete skill training or retraining, or to determine fitness for military service. This includes weekend drills and annual trainings. Approved leave shall include any necessary time for travel to and from the duty or examination location, plus a reasonable amount of leave for rest before reporting to work. See Rule 320.25.4, for time limits on return to work following approved military leaves.

320.25.3 **Active Duty Military Leave** ~~**- Time of War**~~

Leaves of absence shall be granted to officers and employees for service in the armed forces of the United States or the State of California, or in service of the Federal Emergency Management Agency (FEMA) for the period that the officer or employee is ordered or retained on active duty. Leave for this purpose shall not exceed five (5) years, unless the officer or employee's service meets conditions in USERRA for an exemption from the five-year service limit. Reasons for extending the five-year military leave limit include:

1. Service beyond five years that is necessary to complete an initial period of service required in the officer or employee's orders.
2. Service from which an officer or employee, through no fault of their own, is unable to obtain a release within the five-year limit.

3. Service for required training for reservists and National Guard members that must be excluded when calculating the five-year limit.
4. Orders for involuntary service, or retention on active duty during domestic emergency or national security related situations.
5. Orders to service, or to remain on active duty (other than for training) because of a war or national emergency declared by the President or Congress.
6. Active duty (other than for training) by volunteers supporting operational missions, other than war or national emergencies, for which selected reservists have been ordered to active duty without their consent.
7. Service by members who are ordered to active duty in support of a critical mission or requirement of the uniformed services as determined by the agency Secretary involved.
8. Federal service by members of the National Guard called into action by the President to suppress an insurrection, repel an invasion, or to execute the laws of the United States.

~~or for service on ships operated by or for the United States government in time of war and for a period not to exceed three (3) months after the conclusion of such service, but not later than one (1) year after the cessation of hostilities, except in case of disability incurred while in active service with the armed forces or the merchant marines when such disability shall extend beyond such period.~~

320.25.4 Return to Work Following Approved Military Leave ~~– Time of Peace~~

~~Whenever any officer or employee shall, by order of the government of the United States or by lawful order of any of its departments or officers, or by lawful order of the State of California, or any of its departments or officers, be directed in time of peace to report and serve in the armed forces of the United States, or in the armed forces of the State of California, said officer or employee shall be entitled to a leave of absence from the employee's office or position during the time of such service and for a period not to exceed three (3) months after the expiration thereof.~~Officers and employees taking military leave must return to work within certain time limits. The time limit for returning to work depends on the duration of the officer or employee's military service, with the exception of leave taken for fitness-for-service examinations.

Military Service of 1 to 30 Days

Any officer or employee absent due to a military service with a duration of one to 30 days must return to work on the first regularly scheduled workday following completion of the officer or employee's military service, after allowance for safe travel home from the military duty location plus an eight-hour rest period. If, due to no fault of the officer or employee, timely

reporting back to work would be impossible or unreasonable, the employee must report to work as soon as possible after the allowed eight-hour rest period.

Fitness-For-Service-Examinations

The time limit for reporting back to work for officers or employees absent due to orders requiring a fitness-for-service examination is the first scheduled workday following completion of the examination plus allowance for safe travel home from the examination location and an eight-hour rest period. This reporting limit applies regardless of the length of absence.

Service of 31 to 180 Days

Any officer or employee absent due to military service with a duration of 31 to 180 days must make an oral or written request to return to work to the appointing officer or designee within 14 days after the completion of service. If submission of the request to return to work is impossible or unreasonable through no fault of the officer or employee, the request must be submitted as soon as possible. Officers and employees requesting return to work must report to work on the date and time designated by the appointing officer or designee.

Service of 181 Days or More

Any officer or employee absent due to military service with a duration of 181 days or more must make an oral or written request to return to work to the appointing officer or designee within 90 days after the completion of service. If submission of the request to return to work is impossible or unreasonable through no fault of the officer or employee, the request must be submitted as soon as possible. Officers and employees requesting return to work must report to work on the date and time designated by the appointing officer or designee.

Service Incurred or Aggravated Disability Leave

Any officer or employee hospitalized or convalescing because of an injury or illness incurred or aggravated during the performance of military service shall have up to two years to return to work. The two-year period will be extended for a minimum time required to accommodate a circumstance beyond an officer or employee's control that would make returning to work within the two-year period impossible or unreasonable. Such officers and employees must comply with the oral or written request timeframes determined by their length of service, after their recovery.

Failure to Request Return to Work or Return to Work Following Military Leave

Any officer or employee who fails to make a timely oral or written request for return to work, or who fails to return to work following a military leave,

whether submitting a request to return or not, shall be deemed as away without official leave and shall be subject to rules and policies covering unauthorized absence.

Sec. 320.25 Military Leave (cont.)

320.25.5 Military Leave - Permanent Appointees

Any officer or employee on military leave, who prior to such leave has been appointed to a permanent position in the City and County service, shall be entitled to resume such position at the expiration of the leave, and in determining and fixing rights, seniority, salary, benefits, and otherwise which have accrued and shall inure to the benefit of such officer or employee, the term of military leave shall be considered and accounted as part of the employee's service to the City and County.

320.25.6 Military Leave - Proof of Duty Required for Military Pay

Officers and employees requesting military leave pay pursuant to State of California Military and Veterna's Code section 395.1 shall file with the Human Resources Director a copy of the orders ~~necessitating~~ identifying the type of such service and the duration prior to the effective date of the leave of absence ~~and upon return from such leave shall submit a copy of the discharge or release~~.

320.25.7 Military Leave - Salary While on Temporary Leave

Employees who have been employed by the City and County ~~or any other public agency~~ or have been on military duty for a period of not less than one (1) year continuously prior to the date upon which a temporary military leave not exceeding l80 calendar days begins shall, as required by the State of California Military and Veterans' Code (Section 395), receive their regular salary or compensation for a period not to exceed thirty (30) calendar days of such military leave in any fiscal year or more than thirty (30) calendar days during any period of continuous military leave.

320.25.8 Military Leave - Probationary Appointees

Refer to the Probationary Period Rule on leave during the probationary period.

320.25.9 Military Leave - Eligible Not Reached for Certification While in Service - Time of War

An eligible on a regular civil service list, who served on active military duty not including reserve service during time of war who presents an honorable discharge or certificate of honorable active service within one (1) year from the date of release from military service, shall be preferred for certification for a period of four (4) years ~~after the cessation of hostilities~~ from the date of discharge in the order of standing upon the eligible list at the time of entrance into military service and before candidates procuring standing through an examination held subsequent to the entrance of such eligibles into the military service.

Sec. 320.25 Military Leave (cont.)

320.25.10 Military Leave - Eligibles Reached for Certification

If while in the military service, the name of an eligible was reached for certification to a permanent position and the eligible presents an honorable discharge or certificate of honorable active service within one hundred and l20 days from the date of release from active military duty not including reserve service ~~during time of war~~, the eligible shall be certified to a position in the class for which so reached; and, for all purposes of seniority, the date of certification if appointed, shall be deemed to be the date when the eligible was reached for certification while in the military service. A person appointed in accordance with this section shall serve the required probationary period. An eligible who is offered appointment in accordance with the provisions of this section and who waives appointment and is subsequently certified after withdrawal of waiver shall have seniority as of the date of such certification.

320.25.11 Military Leave - Participants in Written Examinations

Persons who participate in a written examination and who present their orders or other proof of service within 120 days from the date of release from active military service ~~in time of war~~ shall be allowed to participate in the remaining parts of the examination. If they meet all the eligibility qualifications, they shall be certified as of the date they would have been reached for certification in accordance with their rank based on the entire examination.

320.25.12 Military Leave - Employees or Officers Not Subject to Civil Service Examination

Military leave to an elected or appointed officer, appointed for a definite period of time, shall not be extended beyond the period of time for which elected or appointed, provided that if such officer is re-elected or reappointed, then military leave shall be automatically extended for such ensuing period of time.

Military leave to an employee occupying a position exempt from civil service examination shall not extend beyond the period of time for which the employee's appointing officer was elected or appointed.

Sec. 320.26 War Effort Leave

The Board of Supervisors may provide by ordinance that leaves of absence shall be granted to officers and employees during time of war for service directly connected with the prosecution of the war or national defense or preparedness.

~~Sec. 320.27 Leave for Sea Duty as Licensed Officers~~

~~In time of war or while any act authorizing compulsory military service or training is in effect, the Board of Supervisors may provide by ordinance that leaves of absence shall be granted to officers and employees for sea duty as licensed officers aboard ships operated by or for the United States government. The Civil Service Commission shall amend this section to implement such ordinance.~~

Sec. 320.27~~8~~ Leave for Spouse or Registered Domestic Partner During Leave from Deployment of Qualified Member

320.27~~8~~.1 In compliance with the State of California Military and Veterans Code section 395.10, an eligible employee who is a spouse or registered domestic partner of a qualified member of the Armed Forces of the United States, National Guard, or Reserves shall be allowed to take up to ten (10) days of leave during a period of leave from deployment of the qualified member.

320.27~~8~~.2 An "eligible employee" is an employee who meets all of the following conditions:

1) is a spouse or registered domestic partner of a qualified member;

2) works on average twenty (20) or more hours per week and is not an independent contractor;

3) provides notice to the City, within two (2) business days of receiving official notice that the qualified member will be on leave from deployment, of his or her intention to take leave; and

4) submits written documentation to the City, certifying that the qualified member will be on leave from deployment during the time of leave.

320.27~~8~~.3 A "qualified member" is any of the following:

1) A member of the Armed Forces of the United States who has been deployed during a period of military conflict to an area designated as a combat theater or combat zone by the President of the United States; or

2) A member of the National Guard who has been deployed during a period of military conflict; or

3) A member of the Reserves who has been deployed during a period of military conflict.

Rule 320
Leaves of Absence

Article VIII: Unpaid Administrative Leave or Furlough

Applicability: Rule 320 shall apply to all classes of the Uniformed Ranks of the San Francisco Fire Department, except that the provisions of Rule 320 may be superseded in whole or in part by the collective bargaining agreement, except for the definitions in this Rule which are applicable to employees in all classes.

Sec. 320.289 Unpaid Administrative Leave or Furlough

320.289.1 General Provisions

1) Notwithstanding the layoff and involuntary leave provisions or any other provisions of these Rules, an appointing officer is authorized to impose unpaid administrative leave (furlough) on any employee within that appointing officer's jurisdiction as provided in this section. The imposition of furloughs shall be subject to receipt of a Projected Deficit Notice (PDN) from the Controller stating that the department's budget will be insufficient to support the department's level of spending through the end of the fiscal year.

2) The authority of the appointing officer to impose furloughs shall be limited to those furloughs necessary to correct the projected deficit identified by the Controller.

3) This Rule shall apply to all employees of the City and County.

4) No provision of Layoff and Involuntary Leave, including but not limited to any provision regarding the order of layoff, displacement of less senior employees, or reinstatement, shall be applicable to any employees furloughed hereunder.

320.289.2 Voluntary Unpaid Time Off

1) Prior to imposing a furlough on any employee, an appointing officer shall attempt to determine, to the extent feasible and with due consideration for the time constraints which may exist for eliminating the projected deficit, the interest of employees within the appointing officer's jurisdiction in taking unpaid personal time off on a voluntary basis.

Voluntary Unpaid Time Off (cont.)

2) The appointing officer shall have full discretion to approve or deny requests for voluntary unpaid time off based on the operational needs of the department and any court decrees or orders pertinent thereto. The decision of the appointing officer shall be final except in cases where requests for voluntary unpaid time off in excess of ten (10) working days are denied. In such cases, an employee may appeal in accordance with the procedures provided below for appealing imposition of furlough.

3) An employee shall be entitled to take up to ten (10) unpaid days per fiscal year at the rate of no more than five (5) days in a three (3) month period, at the employee's discretion, upon at least fifteen (15) calendar days prior written notice to the employee's appointing officer. Such request shall not be denied except for the reason of a requirement that such position be filled on an overtime or premium pay basis, for essential operational needs or the requirements of a court decree or order.

320.2~~8~~9.3 Furloughs

1) Appointing officers are encouraged to furlough entire operational units within departments rather than individual employees; or stagger work hours within an operational unit on a reduced hours basis. The decision of the appointing officer to impose furloughs under this subsection, and the appointing officer's determination of what constitutes an operational unit, shall be final.

2) Where, in the discretion of the appointing officer, furlough of an operational unit as prescribed above is not feasible, individual employees within an operational unit may be furloughed.

3) To the extent practicable, furlough shall be equitably distributed among all of the employees in the affected department or operational unit to which the Projected Deficit Notice (PDN) has application; and, all of the employees in the affected class(es).

4) In determining which employees to furlough, an appointing officer shall consider citywide seniority within a class as well as considering the operational needs of the department.

Sec. 320.2~~8~~9 Unpaid Administrative Leave or Furlough (cont.)

320.2~~8~~9.3 Furloughs (cont.)

5) In no event shall furlough be imposed upon an employee for more than four (4) days in any three (3) month period or (10) days in any fiscal year. Voluntary time off not to exceed a total of five (5) days per quarter or ten (10) days per year, approved pursuant to this section, shall be credited toward the maximum number of furlough days which may be imposed pursuant to this Rule.

6) Employees placed on furlough pursuant to this section shall be notified in writing at least fifteen (15) calendar days in advance of the effective date for the furlough.

7) The decision to furlough an individual employee within an operational unit shall be final except that an employee given notice of a furlough, which taken together with an employee's prior furloughs in the same fiscal year would exceed five (5) working days within any six (6) month period, may file an appeal. Such appeals must be in writing and filed within three (3) calendar days of the date of the notice of furlough with the Human Resources Director with a copy to the appointing officer. Within three (3) calendar days after receiving the appeal, the Department of Human Resources shall refer the written appeal and the appointing officer's written comments, if any, for determination to the Human Resources Director, the Mayor and the Controller, or their designees, who shall meet on no less than twenty –four (24) hours public notice. The determination regarding the appeal shall be rendered within seven (7) calendar days of the date of the appeal. This decision is final and shall not be reconsidered by the Commission. The Human Resources Director shall notify the employee and the appointing officer of the decision prior to the effective date of the furlough.

320.2~~8~~9.4 Restrictions on Use of Paid Time Off While on Voluntary Unpaid Time Off or Furlough

1) All voluntary unpaid time off or furlough imposed or granted pursuant to this section shall be without pay.

2) Employees granted voluntary unpaid time off or placed on furlough are precluded from using sick leave with pay credits, vacation credits, compensatory time off credits, floating holidays, training days or any other form of pay for the time period involved.

Sec. 320.2~~8~~9 Unpaid Administrative Leave or Furlough (cont.)

320.2~~8~~9.5 Imposition of Furlough - Fair Labor Standards Act (FLSA) Restrictions

1) Furlough for employees who are non-exempt under the Fair Labor Standards Act (FLSA) shall be imposed in minimum increments of one (1) hour.

2) Furlough for employees who are exempt under the Fair Labor Standards Act (FLSA) shall be imposed in minimum increments of one (1) day.

320.2~~8~~9.6 Vacation and Sick Leave with Pay Accruals While on Voluntary Unpaid Time Off or Furlough

Subject to passage of necessary ordinances by the Board of Supervisors, vacation and sick leave with pay accruals shall continue during a maximum of ten (10) days of furlough in any fiscal year, or a maximum of twenty (20) days for approved voluntary unpaid time off taken pursuant to this Section in any fiscal year.

320.2~~8~~9.7 Duration and Revocation of Voluntary Unpaid Time Off or Furlough

Furlough imposed upon an employee shall remain in force for the period specified in the written notice unless sooner revoked by written notice from the appointing officer. Approved voluntary unpaid time off taken pursuant to this section may not be changed by the appointing officer without the employee's consent.

320.2~~8~~9.8 Resolution of Disputes

Except as provided elsewhere in this section, the Human Resources Director shall act on all disputes arising out of the application or implementation of the provisions of this section. The decision of the Human Resources Director shall be final and shall not be reconsidered by the Commission.

Rule 320
Leaves of Absence

Article IX: Other Leaves of Absence

Applicability: Rule 320 shall apply to all classes of the Uniformed Ranks of the San Francisco Fire Department, except that the provisions of Rule 320 may be superseded in whole or in part by the collective bargaining agreement, except for the definitions in this Rule which are applicable to employees in all classes.

Sec. 320.29~~30~~ Leave to Accept Other City and County Position

320.29~~30~~.1 Leave by an employee who has completed the probationary period to accept exempt or temporary appointment in the City and County service may be approved for the duration of such appointment. Such leave by a probationary employee is subject to the provisions of the Rule governing the Probationary Period.

320.29~~30~~.2 Denial of such leave by the appointing officer is appealable as provided elsewhere in this Rule.

Sec. 320.30~~1~~ Educational Leave

320.30~~1~~.1 Educational leave is defined as leave for the purpose of educational or vocational training in a field related to the employee's current position and as any training to which a veteran is entitled pursuant to the laws of the United States or the State of California.

320.30~~1~~.2 Educational leave may be approved for permanent appointees for a period of up to one (1) year. Requests for educational leave of longer than one (1) year must be renewed each year.

320.30~~1~~.3 Denial of educational leave is appealable as provided elsewhere in this Rule.

320.30~~1~~.4 An employee on educational leave shall not accept other employment without approval of the appointing officer and the Human Resources Director, except for employment in vacant positions with the City and County during school vacations.

320.30~~1~~.5 As soon as records are available, the employee shall periodically present to the appointing officer a record of completed educational work. These records shall be maintained in such a manner as to be readily available for audit by Department of Human Resources staff. Failure to submit an acceptable record of completed educational work shall subject the employee to disciplinary action as provided in the Charter.

Sec. 320.312 Leave for Civilian Service in the National Interest

320.312.1 Civilian service in the national interest is defined as leave to serve with a federal, state or other public agency or non-profit organization in a program or in a capacity which the Human Resources Director deems to be in the national or general public interest.

320.312.2 Such leave may be approved for permanent appointees for a period of up to one (1) year. Requests for such leave of longer than one (1) year must be renewed each year.

320.312.3 Denial of such leave is appealable as provided elsewhere in this Rule.

Sec. 320.323 Leave for Employment as an Employee Organization Officer or Representative

320.323.1 Leave for employment as an employee organization officer or representative is defined as leave to serve full-time as an officer or representative of an employee organization whose membership includes City employees, or to attend a convention or other type of business meeting of an employee organization as an officer or delegate of the employee organization.

320.323.2 Leave for permanent appointees may be approved for the duration of such service.

320.323.3 Denial of such leave is appealable as provided elsewhere in this Rule.

Sec. 320.334 Family Care Leave

320.334.1 Definition of Family

A unit of interdependent and interacting persons, related together over time by strong social and emotional bonds and/or by ties of marriage, birth, and adoption, whose central purpose is to create, maintain, and promote the social, mental, physical and emotional development and ~~well being~~well-being of each of its members.

320.334.2 Permanent employees who have one (1) or more years of continuous service in any status may be granted up to one (1) year of unpaid family care leave for the following reasons:

1) The birth of a biological child of the employee;

Sec. 320.334 Family Care Leave (cont.)

320.334.2 (cont.)

2) The assumption by the employee of parenting or child rearing responsibilities. Family care leave does not apply to an employee who temporarily cares for a child for compensation, such as a paid ~~child care~~childcare worker;

3) The serious illness or health condition of a family member of the employee, the employee's spouse or domestic partner, a parent of the employee or the employee's spouse or domestic partner, the biological or adoptive child of the employee, or a child for whom the employee has parenting or child rearing responsibilities; or

4) The mental or physical impairment of a family member of the employee, the employee's spouse or domestic partner, a parent of the employee or the employee's spouse or domestic partner, the biological or adoptive child of the employee, or a child for whom the employee has parenting or child rearing responsibilities, which impairment renders that person incapable of self-care.

320.334.3 Family care leave is unpaid leave. Such leave may be granted in addition to accumulated compensatory time off, vacation time, floating holiday time or sick leave as specified under Sick Leave - Illness or Medical Appointment of Child, Parent, Spouse or Registered Domestic Partner.

320.334.4 Denial of family care leave is appealable as provided elsewhere in this Rule.

Sec. 320.345 Witness or Jury Duty Leave

320.345.1 An employee who is summoned as a witness on behalf of the City and County or juror for a judicial proceeding shall be entitled to leave with pay less the amount of juror or witness fee paid for the period required for such service (Charter Section A8.400G). An employee who is summoned to serve as a witness in cases which involve outside employment or personal business affairs shall be placed on leave without pay unless vacation leave or compensatory time is requested and granted.

Sec. 320.345 Witness or Jury Duty Leave (cont.)

320.345.2 Paid witness or jury duty leave shall be only from an employee's scheduled duty time and shall not include hours outside of scheduled hours of work or on days off.

320.345.3 Such employees shall notify the appointing officer immediately upon receiving notice of jury duty.

320.345.4 An employee who takes vacation leave while on witness or jury duty leave shall receive regular salary.

320.345.5 Refer to the Probationary Period Rule on leave during the probationary period.

Sec. 320.356 Holiday Leave

Holiday leave shall be as provided by ordinance of the Board of Supervisors.

Sec. 320.367 Vacation Leave

Vacation leave shall be as provided in the Charter and by ordinance of the Board of Supervisors.

Sec. 320.378 Involuntary Leave of Absence

320.378.1 Whenever it becomes necessary to effect a reduction in force due to lack of work or lack of funds which shall result in the displacement of a permanent or probationary appointee from the City and County service, an appointing officer, notwithstanding other provisions of these Rules governing leaves of absence, shall place such employees on a leave of absence of an involuntary nature unless the employee elects to be laid off.

320.378.2 Such reductions in force shall be effected by the provisions of this Rule governing seniority and order of layoff.

320.378.3 Employees placed on an involuntary leave of absence shall be ranked on the holdover roster for the class from which ~~laid~~they were laid off and shall be returned to duty as provided in this Rule.

Sec. 320.378 Involuntary Leave of Absence (cont.)

320.378.4 Leaves of absence imposed under the provisions of this Rule shall expire upon the return to duty of the holdover, upon the expiration of holdover status, or upon written request of the employee to elect to be laid off while on involuntary leave.

Sec. 320.389 Religious Leave

320.389.1 Employees may be granted leave when personal religious beliefs require that the employee abstain from work during certain periods of the ~~work day~~workday or work week. Such leave shall be known as "Religious Leave."

320.389.2 Religious leave shall be without pay unless the employee elects to use accumulated compensatory time off, vacation time, or floating holiday time.

320.389.3 Denial of religious leave is appealable as provided elsewhere in this Rule.

Sec. 320.40 Personal Leave

320.3940.1 Personal leave is defined as leave for reasons other than those covered in other sections of this Rule.

320.3940.2 Personal leave for permanent employees may be approved for a period of up to twelve (12) months within any two-year period. Personal leave for temporary or provisional employees may be approved only if replacement of the employee is not required and for a maximum of one (1) month.

320.3940.3 On the request of an appointing officer, the Human Resources Director, may for reasons deemed to be in the best interest of the service approve extension of personal leave for permanent employees beyond a twelve (l2) month period.

Rule 320
Leaves of Absence

Article X: Appeal Procedures

Applicability: Rule 320 shall apply to all classes of the Uniformed Ranks of the San Francisco Fire Department, except that the provisions of Rule 320 may be superseded in whole or in part by the collective bargaining agreement, except for the definitions in this Rule which are applicable to employees in all classes.

Sec. 320.40~~1~~ Appeal Procedures

320.40~~1~~.1 Appeals concerning furloughs or voluntary unpaid time off are excluded from appeal under this section and are appealable as provided elsewhere in this Rule.

320.40~~1~~.2 In cases where appeal is specifically granted in this Rule, a dispute concerning the application or implementation of the provisions of this Rule shall be processed EITHER, at the option of the employee:

1) in accordance with the grievance procedure provided by the Human Resources Director for unrepresented employees or in a collective bargaining agreement.

2) by appeal in writing to the Human Resources Director, whose decision shall be final and shall not be reconsidered by the Commission. A decision under one option shall preclude the use of the other option.

Rule 420
Leaves of Absence

Applicability: Rule 420 shall apply to all Service-Critical classes of the Municipal Transportation Agency (MTA), except that the provisions of Rule 420 may be superseded in whole or in part by the collective bargaining agreement. However, all definitions in this Rule are applicable to employees in all classes.

Article I: Leaves of Absence - General Requirements

Article II: Sick Leave - General Provisions

Article III: Sick Leave with Pay

Article IV: Sick Leave without Pay

Article V: Compulsory Sick Leave

Article VI: Disability Leave

Article VII: Military~~, War Effort and Sea Duty~~ Leaves

Article VIII: Unpaid Administrative Leave or Furlough

Article IX: Other Leaves of Absence

Article X: Appeal Procedures

Rule 420
Leaves of Absence

Article I: Leaves of Absence - General Requirements

Applicability: Rule 420 shall apply to all Service-Critical classes of the Municipal Transportation Agency (MTA), except that the provisions of Rule 420 may be superseded in whole or in part by the collective bargaining agreement. However, all definitions in this Rule are applicable to employees in all classes.

Sec. 420.1 Leaves of Absence - General Requirements

420.1.1 Leaves of absence, hereinafter referred to in this Rule as "leave," shall be governed by the provisions of this Rule. For the purpose of this Rule, "appointing officer" shall mean all elected officials; all department heads designated by the Charter as appointing officers; and all Boards and Commissions when officiating as appointing officers.

420.1.2 Requests for leave shall be subject to the approval of the Director of Transportation/Designee. The decision of the MTA Director of Transportation/Designee is final unless provision for appeal is specifically granted in this Rule. Such requests for appeal shall be processed in accordance with the appeal procedure provided in this Rule. Requests for military, maternity, or witness or jury duty leave shall be granted as provided herein.

420.1.3 Beginning January 1, 2016, amendments to California Labor Code Section 233 (Kin Care Law) authorize employees to use available accrued sick leave, each calendar year to care for a “family member” or themselves, in an amount equal to one-half of their annual accrual. Under the Kin Care Law, available accrued sick leave must be granted upon the employee’s oral or written request and the employer shall not deny the right to take such leave, or impose conditions for granting such leave, including the requirement of medical certification.

420.1.4 Except for vacation leave, witness or jury duty leave, compulsory sick leave, disability leave, unpaid administrative leave or absences covered under Labor Code Section 233, an employee requesting a leave for more than five working days shall submit such request on the prescribed form to the MTA Director of Transportation/Designee. With the exceptions noted herein, requests for sick leave in excess of five (5) continuous working days shall be certified by a licensed medical doctor, doctor of dental surgery, doctor of podiatric medicine, licensed clinical psychologist, Christian Science Practitioner or licensed doctor of chiropractic. Verification of sick leave with pay for less than five (5) working days (seven (7) calendar days in the case of part-time

Sec. 420.1 Leaves of Absence - General Requirements

420.1.4 cont.
employees) as provided elsewhere in this Rule shall be required on an individual basis only and shall be based upon an evaluation of an employee's leave use. For employees taking sick leave pursuant to Administrative Code Chapter 12W, Labor Code Sections 245-249 or Labor Code Section 233, the City may take reasonable measures to verify or document that an employee's use of sick leave is taken in accordance with Administrative Code Chapter 12W, Labor Code Sections 245-249 or Labor Code Section 233.

420.1.5 The leave requests shall be retained in the department and maintained in a manner so as to be readily available for audit, review, or analysis, by authorized City personnel, including the Office of Labor Standards Enforcement Staff.

420.1.6 Except as otherwise provided in these Rules, leave granted for the period stated on the prescribed form may be extended or abridged only with the approval of the MTA Director of Transportation/Designee. An employee who does not return to work on the approved date shall be deemed as away without official leave and shall be subject to automatic resignation as provided elsewhere in these Rules.

420.1.7 Except when an employee requesting sick leave has accumulated unused sick leave with pay credits and except for employees eligible for military leave with pay, organ or bone marrow donor leave with pay, witness or jury duty leave, disability leave or leave due to battery as provided elsewhere in this Rule, or for authorized holiday or vacation, leaves shall be without pay.

420.1.8 Refer to the Probationary Period Rule on leave during the probationary period.

420.1.9 Exempt employees shall be granted paid sick leave on the ninetieth (90^{th}) day of service. The decision of the MTA Director of Transportation/Designee shall be final and not subject to appeal.

420.1.10 An appointee shall not be required to sign a resignation form as a condition of approval of a leave.

420.1.11 Leaves granted under this Rule shall be indicated on time rolls as designated by the Controller.

420.1.12 An authorized leave granted under this Rule shall not be considered as a break in the continuous service of an employee.

Rule 420
Leaves of Absence

Article II: Sick Leave - General Provisions

Applicability: Rule 420 shall apply to all Service-Critical classes of the Municipal Transportation Agency (MTA), except that the provisions of Rule 420 may be superseded in whole or in part by the collective bargaining agreement. However, all definitions in this Rule are applicable to employees in all classes.

Sec. 420.2 Eligibility for Sick Leave

Subject to the provisions of this Rule, employees and officers (hereinafter called "employees") who are absent from their duties due to their own illness or disability, or that of a qualifying family member, including preventive care, such as medical or dental appointments, and employees who are victims of domestic violence, sexual assault or stalking, are eligible for sick leave.

Sec. 420.3 Verification of Sick Leave

420.3.1 The MTA Director of Transportation/Designee may make such independent investigation as to the necessity for sick leave as is deemed proper under these rules and federal, state and local law and may require certification for any period of sick leave, provided that the employee has been previously notified in writing that such certification for absence of less than five (5) working days shall be required. For employees taking sick leave pursuant to Administrative Code Chapter 12W, Labor Code Sections 245-249 or Labor Code Section 233, the City may take reasonable measures to verify or document that an employee's use of sick leave is taken in accordance with Administrative Code Chapter 12W, Labor Code Sections 245-249 or Labor Code Section 233.

420.3.2 The MTA Director of Transportation/Designee may at any time make such independent investigation as may be deemed proper regarding the illness of any person on sick leave.

Sec. 420.4 Retirement Automatically Terminates Sick Leave

Sick leave shall automatically terminate on the effective date of an employee's retirement.

Sec. 420.5 Abridgment of Sick Leave

Sick leaves granted in excess of five (5) working days may be abridged if the employee presents to the MTA Director of Transportation/Designee medical evidence of capability to resume all the duties of the position.

Sec. 420.6 Definition of Sick Leave

A leave granted under this Rule for one of the following reasons shall be known as "sick leave":

420.6.1 Sick Leave - Medical Reasons

Absence for diagnosis, care or treatment of a health condition, including alcoholism, or preventive care, and for employees who are victims of domestic violence, sexual assault or stalking, but excluding illness or injury arising out of and in the course of City and County employment. **A**bsence due to illness or injury arising out of and in the course of employment is administered either under the Rules of the Retirement Board and is referred to as "disability leave" and may be supplemented as provided elsewhere in this Rule or under the provisions of this Rule and the Administrative Code for those employees injured by battery ("leave due to battery").

420.6.2 Sick Leave – Quarantine

Absence during a period of quarantine established and declared by the Department of Public Health or other authority.

420.6.3 Sick Leave – Bereavement

Absence because of the death of the employee's spouse or domestic partner, parents, ~~step parents~~stepparents, grandparents, parents-in-law or parents of a domestic partner, sibling, child, ~~step child~~stepchild, adopted child, grandchild, a child for whom the employee has parenting responsibilities, aunt or uncle, legal guardian, or any person who is permanently residing in the household of the employee. Such leave shall not exceed ~~three (3)~~five (5) working days and shall be taken within ~~thirty (30) calendar days~~three (3) months after the date of death~~; however, two (2) additional working days shall be granted in conjunction with the bereavement leave if travel outside the State of California is required as a result of the death~~.

Sec. 420.6 Definition of Sick Leave (cont.)

420.6.3 Sick Leave – Bereavement (cont.)

For absence because of the death of any other person to whom the employee may be reasonably deemed to owe respect; leave shall be for not more than one (1) working day; however, two (2) additional working days shall be granted if travel outside the State of California is required as a result of the person's death.

The appointing officer or designee to whom a request for bereavement leave under this rule is made may request verification of a qualifying family member's death within 30 days of the first day of the employee's leave, as authorized by California Government Code section 12945.7(f).

~~1~~420.6.4 Sick Leave – Reproductive Loss

Absence because of the failure to achieve successful completion of an act that would have resulted in the employee becoming a parent by the birth, placement, or adoption of a child. Qualifying reproductive losses include failed adoption, failed surrogacy, miscarriage, stillbirth, and unsuccessful assisted reproduction, such as intrauterine insemination, embryo transfer, or other assisted reproductive technology. Such leave shall not exceed five (5) working days and shall be taken within three (3) months after the qualifying reproductive loss. Paid sick leave granted for this purpose shall not exceed 20 workdays within a rolling 12-month period.

420.6.5~~4~~ Sick Leave - Maternity

Absence due to the employee's pregnancy or convalescent period following childbirth. Such leave shall not exceed six (6) months provided that such leave may be extended for permanent employees if a physician certifies that a longer convalescence period is required. Such extensions shall be subject to the provisions of this Rule governing sick leave without pay.

420.6.6~~5~~ Sick Leave – Parental Leave

Absence due to the birth of a child to the employee, the employee's spouse, or the employee's domestic partner or assumption by the employee of parenting or child rearing responsibilities either by adoption or foster care.

420.6.7~~6~~ Sick Leave - Illness or Medical Appointment of a Family Member

Absence for diagnosis, care or treatment of a health condition or injury, or for preventive care for an employee's family member, defined as follows:

1) A child, which for the purposes of this section means a biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis. This definition of a child is applicable regardless of age or dependency status.
2) A biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child.
3) A spouse.
4) A registered domestic partner.
5) A grandparent.
6) A grandchild.
7) A sibling.

Sec. 420.6 Definition of Sick Leave (cont.)

420.6.8~~7~~ Sick Leave Pursuant to Administrative Code Chapter 12W

1) Absence due to the illness, injury, medical care, treatment, diagnosis or medical appointment of the employee; employee's child; parent; legal guardian or ward; sibling; grandparent; grandchild; and spouse, registered domestic partner under any state law, or "designated person."

The aforementioned child, parent, sibling, grandparent, and grandchild relationships include not only biological relationships but also relationships resulting from adoption; step-relationships; and foster care relationships. "Child" includes a child of a domestic partner and a child of a person standing in loco parentis.

2) For the purpose of this section, the definition of "designated person" is: one person designated by an employee who has no spouse or registered domestic partner, as the person for whom the employee may use paid sick leave to aid or care for under this section. The opportunity to make such a designation shall be extended to the employee no later than the date on which the employee has worked thirty (30) hours after paid sick leave begins to accrue. There shall be a window of ten (10) business days for the employee to make this designation. Thereafter, the opportunity to make such a designation, including the opportunity to change such a designation previously made, shall be extended to the employee on an annual basis, with a window of ten (10) business days for the employee to make the designation.

420.6.9~~8~~ Sick Leave Pursuant to Labor Code Sections 245-249

Absence for the following purposes: (1) diagnosis, care, or treatment of an existing health condition of, or preventive care for an employee or an employee's family member; or (2) for an employee who is a victim of domestic violence, sexual assault, or stalking, described in Labor Code Section 230, subdivision (c) and Labor Code Section 230.1, subdivision (a).

420.6.10~~9~~ Sick Leave – Compulsory

Leave imposed by the MTA Director of Transportation/Designee due to an employee's medical inability or incapacity to perform all the duties of the position as provided elsewhere in this Rule.

Rule 420
Leaves of Absence

Article III: Sick Leave with Pay

Applicability: Rule 420 shall apply to all Service-Critical classes of the Municipal Transportation Agency (MTA), except that the provisions of Rule 420 may be superseded in whole or in part by the collective bargaining agreement. However, all definitions in this Rule are applicable to employees in all classes.

Sec. 420.7 Sick Leave with Pay Eligibility

420.7.1 Sick leave with pay may be granted to employees who have accrued paid sick leave on the ninetieth (90^{th}) day of service except that supplemental disability credits may be used to supplement disability indemnity payments as provided elsewhere in this Rule regardless of length of service and except that an authorized leave of absence with or without pay granted under this Rule shall not be considered as a break in the continuous service of an employee.

420.7.2 A break in service of more than twelve (12) continuous months by any employee other than an employee designated as a "holdover" will cause prior accumulated sick leave with pay credits to be canceled and eligibility for sick leave with pay must be re-established.

420.7.3 Sick leave with pay credits will continue to accrue at the normal rate while an employee is on either furlough or voluntary unpaid time off in accordance with this Rule, for a maximum of up to ten (10) days per fiscal year for imposed furlough or twenty (20) days per fiscal year for voluntary unpaid time off.

Sec. 420.8 **Sick Leave with Pay Eligibility Pursuant to Administrative Code Chapter 12W Effective February 5, 2007, and Labor Code Sections 245-249 Applicable to Employees Not Otherwise Qualified for Sick Leave Effective July 1, 2015**

420.8.1 Sick leave with pay may be granted to said ~~employees,~~employees on the ninetieth (90) day of service.

420.8.2 Employees hired on or before February 5, 2007, shall immediately be eligible to accrue and use sick leave with pay credits under this section.

420.8.3 A complete separation in service for twelve (12) continuous months by an employee, other than an employee designated as a "holdover" will cause prior accumulated sick leave with pay credits to be canceled and eligibility for sick leave with pay must be re-established.

Sec. 420.8 **Sick Leave with Pay Eligibility Pursuant to Administrative Code Chapter 12W Effective February 5, 2007, and Labor Code Sections 245-249 Applicable to Employees Not Otherwise Qualified for Sick Leave Effective July 1, 2015 (cont.)**

420.8.4 Employees rehired within one (1) year following a separation will not be subject to the ninety (90) calendar day eligibility period. And any of previously accrued and unused sick leave hours will be reinstated.

Sec. 420.9 **Sick Leave with Pay - Maximum Accumulation of Credits**

420.9.1 Sick Leave with Pay – Maximum Accumulation of Credits

Sick leave with pay credits shall be cumulative but the accumulated balance of unused sick leave with pay credits shall not exceed the equivalent of six (6) months which is the hourly equivalent of 130 working days based on the regular daily work schedule as defined, provided that in no case may the total accumulated unused sick leave with pay credit balance exceed l040 hours. Maximum accumulated sick leave with pay credits shall be reduced proportionately for employees entering a class or position where the regular work schedule is less than the class exiting if such employees have accumulated unused sick leave with pay credits in excess of the maximum allowable for the new class or position. Such employees shall have all such credits restored upon return to a class or position with an increased regular work schedule.

420.9.2 Maximum Accumulation of Credits Pursuant to Administrative Code Chapter 12W Effective February 5, 2007, and Labor Code Sections 245-249 Effective July 1, 2015 Applicable to Employee Not Otherwise Qualified for Sick Leave.

Sick leave with pay credits shall be cumulative but the accumulated balance of unused sick leave with pay credits shall not exceed seventy-two (72) hours under Administrative Code Chapter 12W and forty-eight (48) hours under Labor Code Section 245-249.

Sec. 420.10 Sick Leave with Pay - Restrictions

420.10.1 Sick leave with pay**,** beyond that authorized by law, is a privilege recognized by Charter and by Ordinance of the Board of Supervisors and should be requested and granted only in cases of absence because of illness which incapacitates the employee for the performance of duties or as otherwise defined in this Rule.

Sec. 420.10 Sick Leave with Pay – Restrictions (cont.)

420.10.2 Except for absences covered under Labor Code Section 233, the MTA Director of Transportation/Designee may require proof of incapacitation before granting sick leave with pay for any period of time and may withhold pay for failure to submit such proof provided that the employee had been previously notified in writing that such proof would be required for absences of less than five (5) working days.

420.10.3 The rate of earning and accumulating sick leave with pay credits and authorization for its use under this Rule shall in no way inhibit or restrict the right of the MTA Director of Transportation/Designee to establish standards of attendance.

Sec. 420.11 Prohibition Against Employment While on Sick Leave with Pay

420.11.1 Employees are prohibited from working in any other employment while on sick leave with pay unless, after considering the medical reason for the sick leave with pay, the MTA Director of Transportation/Designee, grants permission for the employee to engage in a secondary employment subject to the provisions of these Rules governing such employment.

420.11.2 Violators of this section are subject to disciplinary action as provided in the Charter.

Sec. 420.12 Calculation of Sick Leave with Pay Credits

420.12.1 Unless otherwise provided in this Rule or by ordinance, sick leave with pay credits shall be earned at the rate of .05 hours for each hour of regularly scheduled paid service excluding, overtime exceeding forty (40) hours per week and holiday pay, except that an employee on disability leave shall earn sick leave with pay credits at the normal rate.

420.12.2 Exempt employees shall accrue paid sick leave at a rate of one (1) hour per every thirty (30) hours worked, excluding holiday pay.

Sec. 420.13 Disbursement of Sick Leave with Pay Credits

Sick leave with pay credits shall be used and deducted at the minimum rate in units of one (1) hour for those employees whose credits are calculated in hours.

Sec. 420.14 Conversion of Sick Leave with Pay Credits from Days to Hours

Sick leave with pay credit balances shall be converted from days to hours based on the equivalent number of hours in such employee's sick leave with pay credit balances. The equivalent number of hours shall be based on the employee's authorized normal daily work schedule in effect

Sec. 420.14 Conversion of Sick Leave with Pay Credits from Days to Hours (cont.)

on the effective date of this amended Rule, except if the MTA Director of Transportation/Designee determines that such conversion is inequitable and allows another formula to be used.

Sec. 420.15 Employees Injured by Battery

420.15.1 An employee absent because of bodily injury or illness received in the course of employment and caused by an act of criminal violence shall be entitled to sick leave with pay under the provisions of the Administrative Code.

420.15.2 Sick leave with pay under this section shall be known as "leave due to battery" and shall be subject to approval by the MTA Director of Transportation/Designee. The MTA Director of Transportation/Designee shall make such investigation as is deemed appropriate and may include medical examinations by a physician(s) designated by the MTA Director of Transportation/Designee.

420.15.3 The decision of the MTA Director of Transportation/Designee may be appealed to the Civil Service Commission whose decision is final.

420.15.4 Authorized sick leave under this section shall not be charged against earned sick leave with pay credits.

Sec. 420.16 Appeal of Denial of Sick Leave with Pay

Denial of sick leave with pay to an appointee who is eligible and qualified for such leave is appealable as provided elsewhere in this Rule.

Sec. 420.17 Reimbursement of Vested and Unused Accumulated Sick Leave with Pay Credits Balance

420.17.1 An employee who had accumulated unused sick leave with pay credits and who had completed the service requirement on or before December 5, 1978, shall upon the effective date of retirement for service or disability, or upon the date of death, or upon the date of separation caused by industrial accident, be reimbursed for the accumulated unused sick leave with pay credit balance which had been earned on or before December 5, l978, and not subsequently used ("vested and unused accumulated sick leave with pay credits") in accordance with the following schedule of service requirements and allowances.

Sec. 420.17 Reimbursement of Vested and Unused Accumulated Sick Leave with Pay Credits Balance (cont.)

420.17.1 (cont.)

Schedule of Service Requirements and Allowances for Reimbursement of Vested and Unused Accumulated Sick Leave with Pay Credit Balance at the Time of Retirement, Separation Because of Accident or Death	
Service Requirement	**Amount of Cash Reimbursement**
15 or more years of service	100%
More than 5 continuous years but less than 15 continuous years of service	50%
Up to and including 5 continuous years of service	33.3%

420.17.2 Reimbursement for the vested and unused accumulated sick leave with pay credit balance shall be further subject to the following:

1) The MTA Director of Transportation/Designee shall administer the provisions of this section.

2) Deduction shall be made from the unused accumulated sick leave with pay credit balance which existed on December 5, l978, in an amount proportional to any credits used of that balance. Reimbursement shall be made only for the adjusted amount with all credits from the December 5, l978, balance subsequently used being deducted.

3) Reimbursement for the vested and unused accumulated sick leave with pay credit balance shall be payable at the time of retirement, separation caused by industrial accident or death, or at a later date when so selected by the employee, but within one (1) year of such retirement, separation or death.

4) Reimbursement is to be computed at the base rate of pay of an employee's permanent class, at the base rate of pay of the class of a temporary or provisional employee with no permanent status, or at the base rate of pay in a temporary or provisional appointment of an employee with permanent status in another class who has held such temporary or provisional appointment continuously for one or more years at the time of separation.

Sec. 420.17 Reimbursement of Vested and Unused Accumulated Sick Leave with Pay Credits Balance (cont.)

420.17.2 (cont.)

5) No reimbursement shall be made for unused sick leave with pay credits earned on or after December 6, l978.

6) The enactment of this section is not intended to constitute additional compensation, nor be a part of the rate of pay of the employee, but is reimbursement for the vested and unused accumulated sick leave with pay credit balance to which an employee would have been entitled if the employee had not retired, separated due to industrial injury or died.

Rule 420
Leaves of Absence

Article IV: Sick Leave without Pay

Applicability: Rule 420 shall apply to all Service-Critical classes of the Municipal Transportation Agency (MTA), except that the provisions of Rule 420 may be superseded in whole or in part by the collective bargaining agreement. However, all definitions in this Rule are applicable to employees in all classes.

Sec. 420.18 Sick Leave without Pay – Eligibility

Subject to the provisions of this section, sick leave without pay may be granted to employees who are not eligible for sick leave with pay or, subject to the approval of the appointing officer or designee, employees may choose not to use their sick leave with pay credits.

Sec. 420.19 Sick Leave without Pay – Temporary and Provisional Employees

Sick leave without pay may be granted to temporary or provisional employees. Such leave shall be renewed monthly and shall not be extended beyond three (3) calendar months except for sick leave - maternity.

Sec. 420.20 Sick Leave without Pay – Permanent Employees

Sick leave without pay may be approved for permanent employees for the period of the illness provided that requests for prolonged leave shall be renewed every three (3) months and provided further that such leave shall not be extended beyond a period of one (1) continuous year unless there is a reasonable probability that additional leave will enable the employee to return to employment within a reasonable time.

Sec. 420.21 Prohibition Against Employment While on Sick Leave Without Pay

420.21.1 Employees are prohibited from working in any other employment when on sick leave without pay unless, after considering the medical reason for the sick leave without pay, the MTA Director of Transportation/Designee, grants permission for the employee to engage in outside employment.

420.21.2 Violators of this section are subject to disciplinary action.

Rule 420
Leaves of Absence

Article V: Compulsory Sick Leave

Applicability: Rule 420 shall apply to all Service-Critical classes of the Municipal Transportation Agency (MTA), except that the provisions of Rule 420 may be superseded in whole or in part by the collective bargaining agreement. However, all definitions in this Rule are applicable to employees in all classes.

Sec. 420.22 Compulsory Sick Leave

420.22.1 If the MTA Director of Transportation/Designee has reason to believe that an employee is not medically or physically competent to perform assigned duties, and if allowed to continue in employment or return from leave may represent a risk to co-workers, the public and the employee, may require the employee to present a medical report from a physician designated by the MTA Director of Transportation/Designee certifying the employee's medical or physical competency to perform the required duties.

420.221.2 If the employee refuses to obtain such physician's certificate or if as a result of a medical evaluation, the employee is found not to be medically or physically competent, the MTA Director of Transportation/Designee may place the employee on compulsory sick leave.

420.22.3 An employee shall remain on compulsory sick leave until such time as the employee is found to be competent to return to duty by a physician designated by the MTA Director of Transportation/Designee, but such leave shall not exceed the maximum period of sick leave provided in this Rule.

420.22.4 The employee placed on sick leave under the provisions of this section may appeal as provided under the appeal provisions of the Medical Examination Rule.

420.22.5 An employee placed on compulsory sick leave is ineligible for employment with the City and County and shall be placed under waiver on all lists on which the employee's name appears and shall otherwise be unemployable.

Rule 420
Leaves of Absence

Article VI: Disability Leave

Applicability: Rule 420 shall apply to all Service-Critical classes of the Municipal Transportation Agency (MTA), except that the provisions of Rule 420 may be superseded in whole or in part by the collective bargaining agreement. However, all definitions in this Rule are applicable to employees in all classes.

Sec. 420.23 Disability Leave

420.23.1 Absence due to illness or injury arising out of and in the course of employment is defined as "disability leave" and is administered under the State Workers' Compensation Laws and the Rules of the Retirement Board.

420.23.2 An employee who is absent because of disability leave and who is receiving disability indemnity payments may request, by submitting a signed option statement to the employee's department no later than ninety (90) days following the employee's release from disability leave, that the amount of disability indemnity payment be supplemented with salary to be charged against the employee's supplemental disability credits so as to equal the full salary the employee would have earned for the regular work schedule. The regular work schedule shall be that schedule in effect at the commencement of the disability leave.

420.23.3 Supplemental disability credits shall be an account separate from, but equivalent to, the employee's accumulated unused sick leave with pay credit balance except that the supplemental disability credit account shall be adjusted as provided below.

420.23.4 Failure to exercise the option to supplement disability indemnity payments within ninety (90) calendar days following release from disability leave will preclude later requests.

420.23.5 Supplemental disability credits shall be used at the minimum rate in units of one (1) hour.

420.23.6 The employee's department shall submit separate timerolls to reflect this action only after the Retirement System certifies the amount of disability indemnity payment, if any, for the period.

420.23.7 Salary may be paid on regular timerolls and charged against the unused sick leave with pay credit balance during any period prior to the commencement of the determination of eligibility for disability indemnity payment without requiring a signed option by the employee.

Sec. 420.23 Disability Leave (cont.)

420.23.8 When an employee has used sick leave with pay credits and the Retirement System subsequently determines that the employee was entitled to disability indemnity payment for the period of absence, provision shall be made for adjusting the employee's sick leave with pay credit balance and for reimbursing the appropriate City fund for the amount of sick leave with pay credits charged and paid.

420.23.9 An employee who uses supplemental disability credits to supplement disability indemnity payments shall, while on disability leave, earn supplemental disability credits at the same rate as sick leave with pay credits.

420.23.10 Upon return to duty, an employee who has used supplemental disability credits shall earn sick leave with pay credits at the normal rate and shall earn supplemental disability credits at twice the rate that sick leave with pay credits are earned until such time as the total hours of supplemental disability credits used are regained.

420.23.11 Should an employee suffer a recurrence or a new injury before all supplemental disability credits are regained, the supplemental disability credit balance shall be that balance existing at the beginning of the pay period in which the recurrence or new injury occurs and shall be adjusted for the amount of supplemental disability credits subsequently earned and sick leave with pay credits subsequently used.

Sec. 420.24 Use of Sick Leave with Pay Credits to Supplement State Disability Insurance

420.24.1 Sick leave with pay credits shall be used to supplement State Disability Insurance (SDI) at the minimum rate in units of one (1) hour.

420.24.2 SDI payments to an employee who qualifies and who has accumulated and is eligible to use sick leave with pay credits shall be supplemented with sick leave with pay credits so that the total of SDI and sick leave with pay calculated in units of one-hour provides up to, but does not exceed, the regular gross salary the employee would have received for the normal work schedule excluding overtime.

420.24.3 An employee who wishes not to supplement, or who wishes to supplement with compensatory time or vacation, must submit a written request on the prescribed form to the MTA Director of Transportation/Designee within seven (7) calendar days following the first date of absence.

Sec. 420.24 Use of Sick Leave with Pay Credits to Supplement State Disability Insurance (cont.)

420.24.4 Employees who are supplementing SDI earn sick leave with pay credits at the normal rate only for those hours of sick leave with pay credits used.

Rule 420
Leaves of Absence

Article VII: Military~~, War Effort and Sea Duty~~ Leaves

Applicability: Rule 420 shall apply to all Service-Critical classes of the Municipal Transportation Agency (MTA), except that the provisions of Rule 420 may be superseded in whole or in part by the collective bargaining agreement. However, all definitions in this Rule are applicable to employees in all classes.

Sec. 420.25 Military Leave

420.25.1 Military leave is governed by the provisions in the Uniformed Services Employment and Reemployment Rights Act (USERRA),~~of~~ applicable Federal and State laws, and by Charter provisions and by this Rule.

420.25.2 ~~**Time of War – Definition**~~**Active or Inactive Duty Leave for Military Training, Drills, or Fitness-For-Service Examination**

~~The phrase "time of war" is defined elsewhere in these Rules.~~ Leaves of absence shall be granted to officers and employees ordered to fulfill training requirements determined by a proper military authority as necessary for the officer's or employee's professional development, to complete skill training or retraining, or to determine fitness for military service. This includes weekend drills and annual trainings. Approved leave shall include any necessary time for travel to and from the duty or examination location, plus a reasonable amount of leave for rest before reporting to work. See Rule 420.25.4, for time limits on return to work following approved military leaves.

420.25.3 **Active Duty Military Leave** ~~**– Time of War**~~

Leaves of absence shall be granted to officers and employees for service in the armed forces of the United States or the State of California , or in service of the Federal Emergency Management Agency (FEMA) for the period that the officer or employee is ordered or retained on active duty. Leave for this purpose shall not exceed five (5) years, unless the officer or employee's service meets conditions in USERRA for an exemption from the five-year service limit. Reasons for extending the five-year military leave limit include:

1. Service beyond five years that is necessary to complete an initial period of service required in the officer or employee's orders.
2. Service from which an officer or employee, through no fault of their own, is unable to obtain a release within the five-year limit.

3. Service for required training for reservists and National Guard members that must be excluded when calculating the five-year limit.
4. Orders for involuntary service, or retention on active duty during domestic emergency or national security related situations.
5. Orders to service, or to remain on active duty (other than for training) because of a war or national emergency declared by the President or Congress.
6. Active duty (other than for training) by volunteers supporting operational missions, other than war or national emergencies, for which selected reservists have been ordered to active duty without their consent.
7. Service by members who are ordered to active duty in support of a critical mission or requirement of the uniformed services as determined by the agency Secretary involved.
8. Federal service by members of the National Guard called into action by the President to suppress an insurrection, repel an invasion, or to execute the laws of the United States.

~~or for service on ships operated by or for the United States government in time of war and for a period not to exceed three (3) months after the conclusion of such service, but not later than one (1) year after the cessation of hostilities, except in case of disability incurred while in active service with the armed forces or the merchant marines when such disability shall extend beyond such period.~~

420.25.4 Return to Work Following Approved Military Leave ~~– Time of Peace~~

~~Whenever any officer or employee shall, by order of the government of the United States or by lawful order of any of its departments or officers, or by lawful order of the State of California, or any of its departments or officers, be directed in time of peace to report and serve in the armed forces of the United States, or in the armed forces of the State of California, said officer or employee shall be entitled to a leave of absence from the employee's office or position during the time of such service and for a period not to exceed three (3) months after the expiration thereof.~~ Officers and employees taking military leave must return to work within certain time limits. The time limit for returning to work depends on the duration of the officer or employee's military service, with the exception of leave taken for fitness-for-service examinations.

Military Service of 1 to 30 Days

Any officer or employee absent due to a military service with a duration of one to 30 days must return to work on the first regularly scheduled workday following completion of the officer or employee's military service, after allowance for safe travel home from the military duty location plus an eight-hour rest period. If, due to no fault of the officer or employee, timely

reporting back to work would be impossible or unreasonable, the employee must report to work as soon as possible after the allowed eight-hour rest period.

Fitness-For-Service-Examinations

The time limit for reporting back to work for officers or employees absent due to orders requiring a fitness-for-service examination is the first scheduled workday following completion of the examination plus allowance for safe travel home from the examination location and an eight-hour rest period. This reporting limit applies regardless of the length of absence.

Service of 31 to 180 Days

Any officer or employee absent due to military service with a duration of 31 to 180 days must make an oral or written request to return to work to the appointing officer or designee within 14 days after the completion of service. If submission of the request to return to work is impossible or unreasonable through no fault of the officer or employee, the request must be submitted as soon as possible. Officers and employees requesting return to work must report to work on the date and time designated by the appointing officer or designee.

Service of 181 Days or More

Any officer or employee absent due to military service with a duration of 181 days or more must make an oral or written request to return to work to the appointing officer or designee within 90 days after the completion of service. If submission of the request to return to work is impossible or unreasonable through no fault of the officer or employee, the request must be submitted as soon as possible. Officers and employees requesting return to work must report to work on the date and time designated by the appointing officer or designee.

Service Incurred or Aggravated Disability Leave

Any officer or employee hospitalized or convalescing because of an injury or illness incurred or aggravated during the performance of military service shall have up to two years to return to work. The two-year period will be extended for a minimum time required to accommodate a circumstance beyond an officer or employee's control that would make returning to work within the two-year period impossible or unreasonable. Such officers and employees must comply with the oral or written request timeframes determined by their length of service, after their recovery.

Failure to Request Return to Work or Return to Work Following Military Leave

Any officer or employee who fails to make a timely oral or written request for return to work, or who fails to return to work following a military leave, whether submitting a request to return or not, shall be deemed as away

without official leave and shall be subject to rules and policies covering unauthorized absence.

Sec. 420.25 Military Leave (cont.)

420.25.5 Military Leave – Permanent Appointees

Any officer or employee on military leave, who prior to such leave has been appointed to a permanent position in the City and County service, shall be entitled to resume such position at the expiration of the leave, and in determining and fixing rights, seniority, salary, benefits and otherwise which have accrued and shall inure to the benefit of such officer or employee, the term of military leave shall be considered and accounted as part of the employee's service to the City and County.

420.25.6 Military Leave – Proof of Duty Required for Military Pay

Officers and employees requesting military leave pay pursuant to State of California Military and Veteran's Code section 395.1 shall file with the MTA Director of Transportation/Designee a copy of the orders ~~necessitating~~identifying the type of such service and the duration prior to the effective date of the leave of absence ~~and upon return from such leave shall submit a copy of the discharge or release~~.

420.25.7 Military Leave – Salary While on Temporary Leave

Employees who have been employed by the City and County ~~or any other public agency~~ or have been on military duty for a period of not less than one (1) year continuously prior to the date upon which a temporary military leave not exceeding l80 calendar days begins shall, as required by the State of California Military and Veterans' Code (Section 395), receive their regular salary or compensation for a period not to exceed thirty (30) calendar days of such military leave in any fiscal year or more than thirty (30) calendar days during any period of continuous military leave.

420.25.8 Military Leave – Eligible Not Reached for Certification While in Service - Time of War

An eligible on a regular civil service list, who served on active military duty not including reserve service during time of war who presents an honorable discharge or certificate of honorable active service within one (1) year from the date of release from military service, shall be preferred for certification for a period of four (4) years ~~after the cessation of hostilities~~from the date of discharge in the order of standing upon the eligible list at the time of entrance into military service and before candidates procuring standing through an examination held subsequent to the entrance of such eligibles into the military service.

Sec. 420.25 Military Leave (cont.)

420.25.9 Military Leave – Eligibles Reached for Certification

If while in the military service, the name of an eligible was reached for certification to a permanent position and the eligible presents an honorable discharge or certificate of honorable active service within one hundred and l20 days from the date of release from active military duty not including reserve service ~~during time of war~~, the eligible shall be certified to a position in the class for which so reached; and, for all purposes of seniority, the date of certification if appointed, shall be deemed to be the date when the eligible was reached for certification while in the military service. A person appointed in accordance with this section shall serve the required probationary period. An eligible who is offered appointment in accordance with the provisions of this section and who waives appointment and is subsequently certified after withdrawal of waiver shall have seniority as of the date of such certification.

420.25.10 Military Leave – Participants in Written Examinations

Persons who participate in a written examination and who present their orders or other proof of service within 120 days from the date of release from active military service in ~~time of war~~ shall be allowed to participate in the remaining parts of the examination. If they meet all the eligibility qualifications, they shall be certified as of the date they would have been reached for certification in accordance with their rank based on the entire examination.

420.25.11 Military Leave – Employees or Officers Not Subject to Civil Service Examination

Military leave to an elected or appointed officer, appointed for a definite period of time, shall not be extended beyond the period of time for which elected or appointed, provided that if such officer is re-elected or

reappointed, then military leave shall be automatically extended for such ensuing period of time.

Military leave to an employee occupying a position exempt from civil service examination shall not extend beyond the period of time for which the employee's appointing officer was elected or appointed.

Sec. 420.26 War Effort Leave

The Board of Supervisors may provide by ordinance that leaves of absence shall be granted to officers and employees during time of war for service directly connected with the prosecution of the war or national defense or preparedness.

~~Sec. 420.27 Leave for Sea Duty as Licensed Officers~~

~~In time of war or while any act authorizing compulsory military service or training is in effect, the Board of Supervisors may provide by ordinance that leaves of absence shall be granted to officers and employees for sea duty as licensed officers aboard ships operated by or for the United States government. The Commission shall amend this section to implement such ordinance.~~

Sec. 420.278 Leave for Spouse or Registered Domestic Partner During Leave from Deployment of Qualified Member

420.278.1 In compliance with the State of California Military and Veterans Code section 395.10, an eligible employee who is a spouse or registered domestic partner of a qualified member of the Armed Forces of the United States, National Guard, or Reserves shall be allowed to take up to ten (10) days of leave during a period of leave from deployment of the qualified member.

420.278.2 An "eligible employee" is an employee who meets all of the following conditions:

1) is a spouse or registered domestic partner of a qualified member;

2) works on average twenty (20) or more hours per week and is not an independent contractor;

3) provides notice to the City, within two (2) business days of receiving official notice that the qualified member will be on leave from deployment, of his or her intention to take leave; and

4) submits written documentation to the City, certifying that the qualified member will be on leave from deployment during the time of leave.

420.2~~78~~.3 A "qualified member" is any of the following:
1) A member of the Armed Forces of the United States who has been deployed during a period of military conflict to an area designated as a combat theater or combat zone by the President of the United States; or
2) A member of the National Guard who has been deployed during a period of military conflict; or
3) A member of the Reserves who has been deployed during a period of military conflict.

Rule 420
Leaves of Absence

Article VIII: Unpaid Administrative Leave or Furlough

Applicability: Rule 420 shall apply to all Service-Critical classes of the Municipal Transportation Agency (MTA), except that the provisions of Rule 420 may be superseded in whole or in part by the collective bargaining agreement. However, all definitions in this Rule are applicable to employees in all classes.

Sec. 420.289 Unpaid Administrative Leave or Furlough

420.289.1 General Provisions

1) Notwithstanding the layoff and involuntary leave provisions or any other provisions of these Rules, the MTA Director of Transportation/Designee is authorized to impose unpaid administrative leave (furlough) on any MTA employee as provided in this section. The imposition of furloughs shall be subject to receipt of a Projected Deficit Notice (PDN) from the Controller stating that the department's budget will be insufficient to support the department's level of spending through the end of the fiscal year.

2) The authority of the MTA Director of Transportation/Designee to impose furloughs shall be limited to those furloughs necessary to correct the projected deficit identified by the Controller.

3) This Rule shall apply to all employees of the City and County.

4) No provision of Layoff and Involuntary Leave, including but not limited to any provision regarding the order of layoff, displacement of less senior employees, or reinstatement, shall be applicable to any employees furloughed hereunder.

420.289.2 Voluntary Unpaid Time Off

1) Prior to imposing a furlough on any employee, the MTA Director of Transportation/Designee shall attempt to determine, to the extent feasible and with due consideration for the time constraints which may exist for eliminating the projected deficit, the interest of employees within the appointing officer's jurisdiction in taking unpaid personal time off on a voluntary basis.

Sec. 420.289 Unpaid Administrative Leave or Furlough (cont.)

420.289.2 Voluntary Unpaid Time Off (cont.)

2) The MTA Director of Transportation/Designee shall have full discretion to approve or deny requests for voluntary unpaid time off based on the operational needs of the department and any court decrees or orders pertinent thereto. The decision of the MTA Director of Transportation/Designee shall be final except in cases where requests for voluntary unpaid time off in excess of ten working days are denied. In such cases, an employee may appeal in accordance with the procedures provided below for appealing imposition of furlough.

3) An employee shall be entitled to take up to ten (10) unpaid days per fiscal year at the rate of no more than five (5) days in a three (3) month period, at the employee's discretion, upon at least fifteen (15) calendar days prior written notice to the employee's appointing officer. Such request shall not be denied except for the reason of a requirement that such position be filled on an overtime or premium pay basis, for essential operational needs or the requirements of a court decree or order.

420.289.3 Furloughs

1) The MTA Director of Transportation/Designee is encouraged to furlough entire operational units within departments rather than individual employees; or stagger work hours within an operational unit on a reduced hours basis. The decision of the appointing officer to impose furloughs under this subsection, and the appointing officer's determination of what constitutes an operational unit, shall be final.

2) Where, in the discretion of the MTA Director of Transportation/Designee, furlough of an operational unit as prescribed above is not feasible, individual employees within an operational unit may be furloughed.

3) To the extent practicable, furlough shall be equitably distributed among all of the employees within the affected operational unit to which the Projected Deficit Notice (PDN) has application; and, all of the employees in the affected class(es).

Sec. 420.289 Unpaid Administrative Leave or Furlough (cont.)

420.289.3 Furloughs (cont.)

4) In determining which employees to furlough, the MTA Director of Transportation/Designee shall consider citywide seniority within a class as well as considering the operational needs of the MTA.

5) In no event shall furlough be imposed upon an employee for more than four (4) days in any three (3) month period or ten (10) days in any fiscal year. Voluntary time off not to exceed a total of five (5) days per quarter or ten (10) days per year, approved pursuant to this section, shall be credited toward the maximum number of furlough days which may be imposed pursuant to this Rule.

6) Employees placed on furlough pursuant to this section shall be notified in writing at least fifteen (15) calendar days in advance of the effective date for the furlough.

7) The decision to furlough an individual employee within an operational unit shall be final except that an employee given notice of a furlough, which taken together with an employee's prior furloughs in the same fiscal year would exceed five (5) working days within any six (6) month period, may file an appeal. Such appeals must be in writing and filed within three (3) calendar days of the date of the notice of furlough with the MTA Director of Transportation/Designee. The MTA Director of Transportation, the Mayor and the Controller, or their designees, who shall meet on no less than twenty-four (24) hours public notice. The determination regarding the appeal shall be rendered within seven (7) calendar days of the date of the appeal. This decision is final and shall not be reconsidered by the Commission. The MTA Director of Transportation/Designee shall notify the employee of the decision prior to the effective date of the furlough.

420.289.4 Restrictions on Use of Paid Time Off While on Voluntary Unpaid Time Off or Furlough

1) All voluntary unpaid time off or furlough imposed or granted pursuant to this section shall be without pay.

2) Employees granted voluntary unpaid time off or placed on furlough are precluded from using sick leave with pay credits, vacation credits, compensatory time off credits, floating holidays, training days or any other form of pay for the time period involved.

Sec. 420.289 Unpaid Administrative Leave or Furlough (cont.)

420.2~~89~~.5 Imposition of Furlough - Fair Labor Standards Act (FLSA) Restrictions

1) Furlough for employees who are non-exempt under the Fair Labor Standards Act (FLSA) shall be imposed in minimum increments of one (1) hour.

2) Furlough for employees who are exempt under the Fair Labor Standards Act (FLSA) shall be imposed in minimum increments of one (1) day.

420.2~~89~~.6 Vacation and Sick Leave with Pay Accruals While on Voluntary Unpaid Time Off or Furlough

Subject to passage of necessary ordinances by the Board of Supervisors, vacation and sick leave with pay accruals shall continue during a maximum of ten (10) days of furlough in any fiscal year, or a maximum of twenty (20) days for approved voluntary unpaid time off taken pursuant to this Section in any fiscal year.

420.2~~89~~.7 Duration and Revocation of Voluntary Unpaid Time Off or Furlough

Furlough imposed upon an employee shall remain in force for the period specified in the written notice unless sooner revoked by written notice from the MTA Director of Transportation/Designee. Approved voluntary unpaid time off taken pursuant to this section may not be changed by the MTA Director of Transportation/Designee without the employee's consent.

420.2~~89~~.8 Resolution of Disputes

Except as provided elsewhere in this section, the MTA Director of Transportation/Designee shall act on all disputes arising out of the application or implementation of the provisions of this section. The decision of the MTA Director of Transportation/Designee shall be final and shall not be reconsidered by the Commission.

Rule 420
Leaves of Absence

Article IX: Other Leaves of Absence

Applicability: Rule 420 shall apply to all Service-Critical classes of the Municipal Transportation Agency (MTA), except that the provisions of Rule 420 may be superseded in whole or in part by the collective bargaining agreement. However, all definitions in this Rule are applicable to employees in all classes.

Sec. 420.2930 Leave to Accept Other City and County Position

420.2930.1 Leave by an employee who has completed the probationary period to accept exempt or temporary appointment in the City and County service may be approved for the duration of such appointment. Such leave by a probationary employee is subject to the provisions of the Rule governing the Probationary Period.

420.2930.2 Denial of such leave by the MTA Director of Transportation/Designee is appealable as provided elsewhere in this Rule.

Sec. 420.301 Educational Leave

420.301.1 Educational leave is defined as leave for the purpose of educational or vocational training in a field related to the employee's current position and as any training to which a veteran is entitled pursuant to the laws of the United States or the State of California.

420.301.2 Educational leave may be approved for permanent appointees for a period of up to one (1) year. Requests for educational leave of longer than one (1) year must be renewed each year.

420.301.3 Denial of educational leave is appealable as provided elsewhere in this Rule.

420.301.4 An employee on educational leave shall not accept other employment without approval of the MTA Director of Transportation/Designee.

420.301.5 As soon as records are available, the employee shall periodically present to the MTA Director of Transportation/Designee a record of completed educational work. These records shall be maintained in such a manner as to be readily available for audit. Failure to submit an acceptable record of completed educational work shall subject the employee to disciplinary action as provided in the Charter.

Sec. 420.312 Leave for Civilian Service in the National Interest

420.312.1 Civilian service in the national interest is defined as leave to serve with a Federal, state or other public agency or non-profit organization in a program or in a capacity which the MTA Director of Transportation/Designee deems to be in the national or general public interest.

420.312.2 Such leave may be approved for permanent appointees for a period of up to one (1) year. Requests for such leave of longer than one (1) year must be renewed each year.

420.312.3 Denial of such leave is appealable as provided elsewhere in this Rule.

Sec. 420.323 Leave for Employment as an Employee Organization Officer or Representative

420.323.1 Leave for employment as an employee organization officer or representative is defined as leave to serve full-time as an officer or representative of an employee organization whose membership includes City employees, or to attend a convention or other type of business meeting of an employee organization as an officer or delegate of the employee organization.

420.323.2 Leave for permanent appointees may be approved for the duration of such service.

420.323.3 Denial of such leave is appealable as provided elsewhere in this Rule.

Sec. 420.334 Family Care Leave

420.334.1 Definition of Family

A unit of interdependent and interacting persons, related together over time by strong social and emotional bonds and/or by ties of marriage, birth, and adoption, whose central purpose is to create, maintain, and promote the social, mental, physical and emotional development and ~~well being~~ well-being of each of its members.

420.334.2 Permanent employees who have one (1) or more years of continuous service in any status may be granted up to one (1) year of unpaid family care leave for the following reasons:

1) The birth of a biological child of the employee;

Sec. 420.334 Family Care Leave (cont.)

420.334.2 (cont.)

2) The assumption by the employee of parenting or child rearing responsibilities. Family care leave does not apply to an employee who temporarily cares for a child for compensation, such as a paid ~~child care~~childcare worker;

3) The serious illness or health condition of a family member of the employee, the employee's spouse or domestic partner, a parent of the employee or the employee's spouse or domestic partner, the biological or adoptive child of the employee, or a child for whom the employee has parenting or child rearing responsibilities; or

4) The mental or physical impairment of a family member of the employee, the employee's spouse or domestic partner, a parent of the employee or the employee's spouse or domestic partner, the biological or adoptive child of the employee, or a child for whom the employee has parenting or child rearing responsibilities, which impairment renders that person incapable of self-care.

420.334.3 Family care leave is unpaid leave. Such leave may be granted in addition to accumulated compensatory time off, vacation time, floating holiday time or sick leave as specified under Sick Leave - Illness or Medical Appointment of Child, Parent, Spouse or Registered Domestic Partner.

420.334.4 Denial of family care leave is appealable as provided elsewhere in this Rule.

Sec. 420.345 Witness or Jury Duty Leave

420.345.1 An employee who is summoned as a witness on behalf of the City and County or juror for a judicial proceeding shall be entitled to leave with pay less the amount of juror or witness fee paid for the period required for such service (Charter Section A8.400G). An employee who is summoned to serve as a witness in cases which involve outside employment or personal business affairs shall be placed on leave without pay unless vacation leave or compensatory time is requested and granted.

420.345.2 Paid witness or jury duty leave shall be only from an employee's scheduled duty time and shall not include hours outside of scheduled hours of work or on days off.

Sec. 420.345 Witness or Jury Duty Leave (cont.)

420.345.3 Such employees shall notify the MTA Director of Transportation/Designee immediately upon receiving notice of jury duty.

420.345.4 An employee who takes vacation leave while on witness or jury duty leave shall receive regular salary.

420.345.5 Refer to the Probationary Period Rule on leave during the probationary period.

Sec. 420.356 Holiday Leave

Holiday leave shall be as provided by ordinance of the Board of Supervisors.

Sec. 420.367 Vacation Leave

Vacation leave shall be as provided in the Charter and by ordinance of the Board of Supervisors.

Sec. 420.378 Involuntary Leave of Absence

420.378.1 Whenever it becomes necessary to effect a reduction in force due to lack of work or lack of funds which shall result in the displacement of a permanent or probationary appointee from the City and County service, the MTA Director of Transportation/Designee, notwithstanding other provisions of these Rules governing leaves of absence, shall place such employees on a leave of absence of an involuntary nature unless the employee elects to be laid off.

420.378.2 Such reductions in force shall be effected by the provisions of this Rule governing seniority and order of layoff.

420.378.3 Employees placed on an involuntary leave of absence shall be ranked on the holdover roster for the class from which laid off and shall be returned to duty as provided in this Rule.

420.378.4 Leaves of absence imposed under the provisions of this Rule shall expire upon the return to duty of the holdover, upon the expiration of holdover status, or upon written request of the employee to elect to be laid off while on involuntary leave.

Sec. 420.389 Religious Leave

420.389.1 Employees may be granted leave when personal religious beliefs require that the employee abstain from work during certain periods of the ~~work day~~workday or work week. Such leave shall be known as "Religious Leave."

420.389.2 Religious leave shall be without pay unless the employee elects to use accumulated compensatory time off, vacation time, or floating holiday time.

420.389.3 Denial of religious leave is appealable as provided elsewhere in this Rule.

Sec. 420.3940 Personal Leave

420.3940.1 Personal leave is defined as leave for reasons other than those covered in other sections of this Rule.

420.3940.2 Personal leave for permanent employees may be approved for a period of up to twelve (12) months within any two-year period. Personal leave for temporary or provisional employees may be approved only if replacement of the employee is not required and for a maximum of one (1) month.

420.3940.3 The MTA Director of Transportation/Designee may for reasons deemed to be in the best interest of the service approve extension of personal leave for permanent employees beyond a twelve (l2) month period.

Rule 420
Leaves of Absence

Article X: Appeal Procedures

Applicability: Rule 420 shall apply to all Service-Critical classes of the Municipal Transportation Agency (MTA), except that the provisions of Rule 420 may be superseded in whole or in part by the collective bargaining agreement. However, all definitions in this Rule are applicable to employees in all classes.

Sec. 420.401 Appeal Procedures

420.401.1 Appeals concerning furloughs or voluntary unpaid time off are excluded from appeal under this section and are appealable as provided elsewhere in this Rule.

420.401.2 In cases where appeal is specifically granted in this Rule, a dispute concerning the application or implementation of the provisions of this Rule shall be processed EITHER, at the option of the employee:

1) in accordance with the grievance procedure provided for unrepresented employees or in a collective bargaining agreement;

2) by appeal in writing to the MTA Director of Transportation/Designee, whose decision shall be final and shall not be reconsidered by the Commission. A decision under one option shall preclude the use of the other option.

ATTACHMENT B

Cal. Gov. Code § 12945.7

Section 12945.7 - Bereavement leave

(a) As used in this section:

(1)

(A) "Employee" means a person employed by the employer for at least 30 days prior to the commencement of the leave.

(B) "Employee" does not include a person who is covered by Section 19859.3.

(2) "Employer" means either of the following:

(A) A person who employs five or more persons to perform services for a wage or salary.

(B) The state and any political or civil subdivision of the state, including, but not limited to, cities and counties.

(3) "Family member" means a spouse or a child, parent, sibling, grandparent, grandchild, domestic partner, or parent-in-law as defined in Section 12945.2.

(b) It shall be an unlawful employment practice for an employer to refuse to grant a request by any employee to take up to five days of bereavement leave upon the death of a family member.

(c) The days of bereavement leave need not be consecutive.

(d) The bereavement leave shall be completed within three months of the date of death of the family member.

(e)

(1) The bereavement leave shall be taken pursuant to any existing bereavement leave policy of the employer.

(2) If there is no existing bereavement leave policy, the bereavement leave may be unpaid, except that an employee may use vacation, personal leave, accrued and available sick leave, or compensatory time off that is otherwise available to the employee.

(3) If an existing leave policy provides for less than five days of paid bereavement leave, the employee shall be entitled to no less than a total of five days of bereavement leave, consisting of the number of days of paid leave under the existing policy, and the remainder of days of leave may be unpaid, except that an employee may use vacation, personal leave, accrued and available sick leave, or compensatory time off that is otherwise available to the employee.

(4) If an existing leave policy provides for less than five days of unpaid bereavement leave, the employee shall be entitled to no less than five days of unpaid bereavement leave, except that an employee may use vacation, personal leave, accrued and available sick leave, or compensatory time off that is otherwise available to the employee.

(f) The employee, if requested by the employer, within 30 days of the first day of the leave, shall provide documentation of the death of the family member. As used in this subdivision, "documentation" includes, but is not limited to, a death certificate, a published obituary, or written verification of death, burial, or memorial services from a mortuary, funeral home, burial society, crematorium, religious institution, or governmental agency.
(g) It shall be an unlawful employment practice for an employer to refuse to hire, or to discharge, demote, fine, suspend, expel, or discriminate against, an individual because of either of the following:

(1) An individual's exercise of the right to bereavement leave provided by subdivision (b).

(2) An individual's giving information or testimony as to their own bereavement leave, or another person's bereavement leave, in an inquiry or proceeding related to rights guaranteed under this section.

(h) It shall be an unlawful employment practice for an employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this section.
(i) The employer shall maintain the confidentiality of any employee requesting leave under this section. Any documentation provided to the employer pursuant to subdivision (f) or subdivision (g) shall be maintained as confidential and shall not be disclosed except to internal personnel or counsel, as necessary, or as required by law.
(j) An employee's right to leave under this section shall be construed as separate and distinct from any right under Section 12945.2.
(k) The section does not apply to an employee who is covered by a valid collective bargaining agreement if the agreement expressly provides for bereavement leave equivalent to that required by this section and for the wages, hours of work, and working conditions of the employees, and if the agreement provides premium wage rates for all overtime hours worked, where applicable, and a regular hourly rate of pay for those employees of not less than 30 percent above the state minimum wage.

Ca. Gov. Code § 12945.7

Added by Stats 2022 ch 767 (AB 1949),s 1, eff. 1/1/2023.
See Stats 2022 ch 767 (AB 1949), s 4.

ATTACHMENT C

Cal. Gov. Code § 12945.6

Section 12945.6 - Leave for reproductive loss

(a) For purposes of this section, the following definitions apply:

(1)

(A) "Assisted reproduction" means a method of achieving a pregnancy through an artificial insemination or an embryo transfer and includes gamete and embryo donation.

(B) "Assisted reproduction" does not include any pregnancy achieved through sexual intercourse.

(2) "Employee" means a person employed by the employer for at least 30 days prior to the commencement of the leave.

(3) "Employer" means either of the following:

(A) A person who employs five or more persons to perform services for a wage or salary.

(B) The state and any political or civil subdivision of the state, including, but not limited to, cities and counties.

(4) "Failed adoption" means the dissolution or breach of an adoption agreement with the birth mother or legal guardian, or an adoption that is not finalized because it is contested by another party. This event applies to a person who would have been a parent of the adoptee if the adoption had been completed.

(5) "Failed surrogacy" means the dissolution or breach of a surrogacy agreement, or a failed embryo transfer to the surrogate. This event applies to a person who would have been a parent of a child born as a result of the surrogacy.

(6) "Miscarriage" means a miscarriage by a person, by the person's current spouse or domestic partner, or by another individual if the person would have been a parent of a child born as a result of the pregnancy.

(7) "Reproductive loss event" means the day or, for a multiple-day event, the final day of a failed adoption, failed surrogacy, miscarriage, stillbirth, or an unsuccessful assisted reproduction.

(8) "Reproductive loss leave" means the leave provided by subdivision (b).

(9) "Stillbirth" means a stillbirth resulting from a person's pregnancy, the pregnancy of a person's current spouse or domestic partner, or another individual, if the person would have been a parent of a child born as a result of the pregnancy that ended in stillbirth.

(10) "Unsuccessful assisted reproduction" means an unsuccessful round of intrauterine insemination or of an assisted reproductive technology procedure. This event applies to a

person, the person's current spouse or domestic partner, or another individual, if the person would have been a parent of a child born as a result of the pregnancy.

(b)

(1) It shall be an unlawful employment practice for an employer to refuse to grant a request by any employee to take up to five days of reproductive loss leave following a reproductive loss event. If an employee experiences more than one reproductive loss event within a 12-month period, an employer shall not be obligated to grant a total amount of reproductive loss leave time in excess of 20 days within a 12-month period.

(2) The employer shall allow the days an employee takes for reproductive loss leave to be nonconsecutive.

(3)

(A) Except as provided in subparagraph (B), reproductive loss leave shall be completed within three months of the event entitling the employee to that leave under paragraph (1).

(B) Notwithstanding subparagraph (A), if, prior to or immediately following a reproductive loss event, an employee is on or chooses to go on leave from work pursuant to Section 12945, 12945.2, or any other leave entitlement under state or federal law, the employee shall complete their reproductive loss leave within three months of the end date of the other leave.

(4)

(A) Reproductive loss leave shall be taken pursuant to any existing applicable leave policy of the employer.

(B) If there is no existing applicable leave policy, reproductive loss leave may be unpaid, except that an employee may use vacation, personal leave, accrued and available sick leave, or compensatory time off that is otherwise available to the employee.

(c) It shall be an unlawful employment practice for an employer to retaliate against an individual, including, but not limited to, refusing to hire, discharging, demoting, fining, suspending, expelling, or discriminating against, an individual because of either of the following:

(1) An individual's exercise of the right to reproductive loss leave.

(2) An individual's giving information or testimony as to their own reproductive loss leave, or another person's reproductive loss leave, in an inquiry or proceeding related to rights guaranteed under this section.

(d) It shall be an unlawful employment practice for an employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this section.

(e) The employer shall maintain the confidentiality of any employee requesting leave under this section. Any information provided to the employer pursuant to this section shall be

maintained as confidential and shall not be disclosed except to internal personnel or counsel, as necessary, or as required by law.
(f) An employee's right to reproductive loss leave shall be construed as a separate and distinct right from any right under this part.

Ca. Gov. Code § 12945.6

Added by Stats 2023 ch 724 (SB 848),s 1, eff. 1/1/2024.
See Stats 2023 ch 724 (SB 848), s 2.

ATTACHMENT D

(1) Update, as appropriate, the States' estimates of TAP workload and reserve sufficient funds for that purpose from the total amount available for allocation to the States. Beyond TAP workload, no funds will be reserved for exigent circumstances because the shortfall in the appropriation will be the primary exigent circumstance to be addressed.

(2) Apply proportionally the remaining balance available for basic grant allocations to the States for that fiscal year. The proportion will be calculated by dividing the remaining balance available for allocation by the total estimated State basic grant allocations for that fiscal year. The proportion resulting from that calculation will be applied to each State's estimated basic grant allocation to calculate the amount to be awarded.

PART 1002—REGULATIONS UNDER THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT OF 1994

Subpart A—Introduction to the Regulations Under the Uniformed Services Employment and Reemployment Rights Act of 1994

GENERAL PROVISIONS

Sec.

Subpart B—Anti-Discrimination and Anti-Retaliation

PROTECTION FROM EMPLOYER DISCRIMINATION AND RETALIATION

Subpart C—Eligibility for Reemployment

GENERAL ELIGIBILITY REQUIREMENTS FOR REEMPLOYMENT

COVERAGE OF EMPLOYERS AND POSITIONS

COVERAGE OF SERVICE IN THE UNIFORMED SERVICES

AUTHORITY: Section 4331(a) of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. 4331(a) (Pub. L. 103–353, 108 Stat. 3150).

SOURCE: 70 FR 75292, Dec. 19, 2005, unless otherwise noted.

Subpart A—Introduction to the Regulations Under the Uniformed Services Employment and Reemployment Rights Act of 1994

GENERAL PROVISIONS

§ 1002.1 What is the purpose of this part?

This part implements the Uniformed Services Employment and Reemployment Rights Act of 1994 (''USERRA'' or ''the Act''). 38 U.S.C. 4301–4334. USERRA is a law that establishes certain rights and benefits for employees, and duties for employers. USERRA affects employment, reemployment, and retention in employment, when employees serve or have served in the uniformed services. There are five subparts to these regulations. Subpart A gives an introduction to the USERRA regulations. Subpart B describes USERRA's anti-discrimination and anti-retaliation provisions. Subpart C explains the steps that must be taken by a uniformed service member who wants to return to his or her previous civilian employment. Subpart D describes the rights, benefits, and obligations of persons absent from employment due to service in the uniformed services, including rights and obligations related to health plan coverage. Subpart E describes the rights, benefits, and obligations of the returning veteran or service member. Subpart F explains the role of the Department of Labor in enforcing and giving assistance under USERRA. These regulations implement USERRA as it applies to States, local governments, and private employers. Separate regulations published by the Federal Office of Personnel Management implement USERRA for Federal executive agency employers and employees.

§ 1002.2 Is USERRA a new law?

USERRA is the latest in a series of laws protecting veterans' employment and reemployment rights going back to the Selective Training and Service Act of 1940. USERRA's immediate predecessor was commonly referred to as the Veterans' Reemployment Rights Act (VRRA), which was enacted as section 404 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974. In enacting USERRA, Congress emphasized USERRA's continuity with the VRRA and its intention to clarify and strengthen that law. Congress also emphasized that Federal laws protecting veterans' employment and reemployment rights for the past fifty years had been successful and that the large body of case law that had developed under those statutes remained in full force and effect, to the extent it is consistent with USERRA. USERRA authorized the Department of Labor to publish regulations implementing the Act for State, local government, and private employers. USERRA also authorized the Office of Personnel Management to issue regulations implementing the Act for Federal executive agencies (other than some Federal intelligence agencies). USERRA established a separate program for employees of some Federal intelligence agencies.

§ 1002.3 When did USERRA become effective?

USERRA became law on October 13, 1994. USERRA's reemployment provisions apply to members of the uniformed services seeking civilian reemployment on or after December 12, 1994. USERRA's anti-discrimination and anti-retaliation provisions became effective on October 13, 1994.

§ 1002.4 What is the role of the Secretary of Labor under USERRA?

(a) USERRA charges the Secretary of Labor (through the Veterans' Employment and Training Service) with providing assistance to any person with respect to the employment and reemployment rights and benefits to which such person is entitled under the Act. More information about the Secretary's role in providing this assistance is contained in Subpart F.

(b) USERRA also authorizes the Secretary of Labor to issue regulations implementing the Act with respect to

States, local governments, and private employers. These regulations are issued under this authority.

(c) The Secretary of Labor delegated authority to the Assistant Secretary for Veterans' Employment and Training for administering the veterans' reemployment rights program by Secretary's Order 1–83 (February 3, 1983) and for carrying out the functions and authority vested in the Secretary pursuant to USERRA by memorandum of April 22, 2002 (67 FR 31827).

§ 1002.5 What definitions apply to USERRA?

(a) *Attorney General* means the Attorney General of the United States or any person designated by the Attorney General to carry out a responsibility of the Attorney General under USERRA.

(b) *Benefit, benefit of employment, or rights and benefits* means any advantage, profit, privilege, gain, status, account, or interest (other than wages or salary for work performed) that accrues to the employee because of an employment contract, employment agreement, or employer policy, plan, or practice. The term includes rights and benefits under a pension plan, health plan, or employee stock ownership plan, insurance coverage and awards, bonuses, severance pay, supplemental unemployment benefits, vacations, and the opportunity to select work hours or the location of employment.

(c) *Employee* means any person employed by an employer. The term also includes any person who is a citizen, national or permanent resident alien of the United States who is employed in a workplace in a foreign country by an employer that is an entity incorporated or organized in the United States, or that is controlled by an entity organized in the United States. ''Employee'' includes the former employees of an employer.

(d)(1) *Employer*, except as provided in paragraphs (d)(2) and (3) of this section, means any person, institution, organization, or other entity that pays salary or wages for work performed, or that has control over employment opportunities, including—

(i) A person, institution, organization, or other entity to whom the employer has delegated the performance of employment-related responsibilities, except in the case that such entity has been delegated functions that are purely ministerial in nature, such as maintenance of personnel files or the preparation of forms for submission to a government agency;

(ii) The Federal Government;

(iii) A State;

(iv) Any successor in interest to a person, institution, organization, or other entity referred to in this definition; and,

(v) A person, institution, organization, or other entity that has denied initial employment in violation of 38 U.S.C. 4311, USERRA's anti-discrimination and anti-retaliation provisions.

(2) In the case of a National Guard technician employed under 32 U.S.C. 709, the term ''employer'' means the adjutant general of the State in which the technician is employed.

(3) An employee pension benefit plan as described in section 3(2) of the Employee Retirement Income Security Act of 1974 (ERISA)(29 U.S.C. 1002(2)) is considered an employer for an individual that it does not actually employ only with respect to the obligation to provide pension benefits.

(e) *Health plan* means an insurance policy, insurance contract, medical or hospital service agreement, membership or subscription contract, or other arrangement under which health services for individuals are provided or the expenses of such services are paid.

(f) *National Disaster Medical System (NDMS)* is an agency within the Federal Emergency Management Agency, Department of Homeland Security, established by the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Public Law 107–188. The NDMS provides medical-related assistance to respond to the needs of victims of public health emergencies. Participants in the NDMS are volunteers who serve as intermittent Federal employees when activated. For purposes of USERRA coverage only, these persons are treated as members of the uniformed services when they are activated to provide assistance in response to a public health emergency or to be present for a short period of time when there is a risk of a public health emergency, or when they are

participating in authorized training. See 42 U.S.C. 300hh–11(e).

(g) *Notice*, when the employee is required to give advance notice of service, means any written or verbal notification of an obligation or intention to perform service in the uniformed services provided to an employer by the employee who will perform such service, or by the uniformed service in which the service is to be performed.

(h) *Qualified*, with respect to an employment position, means having the ability to perform the essential tasks of the position.

(i) *Reasonable efforts*, in the case of actions required of an employer, means actions, including training provided by an employer that do not place an undue hardship on the employer.

(j) *Secretary* means the Secretary of Labor or any person designated by the Secretary of Labor to carry out an activity under USERRA and these regulations, unless a different office is expressly indicated in the regulation.

(k) *Seniority* means longevity in employment together with any benefits of employment that accrue with, or are determined by, longevity in employment.

(l) *Service in the uniformed services* means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority. Service in the uniformed services includes active duty, active and inactive duty for training, National Guard duty under Federal statute, and a period for which a person is absent from a position of employment for an examination to determine the fitness of the person to perform such duty. The term also includes a period for which a person is absent from employment to perform funeral honors duty as authorized by law (10 U.S.C. 12503 or 32 U.S.C. 115). The Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Pub. L. 107–188, provides that service as an intermittent disaster-response appointee upon activation of the National Disaster Medical System (NDMS) or as a participant in an authorized training program is deemed ''service in the uniformed services.'' 42 U.S.C. 300hh–11(e)(3).

(m) *State* means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and other territories of the United States (including the agencies and political subdivisions thereof); however, for purposes of enforcement of rights under 38 U.S.C. 4323, a political subdivision of a State is a private employer.

(n) *Undue hardship*, in the case of actions taken by an employer, means an action requiring significant difficulty or expense, when considered in light of—

(1) The nature and cost of the action needed under USERRA and these regulations;

(2) The overall financial resources of the facility or facilities involved in the provision of the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;

(3) The overall financial resources of the employer; the overall size of the business of an employer with respect to the number of its employees; the number, type, and location of its facilities; and,

(4) The type of operation or operations of the employer, including the composition, structure, and functions of the work force of such employer; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the employer.

(o) *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 USERRA.

§ 1002.6 What types of service in the uniformed services are covered by USERRA?

USERRA's definition of ''service in the uniformed services'' covers all categories of military training and service, including duty performed on a voluntary or involuntary basis, in time of peace or war. Although most often understood as applying to National Guard and reserve military personnel, USERRA also applies to persons serving in the active components of the Armed Forces. Certain types of service specified in 42 U.S.C. 300hh-11 by members of the National Disaster Medical System are covered by USERRA.

§ 1002.7 How does USERRA relate to other laws, public and private contracts, and employer practices?

(a) USERRA establishes a floor, not a ceiling, for the employment and reemployment rights and benefits of those it protects. In other words, an employer may provide greater rights and benefits than USERRA requires, but no employer can refuse to provide any right or benefit guaranteed by USERRA.

(b) USERRA supersedes any State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or benefit provided by USERRA, including the establishment of additional prerequisites to the exercise of any USERRA right or the receipt of any USERRA benefit. For example, an employment contract that determines seniority based only on actual days of work in the place of employment would be superseded by USERRA, which requires that seniority credit be given for periods of absence from work due to service in the uniformed services.

(c) USERRA does not supersede, nullify or diminish any Federal or State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that establishes an employment right or benefit that is more beneficial than, or is in addition to, a right or benefit provided under the Act. For example, although USERRA does not require an employer to pay an employee for time away from work performing service, an employer policy, plan, or practice that provides such a benefit is permissible under USERRA.

(d) If an employer provides a benefit that exceeds USERRA's requirements in one area, it cannot reduce or limit other rights or benefits provided by USERRA. For example, even though USERRA does not require it, an employer may provide a fixed number of days of paid military leave per year to employees who are members of the National Guard or Reserve. The fact that it provides such a benefit, however, does not permit an employer to refuse to provide an unpaid leave of absence to an employee to perform service in the uniformed services in excess of the number of days of paid military leave.

Subpart B—Anti-Discrimination and Anti-Retaliation

PROTECTION FROM EMPLOYER DISCRIMINATION AND RETALIATION

§ 1002.18 What status or activity is protected from employer discrimination by USERRA?

An employer must not deny initial employment, reemployment, retention in employment, promotion, or any benefit of employment to an individual on the basis of his or her membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services.

§ 1002.19 What activity is protected from employer retaliation by USERRA?

An employer must not retaliate against an individual by taking any adverse employment action against him or her because the individual has taken an action to enforce a protection afforded any person under USERRA; testified or otherwise made a statement in or in connection with a proceeding under USERRA; assisted or participated in a USERRA investigation: or, exercised a right provided for by USERRA.

§ 1002.20 Does USERRA protect an individual who does not actually perform service in the uniformed services?

Yes. Employers are prohibited from taking actions against an individual for any of the activities protected by the Act, whether or not he or she has performed service in the uniformed services.

§ 1002.21 Do the Act's prohibitions against discrimination and retaliation apply to all employment positions?

The prohibitions against discrimination and retaliation apply to all covered employers (including hiring halls and potential employers, see sections 1002.36 and .38) and employment positions, including those that are for a brief, nonrecurrent period, and for which there is no reasonable expectation that the employment position will continue indefinitely or for a significant period. However, USERRA's reemployment rights and benefits do not apply to such brief, nonrecurrent positions of employment.

§ 1002.22 Who has the burden of proving discrimination or retaliation in violation of USERRA?

The individual has the burden of proving that a status or activity protected by USERRA was one of the reasons that the employer took action against him or her, in order to establish that the action was discrimination or retaliation in violation of USERRA. If the individual succeeds in proving that the status or activity protected by USERRA was one of the reasons the employer took action against him or her, the employer has the burden to prove the affirmative defense that it would have taken the action anyway.

§ 1002.23 What must the individual show to carry the burden of proving that the employer discriminated or retaliated against him or her?

(a) In order to prove that the employer discriminated or retaliated against the individual, he or she must first show that the employer's action was motivated by one or more of the following:

(1) Membership or application for membership in a uniformed service;

(2) Performance of service, application for service, or obligation for service in a uniformed service;

(3) Action taken to enforce a protection afforded any person under USERRA;

(4) Testimony or statement made in or in connection with a USERRA proceeding;

(5) Assistance or participation in a USERRA investigation; or,

(6) Exercise of a right provided for by USERRA.

(b) If the individual proves that the employer's action was based on one of the prohibited motives listed in paragraph (a) of this section, the employer has the burden to prove the affirmative defense that the action would have been taken anyway absent the USERRA-protected status or activity.

Subpart C—Eligibility For Reemployment

GENERAL ELIGIBILITY REQUIREMENTS FOR REEMPLOYMENT

§ 1002.32 What criteria must the employee meet to be eligible under USERRA for reemployment after service in the uniformed services?

(a) In general, if the employee has been absent from a position of civilian employment by reason of service in the uniformed services, he or she will be eligible for reemployment under USERRA by meeting the following criteria:

(1) The employer had advance notice of the employee's service;

(2) The employee has five years or less of cumulative service in the uniformed services in his or her employment relationship with a particular employer;

(3) The employee timely returns to work or applies for reemployment; and,

(4) The employee has not been separated from service with a disqualifying discharge or under other than honorable conditions.

(b) These general eligibility requirements have important qualifications and exceptions, which are described in detail in §§ 1002.73 through 1002.138. If the employee meets these eligibility criteria, then he or she is eligible for

reemployment unless the employer establishes one of the defenses described in §1002.139. The employment position to which the employee is entitled is described in §§1002.191 through 1002.199.

§1002.33 Does the employee have to prove that the employer discriminated against him or her in order to be eligible for reemployment?

No. The employee is not required to prove that the employer discriminated against him or her because of the employee's uniformed service in order to be eligible for reemployment.

COVERAGE OF EMPLOYERS AND POSITIONS

§1002.34 Which employers are covered by USERRA?

(a) USERRA applies to all public and private employers in the United States, regardless of size. For example, an employer with only one employee is covered for purposes of the Act.

(b) USERRA applies to foreign employers doing business in the United States. A foreign employer that has a physical location or branch in the United States (including U.S. territories and possessions) must comply with USERRA for any of its employees who are employed in the United States.

(c) An American company operating either directly or through an entity under its control in a foreign country must also comply with USERRA for all its foreign operations, unless compliance would violate the law of the foreign country in which the workplace is located.

§1002.35 Is a successor in interest an employer covered by USERRA?

USERRA's definition of ''employer'' includes a successor in interest. In general, an employer is a successor in interest where there is a substantial continuity in operations, facilities, and workforce from the former employer. The determination whether an employer is a successor in interest must be made on a case-by-case basis using a multi-factor test that considers the following:

(a) Whether there has been a substantial continuity of business operations from the former to the current employer;

(b) Whether the current employer uses the same or similar facilities, machinery, equipment, and methods of production;

(c) Whether there has been a substantial continuity of employees;

(d) Whether there is a similarity of jobs and working conditions;

(e) Whether there is a similarity of supervisors or managers; and,

(f) Whether there is a similarity of products or services.

§1002.36 Can an employer be liable as a successor in interest if it was unaware that an employee may claim reemployment rights when the employer acquired the business?

Yes. In order to be a successor in interest, it is not necessary for an employer to have notice of a potential reemployment claim at the time of merger, acquisition, or other form of succession.

§1002.37 Can one employee be employed in one job by more than one employer?

Yes. Under USERRA, an employer includes not only the person or entity that pays an employee's salary or wages, but also includes a person or entity that has control over his or her employment opportunities, including a person or entity to whom an employer has delegated the performance of employment-related responsibilities. For example, if the employee is a security guard hired by a security company and he or she is assigned to a work site, the employee may report both to the security company and to the site owner. In such an instance, both employers share responsibility for compliance with USERRA. If the security company declines to assign the employee to a job because of a uniformed service obligation (for example, National Guard duties), then the security company could be in violation of the reemployment requirements and the anti-discrimination provisions of USERRA. Similarly, if the employer at the work site causes the employee's removal from the job position because of his or her uniformed service obligations, then the work site employer could be in violation of the reemployment requirements and the anti-discrimination provisions of USERRA.

§ 1002.38 Can a hiring hall be an employer?

Yes. In certain occupations (for example, longshoreman, stagehand, construction worker), the employee may frequently work for many different employers. A hiring hall operated by a union or an employer association typically assigns the employee to the jobs. In these industries, it may not be unusual for the employee to work his or her entire career in a series of short-term job assignments. The definition of ''employer'' includes a person, institution, organization, or other entity to which the employer has delegated the performance of employment-related responsibilities. A hiring hall therefore is considered the employee's employer if the hiring and job assignment functions have been delegated by an employer to the hiring hall. As the employer, a hiring hall has reemployment responsibilities to its employees. USERRA's anti-discrimination and anti-retaliation provisions also apply to the hiring hall.

§ 1002.39 Are States (and their political subdivisions), the District of Columbia, the Commonwealth of Puerto Rico, and United States territories, considered employers?

Yes. States and their political subdivisions, such as counties, parishes, cities, towns, villages, and school districts, are considered employers under USERRA. The District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and territories of the United States, are also considered employers under the Act.

§ 1002.40 Does USERRA protect against discrimination in initial hiring decisions?

Yes. The Act's definition of employer includes a person, institution, organization, or other entity that has denied initial employment to an individual in violation of USERRA's anti-discrimination provisions. An employer need not actually employ an individual to be his or her ''employer'' under the Act, if it has denied initial employment on the basis of the individual's membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services. Similarly, the employer would be liable if it denied initial employment on the basis of the individual's action taken to enforce a protection afforded to any person under USERRA, his or her testimony or statement in connection with any USERRA proceeding, assistance or other participation in a USERRA investigation, or the exercise of any other right provided by the Act. For example, if the individual has been denied initial employment because of his or her obligations as a member of the National Guard or Reserves, the company or entity denying employment is an employer for purposes of USERRA. Similarly, if an entity withdraws an offer of employment because the individual is called upon to fulfill an obligation in the uniformed services, the entity withdrawing the employment offer is an employer for purposes of USERRA.

§ 1002.41 Does an employee have rights under USERRA even though he or she holds a temporary, part-time, probationary, or seasonal employment position?

USERRA rights are not diminished because an employee holds a temporary, part-time, probationary, or seasonal employment position. However, an employer is not required to reemploy an employee if the employment he or she left to serve in the uniformed services was for a brief, nonrecurrent period and there is no reasonable expectation that the employment would have continued indefinitely or for a significant period. The employer bears the burden of proving this affirmative defense.

§ 1002.42 What rights does an employee have under USERRA if he or she is on layoff, on strike, or on a leave of absence?

(a) If an employee is laid off with recall rights, on strike, or on a leave of absence, he or she is an employee for purposes of USERRA. If the employee is on layoff and begins service in the uniformed services, or is laid off while performing service, he or she may be entitled to reemployment on return if the employer would have recalled the employee to employment during the period of service. Similar principles

apply if the employee is on strike or on a leave of absence from work when he or she begins a period of service in the uniformed services.

(b) If the employee is sent a recall notice during a period of service in the uniformed services and cannot resume the position of employment because of the service, he or she still remains an employee for purposes of the Act. Therefore, if the employee is otherwise eligible, he or she is entitled to reemployment following the conclusion of the period of service even if he or she did not respond to the recall notice.

(c) If the employee is laid off before or during service in the uniformed services, and the employer would not have recalled him or her during that period of service, the employee is not entitled to reemployment following the period of service simply because he or she is a covered employee. Reemployment rights under USERRA cannot put the employee in a better position than if he or she had remained in the civilian employment position.

§ 1002.43 Does an individual have rights under USERRA even if he or she is an executive, managerial, or professional employee?

Yes. USERRA applies to all employees. There is no exclusion for executive, managerial, or professional employees.

§ 1002.44 Does USERRA cover an independent contractor?

(a) No. USERRA does not provide protections for an independent contractor.

(b) In deciding whether an individual is an independent contractor, the following factors need to be considered:

(1) The extent of the employer's right to control the manner in which the individual's work is to be performed;

(2) The opportunity for profit or loss that depends upon the individual's managerial skill;

(3) Any investment in equipment or materials required for the individual's tasks, or his or her employment of helpers;

(4) Whether the service the individual performs requires a special skill;

(5) The degree of permanence of the individual's working relationship; and,

(6) Whether the service the individual performs is an integral part of the employer's business.

(c) No single one of these factors is controlling, but all are relevant to determining whether an individual is an employee or an independent contractor.

Coverage of Service in the Uniformed Services

§ 1002.54 Are all military fitness examinations considered "service in the uniformed services?"

Yes. USERRA's definition of ''service in the uniformed services'' includes a period for which an employee is absent from a position of employment for the purpose of an examination to determine his or her fitness to perform duty in the uniformed services. Military fitness examinations can address more than physical or medical fitness, and include evaluations for mental, educational, and other types of fitness. Any examination to determine an employee's fitness for service is covered, whether it is an initial or recurring examination. For example, a periodic medical examination required of a Reserve component member to determine fitness for continued service is covered.

§ 1002.55 Is all funeral honors duty considered "service in the uniformed services?"

(a) USERRA's definition of ''service in the uniformed services'' includes a period for which an employee is absent from employment for the purpose of performing authorized funeral honors duty under 10 U.S.C. 12503 (members of Reserve ordered to perform funeral honors duty) or 32 U.S.C. 115 (Member of Air or Army National Guard ordered to perform funeral honors duty).

(b) Funeral honors duty performed by persons who are not members of the uniformed services, such as members of veterans' service organizations, is not ''service in the uniformed services.''

§ 1002.56 What types of service in the National Disaster Medical System are considered "service in the uniformed services?"

Under a provision of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, 42

U.S.C. 300hh 11(e)(3), ''service in the uniformed services'' includes service performed as an intermittent disaster-response appointee upon activation of the National Disaster Medical System or participation in an authorized training program, even if the individual is not a member of the uniformed services.

§ 1002.57 Is all service as a member of the National Guard considered "service in the uniformed services?"

The National Guard has a dual status. It is a Reserve component of the Army, or, in the case of the Air National Guard, of the Air Force. Simultaneously, it is a State military force subject to call-up by the State Governor for duty not subject to Federal control, such as emergency duty in cases of floods or riots. National Guard members may perform service under either Federal or State authority, but only Federal National Guard service is covered by USERRA.

(a) National Guard service under Federal authority is protected by USERRA. Service under Federal authority includes active duty performed under Title 10 of the United States Code. Service under Federal authority also includes duty under Title 32 of the United States Code, such as active duty for training, inactive duty training, or full-time National Guard duty.

(b) National Guard service under authority of State law is not protected by USERRA. However, many States have laws protecting the civilian job rights of National Guard members who serve under State orders. Enforcement of those State laws is not covered by USERRA or these regulations.

§ 1002.58 Is service in the commissioned corps of the Public Health Service considered "service in the uniformed services?"

Yes. Service in the commissioned corps of the Public Health Service (PHS) is ''service in the uniformed services'' under USERRA.

§ 1002.59 Are there any circumstances in which special categories of persons are considered to perform "service in the uniformed services?"

Yes. In time of war or national emergency the President has authority to designate any category of persons as a ''uniformed service'' for purposes of USERRA. If the President exercises this authority, service as a member of that category of persons would be ''service in the uniformed services'' under USERRA.

§ 1002.60 Does USERRA cover an individual attending a military service academy?

Yes. Attending a military service academy is considered uniformed service for purposes of USERRA. There are four service academies: The United States Military Academy (West Point, New York), the United States Naval Academy (Annapolis, Maryland), the United States Air Force Academy (Colorado Springs, Colorado), and the United States Coast Guard Academy (New London, Connecticut).

§ 1002.61 Does USERRA cover a member of the Reserve Officers Training Corps?

Yes, under certain conditions.

(a) Membership in the Reserve Officers Training Corps (ROTC) or the Junior ROTC is not ''service in the uniformed services.'' However, some Reserve and National Guard enlisted members use a college ROTC program as a means of qualifying for commissioned officer status. National Guard and Reserve members in an ROTC program may at times, while participating in that program, be receiving active duty and inactive duty training service credit with their unit. In these cases, participating in ROTC training sessions is considered ''service in the uniformed services,'' and qualifies a person for protection under USERRA's reemployment and anti-discrimination provisions.

(b) Typically, an individual in a College ROTC program enters into an agreement with a particular military service that obligates such individual to either complete the ROTC program and accept a commission or, in case he or she does not successfully complete the ROTC program, to serve as an enlisted member. Although an individual does not qualify for reemployment protection, except as specified in (a) above, he or she is protected under

USERRA's anti-discrimination provisions because, as a result of the agreement, he or she has applied to become a member of the uniformed services and has incurred an obligation to perform future service.

§ 1002.62 Does USERRA cover a member of the Commissioned Corps of the National Oceanic and Atmospheric Administration, the Civil Air Patrol, or the Coast Guard Auxiliary?

No. Although the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA) is a ''uniformed service'' for some purposes, it is not included in USERRA's definition of this term. Service in the Civil Air Patrol and the Coast Guard Auxiliary similarly is not considered ''service in the uniformed services'' for purposes of USERRA. Consequently, service performed in the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA), the Civil Air Patrol, and the Coast Guard Auxiliary is not protected by USERRA.

Absence From a Position of Employment Necessitated by Reason of Service in the Uniformed Services

§ 1002.73 Does service in the uniformed services have to be an employee's sole reason for leaving an employment position in order to have USERRA reemployment rights?

No. If absence from a position of employment is necessitated by service in the uniformed services, and the employee otherwise meets the Act's eligibility requirements, he or she has reemployment rights under USERRA, even if the employee uses the absence for other purposes as well. An employee is not required to leave the employment position for the sole purpose of performing service in the uniformed services. For example, if the employee is required to report to an out of State location for military training and he or she spends off-duty time during that assignment moonlighting as a security guard or visiting relatives who live in that State, the employee will not lose reemployment rights simply because he or she used some of the time away from the job to do something other than attend the military training. Also, if an employee receives advance notification of a mobilization order, and leaves his or her employment position in order to prepare for duty, but the mobilization is cancelled, the employee will not lose any reemployment rights.

§ 1002.74 Must the employee begin service in the uniformed services immediately after leaving his or her employment position in order to have USERRA reemployment rights?

No. At a minimum, an employee must have enough time after leaving the employment position to travel safely to the uniformed service site and arrive fit to perform the service. Depending on the specific circumstances, including the duration of service, the amount of notice received, and the location of the service, additional time to rest, or to arrange affairs and report to duty, may be necessitated by reason of service in the uniformed services. The following examples help to explain the issue of the period of time between leaving civilian employment and beginning of service in the uniformed services:

(a) If the employee performs a full overnight shift for the civilian employer and travels directly from the work site to perform a full day of uniformed service, the employee would not be considered fit to perform the uniformed service. An absence from that work shift is necessitated so that the employee can report for uniformed service fit for duty.

(b) If the employee is ordered to perform an extended period of service in the uniformed services, he or she may require a reasonable period of time off from the civilian job to put his or her personal affairs in order, before beginning the service. Taking such time off is also necessitated by the uniformed service.

(c) If the employee leaves a position of employment in order to enlist or otherwise perform service in the uniformed services and, through no fault of his or her own, the beginning date of the service is delayed, this delay does not terminate any reemployment rights.

REQUIREMENT OF NOTICE

§ 1002.85 Must the employee give advance notice to the employer of his or her service in the uniformed services?

(a) Yes. The employee, or an appropriate officer of the uniformed service in which his or her service is to be performed, must notify the employer that the employee intends to leave the employment position to perform service in the uniformed services, with certain exceptions described below. In cases in which an employee is employed by more than one employer, the employee, or an appropriate office of the uniformed service in which his or her service is to be performed, must notify each employer that the employee intends to leave the employment position to perform service in the uniformed services, with certain exceptions described below.

(b) The Department of Defense USERRA regulations at 32 CFR 104.3 provide that an ''appropriate officer'' can give notice on the employee's behalf. An ''appropriate officer'' is a commissioned, warrant, or non-commissioned officer authorized to give such notice by the military service concerned.

(c) The employee's notice to the employer may be either verbal or written. The notice may be informal and does not need to follow any particular format.

(d) Although USERRA does not specify how far in advance notice must be given to the employer, an employee should provide notice as far in advance as is reasonable under the circumstances. In regulations promulgated by the Department of Defense under USERRA, 32 CFR 104.6(a)(2)(i)(B), the Defense Department ''strongly recommends that advance notice to civilian employers be provided at least 30 days prior to departure for uniformed service when it is feasible to do so.''

§ 1002.86 When is the employee excused from giving advance notice of service in the uniformed services?

The employee is required to give advance notice of pending service unless giving such notice is prevented by military necessity, or is otherwise impossible or unreasonable under all the circumstances.

(a) Only a designated authority can make a determination of ''military necessity,'' and such a determination is not subject to judicial review. Guidelines for defining ''military necessity'' appear in regulations issued by the Department of Defense at 32 CFR 104.3. In general, these regulations cover situations where a mission, operation, exercise or requirement is classified, or could be compromised or otherwise adversely affected by public knowledge. In certain cases, the Secretary of Homeland Security, in consultation with the Secretary of Defense, can make a determination that giving of notice by intermittent disaster-response appointees of the National Disaster Medical System is precluded by ''military necessity.'' See 42 U.S.C. 300hh–11(e)(3)(B).

(b) It may be impossible or unreasonable to give advance notice under certain circumstances. Such circumstances may include the unavailability of the employee's employer or the employer's representative, or a requirement that the employee report for uniformed service in an extremely short period of time.

§ 1002.87 Is the employee required to get permission from his or her employer before leaving to perform service in the uniformed services?

No. The employee is not required to ask for or get his or her employer's permission to leave to perform service in the uniformed services. The employee is only required to give the employer notice of pending service.

§ 1002.88 Is the employee required to tell his or her civilian employer that he or she intends to seek reemployment after completing uniformed service before the employee leaves to perform service in the uniformed services?

No. When the employee leaves the employment position to begin a period of service, he or she is not required to tell the civilian employer that he or she intends to seek reemployment after completing uniformed service. Even if the employee tells the employer before entering or completing uniformed service that he or she does not intend to

seek reemployment after completing the uniformed service, the employee does not forfeit the right to reemployment after completing service. The employee is not required to decide in advance of leaving the civilian employment position whether he or she will seek reemployment after completing uniformed service.

PERIOD OF SERVICE

§ 1002.99 Is there a limit on the total amount of service in the uniformed services that an employee may perform and still retain reemployment rights with the employer?

Yes. In general, the employee may perform service in the uniformed services for a cumulative period of up to five (5) years and retain reemployment rights with the employer. The exceptions to this rule are described below.

§ 1002.100 Does the five-year service limit include all absences from an employment position that are related to service in the uniformed services?

No. The five-year period includes only the time the employee spends actually performing service in the uniformed services. A period of absence from employment before or after performing service in the uniformed services does not count against the five-year limit. For example, after the employee completes a period of service in the uniformed services, he or she is provided a certain amount of time, depending upon the length of service, to report back to work or submit an application for reemployment. The period between completing the uniformed service and reporting back to work or seeking reemployment does not count against the five-year limit.

§ 1002.101 Does the five-year service limit include periods of service that the employee performed when he or she worked for a previous employer?

No. An employee is entitled to a leave of absence for uniformed service for up to five years with each employer for whom he or she works. When the employee takes a position with a new employer, the five-year period begins again regardless of how much service he or she performed while working in any previous employment relationship. If an employee is employed by more than one employer, a separate five-year period runs as to each employer independently, even if those employers share or co-determine the employee's terms and conditions of employment.

§ 1002.102 Does the five-year service limit include periods of service that the employee performed before USERRA was enacted?

It depends. USERRA provides reemployment rights to which an employee may become entitled beginning on or after December 12, 1994, but any uniformed service performed before December 12, 1994, that was counted against the service limitations of the previous law (the Veterans Reemployment Rights Act), also counts against USERRA's five-year limit.

§ 1002.103 Are there any types of service in the uniformed services that an employee can perform that do not count against USERRA's five-year service limit?

(a) USERRA creates the following exceptions to the five-year limit on service in the uniformed services:

(1) Service that is required beyond five years to complete an initial period of obligated service. Some military specialties require an individual to serve more than five years because of the amount of time or expense involved in training. If the employee works in one of those specialties, he or she has reemployment rights when the initial period of obligated service is completed;

(2) If the employee was unable to obtain orders releasing him or her from service in the uniformed services before the expiration of the five-year period, and the inability was not the employee's fault;

(3)(i) Service performed to fulfill periodic National Guard and Reserve training requirements as prescribed by 10 U.S.C. 10147 and 32 U.S.C. 502(a) and 503; and,

(ii) Service performed to fulfill additional training requirements determined and certified by a proper military authority as necessary for the employee's professional development, or

to complete skill training or retraining;

(4) Service performed in a uniformed service if he or she was ordered to or retained on active duty under:

(i) 10 U.S.C. 688 (involuntary active duty by a military retiree);

(ii) 10 U.S.C. 12301(a) (involuntary active duty in wartime);

(iii) 10 U.S.C. 12301(g) (retention on active duty while in captive status);

(iv) 10 U.S.C. 12302 (involuntary active duty during a national emergency for up to 24 months);

(v) 10 U.S.C. 12304 (involuntary active duty for an operational mission for up to 270 days);

(vi) 10 U.S.C. 12305 (involuntary retention on active duty of a critical person during time of crisis or other specific conditions);

(vii) 14 U.S.C. 331 (involuntary active duty by retired Coast Guard officer);

(viii) 14 U.S.C. 332 (voluntary active duty by retired Coast Guard officer);

(ix) 14 U.S.C. 359 (involuntary active duty by retired Coast Guard enlisted member);

(x) 14 U.S.C. 360 (voluntary active duty by retired Coast Guard enlisted member);

(xi) 14 U.S.C. 367 (involuntary retention of Coast Guard enlisted member on active duty); and

(xii) 14 U.S.C. 712 (involuntary active duty by Coast Guard Reserve member for natural or man-made disasters).

(5) Service performed in a uniformed service if the employee was 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;

(6) Service performed in a uniformed service if the employee was ordered to active duty (other than for training) in support of an operational mission for which personnel have been ordered to active duty under 10 U.S.C. 12304, as determined by a proper military authority;

(7) Service performed in a uniformed service if the employee was ordered to active duty in support of a critical mission or requirement of the uniformed services as determined by the Secretary concerned; and,

(8) Service performed as a member of the National Guard if the employee was called to respond to an invasion, danger of invasion, rebellion, danger of rebellion, insurrection, or the inability of the President with regular forces to execute the laws of the United States.

(b) Service performed to mitigate economic harm where the employee's employer is in violation of its employment or reemployment obligations to him or her.

§ 1002.104 Is the employee required to accommodate his or her employer's needs as to the timing, frequency or duration of service?

No. The employee is not required to accommodate his or her employer's interests or concerns regarding the timing, frequency, or duration of uniformed service. The employer cannot refuse to reemploy the employee because it believes that the timing, frequency or duration of the service is unreasonable. However, the employer is permitted to bring its concerns over the timing, frequency, or duration of the employee's service to the attention of the appropriate military authority. Regulations issued by the Department of Defense at 32 CFR 104.4 direct military authorities to provide assistance to an employer in addressing these types of employment issues. The military authorities are required to consider requests from employers of National Guard and Reserve members to adjust scheduled absences from civilian employment to perform service.

Application for Reemployment

§ 1002.115 Is the employee required to report to or submit a timely application for reemployment to his or her pre-service employer upon completing the period of service in the uniformed services?

Yes. Upon completing service in the uniformed services, the employee must notify the pre-service employer of his or her intent to return to the employment position by either reporting to work or submitting a timely application 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) *Period of service less than 31 days or for a period of any length for the purpose of a fitness examination.* If the period of service in the uniformed services was less than 31 days, or the employee was absent from a position of employment for a period of any length for the purpose of an examination to determine his or her fitness to perform service, the employee must report back to the employer not later than the beginning of the first full regularly-scheduled work period on the first full calendar day following the completion of the period of service, and the expiration of eight hours after a period allowing for safe transportation from the place of that service to the employee's residence. For example, if the employee completes a period of service and travel home, arriving at ten o'clock in the evening, he or she cannot be required to report to the employer until the beginning of the next full regularly-scheduled work period that begins at least eight hours after arriving home, *i.e.*, no earlier than six o'clock the next morning. If it is impossible or unreasonable for the employee to report within such time period through no fault of his or her own, he or she must report to the employer as soon as possible after the expiration of the eight-hour period.

(b) *Period of service more than 30 days but less than 181 days.* If the employee's period of service in the uniformed services was for more than 30 days but less than 181 days, he or she 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 or her own, he or she must submit the application not later than the next full calendar day after it becomes possible to do so.

(c) *Period of service more than 180 days.* If the employee's period of service in the uniformed services was for more than 180 days, he or she must submit an application for reemployment (written or verbal) not later than 90 days after completing service.

§ 1002.116 Is the time period for reporting back to an employer extended if the employee is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service?

Yes. If the employee is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service, he or she must report to or submit an application for reemployment to the employer at the end of the period necessary for recovering from the illness or injury. This period may not exceed two years from the date of the completion of service, except that it must be extended by the minimum time necessary to accommodate circumstances beyond the employee's control that make reporting within the period impossible or unreasonable. This period for recuperation and recovery extends the time period for reporting to or submitting an application for reemployment to the employer, and is not applicable following reemployment.

§ 1002.117 Are there any consequences if the employee fails to report for or submit a timely application for reemployment?

(a) If the employee fails to timely report for or apply for reemployment, he or she does not automatically forfeit entitlement to USERRA's reemployment and other rights and benefits. Rather, the employee becomes subject to the conduct rules, established policy, and general practices of the employer pertaining to an absence from scheduled work.

(b) If reporting or submitting an employment application to the employer is impossible or unreasonable through no fault of the employee, he or she may report to the employer as soon as possible (in the case of a period of service less than 31 days) or submit an application for reemployment to the employer by the next full calendar day after it becomes possible to do so (in the case of a period of service from 31 to 180 days), and the employee will be considered to have timely reported or applied for reemployment.

§ 1002.118 Is an application for reemployment required to be in any particular form?

An application for reemployment need not follow any particular format. The employee may apply orally or in writing. The application should indicate that the employee is a former employee returning from service in the uniformed services and that he or she seeks reemployment with the pre-service employer. The employee is permitted but not required to identify a particular reemployment position in which he or she is interested.

§ 1002.119 To whom must the employee submit the application for reemployment?

The application must be submitted to the pre-service employer or to an agent or representative of the employer who has apparent responsibility for receiving employment applications. Depending upon the circumstances, such a person could be a personnel or human resources officer, or a first-line supervisor. If there has been a change in ownership of the employer, the application should be submitted to the employer's successor-in-interest.

§ 1002.120 If the employee seeks or obtains employment with an employer other than the pre-service employer before the end of the period within which a reemployment application must be filed, will that jeopardize reemployment rights with the pre-service employer?

No. The employee has reemployment rights with the pre-service employer provided that he or she makes a timely reemployment application to that employer. The employee may seek or obtain employment with an employer other than the pre-service employer during the period of time within which a reemployment application must be made, without giving up reemployment rights with the pre-service employer. However, such alternative employment during the application period should not be of a type that would constitute cause for the employer to discipline or terminate the employee following reemployment. For instance, if the employer forbids employees from working concurrently for a direct competitor during employment, violation of such a policy may constitute cause for discipline or even termination.

§ 1002.121 Is the employee required to submit documentation to the employer in connection with the application for reemployment?

Yes, if the period of service exceeded 30 days and if requested by the employer to do so. If the employee submits an application for reemployment after a period of service of more than 30 days, he or she must, upon the request of the employer, 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 the exceptions listed at § 1002.103); and,

(c) The employee's separation or dismissal from service was not disqualifying.

§ 1002.122 Is the employer required to reemploy the employee if documentation establishing the employee's eligibility does not exist or is not readily available?

Yes. The employer is not permitted to delay or deny reemployment by demanding documentation that does not exist or is not readily available. The employee is not liable for administrative delays in the issuance of military documentation. If the employee is reemployed after an absence from employment for more than 90 days, the employer may require that he or she submit the documentation establishing entitlement to reemployment before treating the employee as not having had a break in service for pension purposes. If the documentation is received after reemployment and it shows that the employee is not entitled to reemployment, the employer may terminate employment and any rights or benefits that the employee may have been granted.

§ 1002.123 What documents satisfy the requirement that the employee establish eligibility for reemployment after a period of service of more than thirty days?

(a) Documents that satisfy the requirements of USERRA include the following:

(1) DD (Department of Defense) 214 Certificate of Release or Discharge from Active Duty;

(2) Copy of duty orders prepared by the facility where the orders were fulfilled carrying an endorsement indicating completion of the described service;

(3) Letter from the commanding officer of a Personnel Support Activity or someone of comparable authority;

(4) Certificate of completion from military training school;

(5) Discharge certificate showing character of service; and,

(6) Copy of extracts from payroll documents showing periods of service;

(7) Letter from National Disaster Medical System (NDMS) Team Leader or Administrative Officer verifying dates and times of NDMS training or Federal activation.

(b) The types of documents that are necessary to establish eligibility for reemployment will vary from case to case. Not all of these documents are available or necessary in every instance to establish reemployment eligibility.

CHARACTER OF SERVICE

§ 1002.134 What type of discharge or separation from service is required for an employee to be entitled to reemployment under USERRA?

USERRA does not require any particular form of discharge or separation from service. However, even if the employee is otherwise eligible for reemployment, he or she will be disqualified if the characterization of service falls within one of four categories. USERRA requires that the employee not have received one of these types of discharge.

§ 1002.135 What types of discharge or separation from uniformed service will make the employee ineligible for reemployment under USERRA?

Reemployment rights are terminated if the employee is:

(a) Separated from uniformed service with a dishonorable or bad conduct discharge;

(b) Separated from uniformed service under other than honorable conditions, as characterized by regulations of the uniformed service;

(c) A commissioned officer dismissed as permitted under 10 U.S.C. 1161(a) by sentence of a general court-martial; in commutation of a sentence of a general court-martial; or, in time of war, by order of the President; or,

(d) A commissioned officer dropped from the rolls under 10 U.S.C. 1161(b) due to absence without authority for at least three months; separation by reason of a sentence to confinement adjudged by a court-martial; or, a sentence to confinement in a Federal or State penitentiary or correctional institution.

§ 1002.136 Who determines the characterization of service?

The branch of service in which the employee performs the tour of duty determines the characterization of service.

§ 1002.137 If the employee receives a disqualifying discharge or release from uniformed service and it is later upgraded, will reemployment rights be restored?

Yes. A military review board has the authority to prospectively or retroactively upgrade a disqualifying discharge or release. A retroactive upgrade would restore reemployment rights providing the employee otherwise meets the Act's eligibility criteria.

§ 1002.138 If the employee receives a retroactive upgrade in the characterization of service, will that entitle him or her to claim back wages and benefits lost as of the date of separation from service?

No. A retroactive upgrade allows the employee to obtain reinstatement with the former employer, provided the employee otherwise meets the Act's eligibility criteria. Back pay and other benefits such as pension plan credits attributable to the time period between discharge and the retroactive upgrade are not required to be restored by the employer in this situation.

EMPLOYER STATUTORY DEFENSES

§ 1002.139 Are there any circumstances in which the pre-service employer is excused from its obligation to reemploy the employee following a period of uniformed service? What statutory defenses are available to the employer in an action or proceeding for reemployment benefits?

(a) Even if the employee is otherwise eligible for reemployment benefits, the employer is not required to reemploy him or her if the employer establishes that its circumstances have so changed as to make reemployment impossible or unreasonable. For example, an employer may be excused from reemploying the employee where there has been an intervening reduction in force that would have included that employee. The employer may not, however, refuse to reemploy the employee on the basis that another employee was hired to fill the reemployment position during the employee's absence, even if reemployment might require the termination of that replacement employee;

(b) Even if the employee is otherwise eligible for reemployment benefits, the employer is not required to reemploy him or her if it establishes that assisting the employee in becoming qualified for reemployment would impose an undue hardship, as defined in §1002.5(n) and discussed in §1002.198, on the employer; or,

(c) Even if the employee is otherwise eligible for reemployment benefits, the employer is not required to reemploy him or her if it establishes that the employment position vacated by the employee in order to perform service in the uniformed services was for a brief, nonrecurrent period and there was no reasonable expectation that the employment would continue indefinitely or for a significant period.

(d) The employer defenses included in this section are affirmative ones, and the employer carries the burden to prove by a preponderance of the evidence that any one or more of these defenses is applicable.

Subpart D—Rights, Benefits, and Obligations of Persons Absent from Employment Due to Service in the Uniformed Services

FURLOUGH AND LEAVE OF ABSENCE

§ 1002.149 What is the employee's status with his or her civilian employer while performing service in the uniformed services?

During a period of service in the uniformed services, the employee is deemed to be on furlough or leave of absence from the civilian employer. In this status, the employee is entitled to the non-seniority rights and benefits generally provided by the employer to other employees with similar seniority, status, and pay that are on furlough or leave of absence. Entitlement to these non-seniority rights and benefits is not dependent on how the employer characterizes the employee's status during a period of service. For example, if the employer characterizes the employee as ''terminated'' during the period of uniformed service, this characterization cannot be used to avoid USERRA's requirement that the employee be deemed on furlough or leave of absence, and therefore entitled to the non-seniority rights and benefits generally provided to employees on furlough or leave of absence.

§ 1002.150 Which non-seniority rights and benefits is the employee entitled to during a period of service?

(a) The non-seniority rights and benefits to which an employee is entitled during a period of service are those that the employer provides to similarly situated employees by an employment contract, agreement, policy, practice, or plan in effect at the employee's workplace. These rights and benefits include those in effect at the beginning of the employee's employment and those established after employment began. They also include those rights and benefits that become effective during the employee's period of service and that are provided to similarly situated employees on furlough or leave of absence.

(b) If the non-seniority benefits to which employees on furlough or leave

of absence are entitled vary according to the type of leave, the employee must be given the most favorable treatment accorded to any comparable form of leave when he or she performs service in the uniformed services. In order to determine whether any two types of leave are comparable, the duration of the leave may be the most significant factor to compare. For instance, a two-day funeral leave will not be ''comparable'' to an extended leave for service in the uniformed service. In addition to comparing the duration of the absences, other factors such as the purpose of the leave and the ability of the employee to choose when to take the leave should also be considered.

(c) As a general matter, accrual of vacation leave is considered to be a non-seniority benefit that must be provided by an employer to an employee on a military leave of absence only if the employer provides that benefit to similarly situated employees on comparable leaves of absence.

§ 1002.151 If the employer provides full or partial pay to the employee while he or she is on military leave, is the employer required to also provide the non-seniority rights and benefits ordinarily granted to similarly situated employees on furlough or leave of absence?

Yes. If the employer provides additional benefits such as full or partial pay when the employee performs service, the employer is not excused from providing other rights and benefits to which the employee is entitled under the Act.

§ 1002.152 If employment is interrupted by a period of service in the uniformed services, are there any circumstances under which the employee is not entitled to the non-seniority rights and benefits ordinarily granted to similarly situated employees on furlough or leave of absence?

If employment is interrupted by a period of service in the uniformed services and the employee knowingly provides written notice of intent not to return to the position of employment after service in the uniformed services, he or she is not entitled to those non-seniority rights and benefits. The employee's written notice does not waive entitlement to any other rights to which he or she is entitled under the Act, including the right to reemployment after service.

§ 1002.153 If employment is interrupted by a period of service in the uniformed services, is the employee permitted upon request to use accrued vacation, annual or similar leave with pay during the service? Can the employer require the employee to use accrued leave during a period of service?

(a) If employment is interrupted by a period of service, the employee must be permitted upon request to use any accrued vacation, annual, or similar leave with pay during the period of service, in order to continue his or her civilian pay. However, the employee is not entitled to use sick leave that accrued with the civilian employer during a period of service in the uniformed services, unless the employer allows employees to use sick leave for any reason, or allows other similarly situated employees on comparable furlough or leave of absence to use accrued paid sick leave. Sick leave is usually not comparable to annual or vacation leave; it is generally intended to provide income when the employee or a family member is ill and the employee is unable to work.

(b) The employer may not require the employee to use accrued vacation, annual, or similar leave during a period of service in the uniformed services.

HEALTH PLAN COVERAGE

§ 1002.163 What types of health plans are covered by USERRA?

(a) USERRA defines a health plan to include an insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or arrangement under which the employee's health services are provided or the expenses of those services are paid.

(b) USERRA covers group health plans as defined in the Employee Retirement Income Security Act of 1974 (ERISA) at 29 U.S.C. 1191b(a). USERRA applies to group health plans that are subject to ERISA, and plans that are not subject to ERISA, such as those

sponsored by State or local governments or religious organizations for their employees.

(c) USERRA covers multiemployer plans maintained pursuant to one or more collective bargaining agreements between employers and employee organizations. USERRA applies to multiemployer plans as they are defined in ERISA at 29 U.S.C. 1002(37). USERRA contains provisions that apply specifically to multiemployer plans in certain situations.

§ 1002.164 What health plan coverage must the employer provide for the employee under USERRA?

If the employee has coverage under a health plan in connection with his or her employment, the plan must permit the employee to elect to continue the coverage for a certain period of time as described below:

(a) When the employee is performing service in the uniformed services, he or she is entitled to continuing coverage for himself or herself (and dependents if the plan offers dependent coverage) under a health plan provided in connection with the employment. The plan must allow the employee to elect to continue coverage for a period of time that is the lesser of:

(1) The 24-month period beginning on the date on which the employee's absence for the purpose of performing service begins; or,

(2) The period beginning on the date on which the employee's absence for the purpose of performing service begins, and ending on the date on which he or she fails to return from service or apply for a position of employment as provided under sections 1002.115–123 of these regulations.

(b) USERRA does not require the employer to establish a health plan if there is no health plan coverage in connection with the employment, or, where there is a plan, to provide any particular type of coverage.

(c) USERRA does not require the employer to permit the employee to initiate new health plan coverage at the beginning of a period of service if he or she did not previously have such coverage.

§ 1002.165 How does the employee elect continuing health plan coverage?

USERRA does not specify requirements for electing continuing coverage. Health plan administrators may develop reasonable requirements addressing how continuing coverage may be elected, consistent with the terms of the plan and the Act's exceptions to the requirement that the employee give advance notice of service in the uniformed services. For example, the employee cannot be precluded from electing continuing health plan coverage under circumstances where it is impossible or unreasonable for him or her to make a timely election of coverage.

§ 1002.166 How much must the employee pay in order to continue health plan coverage?

(a) If the employee performs service in the uniformed service for fewer than 31 days, he or she cannot be required to pay more than the regular employee share, if any, for health plan coverage.

(b) If the employee performs service in the uniformed service for 31 or more days, he or she may be required to pay no more than 102% of the full premium under the plan, which represents the employer's share plus the employee's share, plus 2% for administrative costs.

(c) USERRA does not specify requirements for methods of paying for continuing coverage. Health plan administrators may develop reasonable procedures for payment, consistent with the terms of the plan.

§ 1002.167 What actions may a plan administrator take if the employee does not elect or pay for continuing coverage in a timely manner?

The actions a plan administrator may take regarding the provision or cancellation of an employee's continuing coverage depend on whether the employee is excused from the requirement to give advance notice, whether the plan has established reasonable rules for election of continuation coverage, and whether the plan has established reasonable rules for the payment for continuation coverage.

(a) *No notice of service and no election of continuation coverage:* If an employer

provides employment-based health coverage to an employee who leaves employment for uniformed service without giving advance notice of service, the plan administrator may cancel the employee's health plan coverage upon the employee's departure from employment for uniformed service. However, in cases in which an employee's failure to give advance notice of service was excused under the statute because it was impossible, unreasonable, or precluded by military necessity, the plan administrator must reinstate the employee's health coverage retroactively upon his or her election to continue coverage and payment of all unpaid amounts due, and the employee must incur no administrative reinstatement costs. In order to qualify for an exception to the requirement of timely election of continuing health care, an employee must first be excused from giving notice of service under the statute.

(b) *Notice of service but no election of continuing coverage:* Plan administrators may develop reasonable requirements addressing how continuing coverage may be elected. Where health plans are also covered under the Consolidated Omnibus Budget Reconciliation Act of 1985, 26 U.S.C. 4980B (COBRA), it may be reasonable for a health plan administrator to adopt COBRA-compliant rules regarding election of continuing coverage, as long as those rules do not conflict with any provision of USERRA or this rule. If an employer provides employment-based health coverage to an employee who leaves employment for uniformed service for a period of service in excess of 30 days after having given advance notice of service but without making an election regarding continuing coverage, the plan administrator may cancel the employee's health plan coverage upon the employee's departure from employment for uniformed service, but must reinstate coverage without the imposition of administrative reinstatement costs under the following conditions:

(1) Plan administrators who have developed reasonable rules regarding the period within which an employee may elect continuing coverage must permit retroactive reinstatement of uninterrupted coverage to the date of departure if the employee elects continuing coverage and pays all unpaid amounts due within the periods established by the plan;

(2) In cases in which plan administrators have not developed rules regarding the period within which an employee may elect continuing coverage, the plan must permit retroactive reinstatement of uninterrupted coverage to the date of departure upon the employee's election and payment of all unpaid amounts at any time during the period established in section 1002.164(a).

(c) *Election of continuation coverage without timely payment:* Health plan administrators may adopt reasonable rules allowing cancellation of coverage if timely payment is not made. Where health plans are covered under COBRA, it may be reasonable for a health plan administrator to adopt COBRA-compliant rules regarding payment for continuing coverage, as long as those rules do not conflict with any provision of USERRA or this rule.

§ 1002.168 If the employee's coverage was terminated at the beginning of or during service, does his or her coverage have to be reinstated upon reemployment?

(a) If health plan coverage for the employee or a dependent was terminated by reason of service in the uniformed services, that coverage must be reinstated upon reemployment. An exclusion or waiting period may not be imposed in connection with the reinstatement of coverage upon reemployment, if an exclusion or waiting period would not have been imposed had coverage not been terminated by reason of such service.

(b) USERRA permits a health plan to impose an exclusion or waiting period as to illnesses or injuries determined by the Secretary of Veterans Affairs to have been incurred in, or aggravated during, performance of service in the uniformed services. The determination that the employee's illness or injury was incurred in, or aggravated during, the performance of service may only be made by the Secretary of Veterans Affairs or his or her representative. Other coverage, for injuries or illnesses that

are not service-related (or for the employee's dependents, if he or she has dependent coverage), must be reinstated subject to paragraph (a) of this section.

§ 1002.169 Can the employee elect to delay reinstatement of health plan coverage until a date after the date he or she is reemployed?

USERRA requires the employer to reinstate health plan coverage upon request at reemployment. USERRA permits but does not require the employer to allow the employee to delay reinstatement of health plan coverage until a date that is later than the date of reemployment.

§ 1002.170 In a multiemployer health plan, how is liability allocated for employer contributions and benefits arising under USERRA's health plan provisions?

Liability under a multiemployer plan for employer contributions and benefits in connection with USERRA's health plan provisions must be allocated either as the plan sponsor provides, or, if the sponsor does not provide, to the employee's last employer before his or her service. If the last employer is no longer functional, liability for continuing coverage is allocated to the health plan.

§ 1002.171 How does the continuation of health plan benefits apply to a multiemployer plan that provides health plan coverage through a health benefits account system?

(a) Some employees receive health plan benefits provided pursuant to a multiemployer plan that utilizes a health benefits account system in which an employee accumulates prospective health benefit eligibility, also commonly referred to as ''dollar bank,'' ''credit bank,'' and ''hour bank'' plans. In such cases, where an employee with a positive health benefits account balance elects to continue the coverage, the employee may further elect either option below:

(1) The employee may expend his or her health account balance during an absence from employment due to service in the uniformed services in lieu of paying for the continuation of coverage as set out in §1002.166. If an employee's health account balance becomes depleted during the applicable period provided for in §1002.164(a), the employee must be permitted, at his or her option, to continue coverage pursuant to §1002.166. Upon reemployment, the plan must provide for immediate reinstatement of the employee as required by §1002.168, but may require the employee to pay the cost of the coverage until the employee earns the credits necessary to sustain continued coverage in the plan.

(2) The employee may pay for continuation coverage as set out in §1002.166, in order to maintain intact his or her account balance as of the beginning date of the absence from employment due to service in the uniformed services. This option permits the employee to resume usage of the account balance upon reemployment.

(b) Employers or plan administrators providing such plans should counsel employees of their options set out in this subsection.

Subpart E—Reemployment Rights and Benefits

PROMPT REEMPLOYMENT

§ 1002.180 When is an employee entitled to be reemployed by his or her civilian employer?

The employer must promptly reemploy the employee when he or she returns from a period of service if the employee meets the Act's eligibility criteria as described in Subpart C of these regulations.

§ 1002.181 How is "prompt reemployment" defined?

''Prompt reemployment'' means as soon as practicable under the circumstances of each case. Absent unusual circumstances, reemployment must occur within two weeks of the employee's application for reemployment. For example, prompt reinstatement after a weekend National Guard duty generally means the next regularly scheduled working day. On the other hand, prompt reinstatement following several years of active duty may require more time, because the employer may have to reassign or give notice to another employee who occupied the returning employee's position.

REEMPLOYMENT POSITION

§ 1002.191 What position is the employee entitled to upon reemployment?

As a general rule, the employee is entitled to reemployment in the job position that he or she would have attained with reasonable certainty if not for the absence due to uniformed service. This position is known as the escalator position. The principle behind the escalator position is that, if not for the period of uniformed service, the employee could have been promoted (or, alternatively, demoted, transferred, or laid off) due to intervening events. The escalator principle requires that the employee be reemployed in a position that reflects with reasonable certainty the pay, benefits, seniority, and other job perquisites, that he or she would have attained if not for the period of service. Depending upon the specific circumstances, the employer may have the option, or be required, to reemploy the employee in a position other than the escalator position.

§ 1002.192 How is the specific reemployment position determined?

In all cases, the starting point for determining the proper reemployment position is the escalator position, which is the job position that the employee would have attained if his or her continuous employment had not been interrupted due to uniformed service. Once this position is determined, the employer may have to consider several factors before determining the appropriate reemployment position in any particular case. Such factors may include the employee's length of service, qualifications, and disability, if any. The reemployment position may be either the escalator position; the preservice position; a position comparable to the escalator or pre-service position; or, the nearest approximation to one of these positions.

§ 1002.193 Does the reemployment position include elements such as seniority, status, and rate of pay?

(a) Yes. The reemployment position includes the seniority, status, and rate of pay that an employee would ordinarily have attained in that position given his or her job history, including prospects for future earnings and advancement. The employer must determine the seniority rights, status, and rate of pay as though the employee had been continuously employed during the period of service. The seniority rights, status, and pay of an employment position include those established (or changed) by a collective bargaining agreement, employer policy, or employment practice. The sources of seniority rights, status, and pay include agreements, policies, and practices in effect at the beginning of the employee's service, and any changes that may have occurred during the period of service. In particular, the employee's status in the reemployment position could include opportunities for advancement, general working conditions, job location, shift assignment, rank, responsibility, and geographical location.

(b) If an opportunity for promotion, or eligibility for promotion, that the employee missed during service is based on a skills test or examination, then the employer should give him or her a reasonable amount of time to adjust to the employment position and then give a skills test or examination. No fixed amount of time for permitting adjustment to reemployment will be deemed reasonable in all cases. However, in determining a reasonable amount of time to permit an employee to adjust to reemployment before scheduling a makeup test or examination, an employer may take into account a variety of factors, including but not limited to the length of time the returning employee was absent from work, the level of difficulty of the test itself, the typical time necessary to prepare or study for the test, the duties and responsibilities of the reemployment position and the promotional position, and the nature and responsibilities of the service member while serving in the uniformed service. If the employee is successful on the makeup exam and, based on the results of that exam, there is a reasonable certainty that he or she would have been promoted, or made eligible for promotion, during the time that the employee served in the uniformed service, then

the promotion or eligibility for promotion must be made effective as of the date it would have occurred had employment not been interrupted by uniformed service.

§ 1002.194 Can the application of the escalator principle result in adverse consequences when the employee is reemployed?

Yes. The Act does not prohibit lawful adverse job consequences that result from the employee's restoration on the seniority ladder. Depending on the circumstances, the escalator principle may cause an employee to be reemployed in a higher or lower position, laid off, or even terminated. For example, if an employee's seniority or job classification would have resulted in the employee being laid off during the period of service, and the layoff continued after the date of reemployment, reemployment would reinstate the employee to layoff status. Similarly, the status of the reemployment position requires the employer to assess what would have happened to such factors as the employee's opportunities for advancement, working conditions, job location, shift assignment, rank, responsibility, and geographical location, if he or she had remained continuously employed. The reemployment position may involve transfer to another shift or location, more or less strenuous working conditions, or changed opportunities for advancement, depending upon the application of the escalator principle.

§ 1002.195 What other factors can determine the reemployment position?

Once the employee's escalator position is determined, other factors may allow, or require, the employer to reemploy the employee in a position other than the escalator position. These factors, which are explained in §§ 1002.196 through 1002.199, are:

(a) The length of the employee's most recent period of uniformed service;

(b) The employee's qualifications; and,

(c) Whether the employee has a disability incurred or aggravated during uniformed service.

§ 1002.196 What is the employee's reemployment position if the period of service was less than 91 days?

Following a period of service in the uniformed services of less than 91 days, the employee must be reemployed according to the following priority:

(a) The employee must be reemployed in the escalator position. He or she must be qualified to perform the duties of this position. The employer must make reasonable efforts to help the employee become qualified to perform the duties of this position.

(b) If the employee is not qualified to perform the duties of the escalator position after reasonable efforts by the employer, the employee must be reemployed in the position in which he or she was employed on the date that the period of service began. The employee must be qualified to perform the duties of this position. The employer must make reasonable efforts to help the employee become qualified to perform the duties of this position.

(c) If the employee is not qualified to perform the duties of the escalator position or the pre-service position, after reasonable efforts by the employer, he or she must be reemployed in any other position that is the nearest approximation first to the escalator position and then to the pre-service position. The employee must be qualified to perform the duties of this position. The employer must make reasonable efforts to help the employee become qualified to perform the duties of this position.

§ 1002.197 What is the reemployment position if the employee's period of service in the uniformed services was more than 90 days?

Following a period of service of more than 90 days, the employee must be reemployed according to the following priority:

(a) The employee must be reemployed in the escalator position or a position of like seniority, status, and pay. He or she must be qualified to perform the duties of this position. The employer must make reasonable efforts to help the employee become qualified to perform the duties of this position.

(b) If the employee is not qualified to perform the duties of the escalator position or a like position after reasonable efforts by the employer, the employee must be reemployed in the position in which he or she was employed on the date that the period of service began or in a position of like seniority, status, and pay. The employee must be qualified to perform the duties of this position. The employer must make reasonable efforts to help the employee become qualified to perform the duties of this position.

(c) If the employee is not qualified to perform the duties of the escalator position, the pre-service position, or a like position, after reasonable efforts by the employer, he or she must be reemployed in any other position that is the nearest approximation first to the escalator position and then to the pre-service position. The employee must be qualified to perform the duties of this position. The employer must make reasonable efforts to help the employee become qualified to perform the duties of this position.

§ 1002.198 What efforts must the employer make to help the employee become qualified for the reemployment position?

The employee must be qualified for the reemployment position. The employer must make reasonable efforts to help the employee become qualified to perform the duties of this position. The employer is not required to reemploy the employee on his or her return from service if he or she cannot, after reasonable efforts by the employer, qualify for the appropriate reemployment position.

(a)(1) ''Qualified'' means that the employee has the ability to perform the essential tasks of the position. The employee's inability to perform one or more non-essential tasks of a position does not make him or her unqualified.

(2) Whether a task is essential depends on several factors, and these factors include but are not limited to:

(i) The employer's judgment as to which functions are essential;

(ii) Written job descriptions developed before the hiring process begins;

(iii) The amount of time on the job spent performing the function;

(iv) The consequences of not requiring the individual to perform the function;

(v) The terms of a collective bargaining agreement;

(vi) The work experience of past incumbents in the job; and/or

(vii) The current work experience of incumbents in similar jobs.

(b) Only after the employer makes reasonable efforts, as defined in §1002.5(i), may it determine that the employee is not qualified for the reemployment position. These reasonable efforts must be made at no cost to the employee.

§ 1002.199 What priority must the employer follow if two or more returning employees are entitled to reemployment in the same position?

If two or more employees are entitled to reemployment in the same position and more than one employee has reported or applied for employment in that position, the employee who first left the position for uniformed service has the first priority on reemployment in that position. The remaining employee (or employees) is entitled to be reemployed in a position similar to that in which the employee would have been reemployed according to the rules that normally determine a reemployment position, as set out in §§1002.196 and 1002.197.

SENIORITY RIGHTS AND BENEFITS

§ 1002.210 What seniority rights does an employee have when reemployed following a period of uniformed service?

The employee is entitled to the seniority and seniority-based rights and benefits that he or she had on the date the uniformed service began, plus any seniority and seniority-based rights and benefits that the employee would have attained if he or she had remained continuously employed. In determining entitlement to seniority and seniority-based rights and benefits, the period of absence from employment due to or necessitated by uniformed service is not considered a break in employment. The rights and benefits protected by USERRA upon reemployment include those provided by the employer and those required by statute. For example,

under USERRA, a reemployed service member would be eligible for leave under the Family and Medical Leave Act of 1993, 29 U.S.C. 2601–2654 (FMLA), if the number of months and the number of hours of work for which the service member was employed by the civilian employer, together with the number of months and the number of hours of work for which the service member would have been employed by the civilian employer during the period of uniformed service, meet FMLA's eligibility requirements. In the event that a service member is denied FMLA leave for failing to satisfy the FMLA's hours of work requirement due to absence from employment necessitated by uniformed service, the service member may have a cause of action under USERRA but not under the FMLA.

§ 1002.211 Does USERRA require the employer to use a seniority system?

No. USERRA does not require the employer to adopt a formal seniority system. USERRA defines seniority as longevity in employment together with any employment benefits that accrue with, or are determined by, longevity in employment. In the absence of a formal seniority system, such as one established through collective bargaining, USERRA looks to the custom and practice in the place of employment to determine the employee's entitlement to any employment benefits that accrue with, or are determined by, longevity in employment.

§ 1002.212 How does a person know whether a particular right or benefit is a seniority-based right or benefit?

A seniority-based right or benefit is one that accrues with, or is determined by, longevity in employment. Generally, whether a right or benefit is seniority-based depends on three factors:

(a) Whether the right or benefit is a reward for length of service rather than a form of short-term compensation for work performed;

(b) Whether it is reasonably certain that the employee would have received the right or benefit if he or she had remained continuously employed during the period of service; and,

(c) Whether it is the employer's actual custom or practice to provide or withhold the right or benefit as a reward for length of service. Provisions of an employment contract or policies in the employee handbook are not controlling if the employer's actual custom or practice is different from what is written in the contract or handbook.

§ 1002.213 How can the employee demonstrate a reasonable certainty that he or she would have received the seniority right or benefit if he or she had remained continuously employed during the period of service?

A reasonable certainty is a high probability that the employee would have received the seniority or seniority-based right or benefit if he or she had been continuously employed. The employee does not have to establish that he or she would have received the benefit as an absolute certainty. The employee can demonstrate a reasonable certainty that he or she would have received the seniority right or benefit by showing that other employees with seniority similar to that which the employee would have had if he or she had remained continuously employed received the right or benefit. The employer cannot withhold the right or benefit based on an assumption that a series of unlikely events could have prevented the employee from gaining the right or benefit.

DISABLED EMPLOYEES

§ 1002.225 Is the employee entitled to any specific reemployment benefits if he or she has a disability that was incurred in, or aggravated during, the period of service?

Yes. A disabled service member is entitled, to the same extent as any other individual, to the escalator position he or she would have attained but for uniformed service. If the employee has a disability incurred in, or aggravated during, the period of service in the uniformed services, the employer must make reasonable efforts to accommodate that disability and to help the employee become qualified to perform the duties of his or her reemployment position. If the employee is not qualified

for reemployment in the escalator position because of a disability after reasonable efforts by the employer to accommodate the disability and to help the employee to become qualified, the employee must be reemployed in a position according to the following priority. The employer must make reasonable efforts to accommodate the employee's disability and to help him or her to become qualified to perform the duties of one of these positions:

(a) A position that is equivalent in seniority, status, and pay to the escalator position; or,

(b) A position that is the nearest approximation to the equivalent position, consistent with the circumstances of the employee's case, in terms of seniority, status, and pay. A position that is the nearest approximation to the equivalent position may be a higher or lower position, depending on the circumstances.

§ 1002.226 If the employee has a disability that was incurred in, or aggravated during, the period of service, what efforts must the employer make to help him or her become qualified for the reemployment position?

(a) USERRA requires that the employee be qualified for the reemployment position regardless of any disability. The employer must make reasonable efforts to help the employee to become qualified to perform the duties of this position. The employer is not required to reemploy the employee on his or her return from service if he or she cannot, after reasonable efforts by the employer, qualify for the appropriate reemployment position.

(b) ''Qualified'' has the same meaning here as in §1002.198.

RATE OF PAY

§ 1002.236 How is the employee's rate of pay determined when he or she returns from a period of service?

The employee's rate of pay is determined by applying the same escalator principles that are used to determine the reemployment position, as follows:

(a) If the employee is reemployed in the escalator position, the employer must compensate him or her at the rate of pay associated with the escalator position. The rate of pay must be determined by taking into account any pay increases, differentials, step increases, merit increases, or periodic increases that the employee would have attained with reasonable certainty had he or she remained continuously employed during the period of service. In addition, when considering whether merit or performance increases would have been attained with reasonable certainty, an employer may examine the returning employee's own work history, his or her history of merit increases, and the work and pay history of employees in the same or similar position. For example, if the employee missed a merit pay increase while performing service, but qualified for previous merit pay increases, then the rate of pay should include the merit pay increase that was missed. If the merit pay increase that the employee missed during service is based on a skills test or examination, then the employer should give the employee a reasonable amount of time to adjust to the reemployment position and then give him or her the skills test or examination. No fixed amount of time for permitting adjustment to reemployment will be deemed reasonable in all cases. However, in determining a reasonable amount of time to permit an employee to adjust to reemployment before scheduling a makeup test or examination, an employer may take into account a variety of factors, including but not limited to the length of time the returning employee was absent from work, the level of difficulty of the test itself, the typical time necessary to prepare or study for the test, the duties and responsibilities of the reemployment position and the promotional position, and the nature and responsibilities of the service member while serving in the uniformed service. The escalator principle also applies in the event a pay reduction occurred in the reemployment position during the period of service. Any pay adjustment must be made effective as of the date it would have occurred had the employee's employment not been interrupted by uniformed service.

(b) If the employee is reemployed in the pre-service position or another position, the employer must compensate

him or her at the rate of pay associated with the position in which he or she is reemployed. As with the escalator position, the rate of pay must be determined by taking into account any pay increases, differentials, step increases, merit increases, or periodic increases that the employee would have attained with reasonable certainty had he or she remained continuously employed during the period of service.

PROTECTION AGAINST DISCHARGE

§ 1002.247 Does USERRA provide the employee with protection against discharge?

Yes. If the employee's most recent period of service in the uniformed services was more than 30 days, he or she must not be discharged except for cause—

(a) For 180 days after the employee's date of reemployment if his or her most recent period of uniformed service was more than 30 days but less than 181 days; or,

(b) For one year after the date of reemployment if the employee's most recent period of uniformed service was more than 180 days.

§ 1002.248 What constitutes cause for discharge under USERRA?

The employee may be discharged for cause based either on conduct or, in some circumstances, because of the application of other legitimate nondiscriminatory reasons.

(a) In a discharge action based on conduct, the employer bears the burden of proving that it is reasonable to discharge the employee for the conduct in question, and that he or she had notice, which was express or can be fairly implied, that the conduct would constitute cause for discharge.

(b) If, based on the application of other legitimate nondiscriminatory reasons, the employee's job position is eliminated, or the employee is placed on layoff status, either of these situations would constitute cause for purposes of USERRA. The employer bears the burden of proving that the employee's job would have been eliminated or that he or she would have been laid off.

PENSION PLAN BENEFITS

§ 1002.259 How does USERRA protect an employee's pension benefits?

On reemployment, the employee is treated as not having a break in service with the employer or employers maintaining a pension plan, for purposes of participation, vesting and accrual of benefits, by reason of the period of absence from employment due to or necessitated by service in the uniformed services.

(a) Depending on the length of the employee's period of service, he or she is entitled to take from one to ninety days following service before reporting back to work or applying for reemployment (See § 1002.115). This period of time must be treated as continuous service with the employer for purposes of determining participation, vesting and accrual of pension benefits under the plan.

(b) If the employee is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, service, he or she is entitled to report to or submit an application for reemployment at the end of the time period necessary for him or her to recover from the illness or injury. This period, which may not exceed two years from the date the employee completed service, except in circumstances beyond his or her control, must be treated as continuous service with the employer for purposes of determining the participation, vesting and accrual of pension benefits under the plan.

§ 1002.260 What pension benefit plans are covered under USERRA?

(a) The Employee Retirement Income Security Act of 1974 (ERISA) defines an employee pension benefit plan as a plan that provides retirement income to employees, or defers employee income to a period extending to or beyond the termination of employment. Any such plan maintained by the employer or employers is covered under USERRA. USERRA also covers certain pension plans not covered by ERISA, such as those sponsored by a State, government entity, or church for its employees.

(b) USERRA does not cover pension benefits under the Federal Thrift Savings Plan; those benefits are covered under 5 U.S.C. 8432b.

§ 1002.261 Who is responsible for funding any plan obligation to provide the employee with pension benefits?

With the exception of multiemployer plans, which have separate rules discussed below, the employer is liable to the pension benefit plan to fund any obligation of the plan to provide benefits that are attributable to the employee's period of service. In the case of a defined contribution plan, once the employee is reemployed, the employer must allocate the amount of its make-up contribution for the employee, if any; his or her make-up employee contributions, if any; and his or her elective deferrals, if any; in the same manner and to the same extent that it allocates the amounts for other employees during the period of service. In the case of a defined benefit plan, the employee's accrued benefit will be increased for the period of service once he or she is reemployed and, if applicable, has repaid any amounts previously paid to him or her from the plan and made any employee contributions that may be required to be made under the plan.

§ 1002.262 When is the employer required to make the plan contribution that is attributable to the employee's period of uniformed service?

(a) The employer is not required to make its contribution until the employee is reemployed. For employer contributions to a plan in which the employee is not required or permitted to contribute, the employer must make the contribution attributable to the employee's period of service no later than ninety days after the date of reemployment, or when plan contributions are normally due for the year in which the service in the uniformed services was performed, whichever is later. If it is impossible or unreasonable for the employer to make the contribution within this time period, the employer must make the contribution as soon as practicable.

(b) If the employee is enrolled in a contributory plan he or she is allowed (but not required) to make up his or her missed contributions or elective deferrals. These makeup contributions or elective deferrals must be made during a time period starting with the date of reemployment and continuing for up to three times the length of the employee's immediate past period of uniformed service, with the repayment period not to exceed five years. Make-up contributions or elective deferrals may only be made during this period and while the employee is employed with the post-service employer.

(c) If the employee's plan is contributory and he or she does not make up his or her contributions or elective deferrals, he or she will not receive the employer match or the accrued benefit attributable to his or her contribution because the employer is required to make contributions that are contingent on or attributable to the employee's contributions or elective deferrals only to the extent that the employee makes up his or her payments to the plan. Any employer contributions that are contingent on or attributable to the employee's make-up contributions or elective deferrals must be made according to the plan's requirements for employer matching contributions.

(d) The employee is not required to make up the full amount of employee contributions or elective deferrals that he or she missed making during the period of service. If the employee does not make up all of the missed contributions or elective deferrals, his or her pension may be less than if he or she had done so.

(e) Any vested accrued benefit in the pension plan that the employee was entitled to prior to the period of uniformed service remains intact whether or not he or she chooses to be reemployed under the Act after leaving the uniformed service.

(f) An adjustment will be made to the amount of employee contributions or elective deferrals the employee will be able to make to the pension plan for any employee contributions or elective deferrals he or she actually made to the plan during the period of service.

§ 1002.263 Does the employee pay interest when he or she makes up missed contributions or elective deferrals?

No. The employee is not required or permitted to make up a missed contribution in an amount that exceeds the amount he or she would have been permitted or required to contribute had he or she remained continuously employed during the period of service.

§ 1002.264 Is the employee allowed to repay a previous distribution from a pension benefits plan upon being reemployed?

Yes, provided the plan is a defined benefit plan. If the employee received a distribution of all or part of the accrued benefit from a defined benefit plan in connection with his or her service in the uniformed services before he or she became reemployed, he or she must be allowed to repay the withdrawn amounts when he or she is reemployed. The amount the employee must repay includes any interest that would have accrued had the monies not been withdrawn. The employee must be allowed to repay these amounts during a time period starting with the date of reemployment and continuing for up to three times the length of the employee's immediate past period of uniformed service, with the repayment period not to exceed five years (or such longer time as may be agreed to between the employer and the employee), provided the employee is employed with the post-service employer during this period.

§ 1002.265 If the employee is reemployed with his or her pre-service employer, is the employee's pension benefit the same as if he or she had remained continuously employed?

The amount of the employee's pension benefit depends on the type of pension plan.

(a) In a non-contributory defined benefit plan, where the amount of the pension benefit is determined according to a specific formula, the employee's benefit will be the same as though he or she had remained continuously employed during the period of service.

(b) In a contributory defined benefit plan, the employee will need to make up contributions in order to have the same benefit as if he or she had remained continuously employed during the period of service.

(c) In a defined contribution plan, the benefit may not be the same as if the employee had remained continuously employed, even though the employee and the employer make up any contributions or elective deferrals attributable to the period of service, because the employee is not entitled to forfeitures and earnings or required to experience losses that accrued during the period or periods of service.

§ 1002.266 What are the obligations of a multiemployer pension benefit plan under USERRA?

A multiemployer pension benefit plan is one to which more than one employer is required to contribute, and which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer. The Act uses ERISA's definition of a multiemployer plan. In addition to the provisions of USERRA that apply to all pension benefit plans, there are provisions that apply specifically to multiemployer plans, as follows:

(a) The last employer that employed the employee before the period of service is responsible for making the employer contribution to the multiemployer plan, if the plan sponsor does not provide otherwise. If the last employer is no longer functional, the plan must nevertheless provide coverage to the employee.

(b) An employer that contributes to a multiemployer plan and that reemploys the employee pursuant to USERRA must provide written notice of reemployment to the plan administrator within 30 days after the date of reemployment. The returning service member should notify the reemploying employer that he or she has been reemployed pursuant to USERRA. The 30-day period within which the reemploying employer must provide written notice to the multiemployer plan pursuant to this subsection does not begin until the employer has knowledge that the employee was reemployed pursuant to USERRA.

(c) The employee is entitled to the same employer contribution whether

he or she is reemployed by the pre-service employer or by a different employer contributing to the same multi-employer plan, provided that the pre-service employer and the post-service employer share a common means or practice of hiring the employee, such as common participation in a union hiring hall.

§ 1002.267 How is compensation during the period of service calculated in order to determine the employee's pension benefits, if benefits are based on compensation?

In many pension benefit plans, the employee's compensation determines the amount of his or her contribution or the retirement benefit to which he or she is entitled.

(a) Where the employee's rate of compensation must be calculated to determine pension entitlement, the calculation must be made using the rate of pay that the employee would have received but for the period of uniformed service.

(b)(1) Where the rate of pay the employee would have received is not reasonably certain, such as where compensation is based on commissions earned, the average rate of compensation during the 12-month period prior to the period of uniformed service must be used.

(2) Where the rate of pay the employee would have received is not reasonably certain and he or she was employed for less than 12 months prior to the period of uniformed service, the average rate of compensation must be derived from this shorter period of employment that preceded service.

Subpart F—Compliance Assistance, Enforcement and Remedies

COMPLIANCE ASSISTANCE

§ 1002.277 What assistance does the Department of Labor provide to employees and employers concerning employment, reemployment, or other rights and benefits under USERRA?

The Secretary, through the Veterans' Employment and Training Service (VETS), provides assistance to any person or entity with respect to employment and reemployment rights and benefits under USERRA. This assistance includes a wide range of compliance assistance outreach activities, such as responding to inquiries; conducting USERRA briefings and Webcasts; issuing news releases; and, maintaining the elaws USERRA Advisor (located at *http://www.dol.gov/elaws/userra.htm*), the e-VETS Resource Advisor and other web-based materials (located at *http://www.dol.gov/vets*), which are designed to increase awareness of the Act among affected persons, the media, and the general public. In providing such assistance, VETS may request the assistance of other Federal and State agencies, and utilize the assistance of volunteers.

INVESTIGATION AND REFERRAL

§ 1002.288 How does an individual file a USERRA complaint?

If an individual is claiming entitlement to employment rights or benefits or reemployment rights or benefits and alleges that an employer has failed or refused, or is about to fail or refuse, to comply with the Act, the individual may file a complaint with VETS or initiate a private legal action in a court of law (*see* § 1002.303). A complaint may be filed with VETS either in writing, using VETS Form 1010, or electronically, using VETS Form e1010 (instructions and the forms can be accessed at *http://www.dol.gov/elaws/vets/userra/1010.asp*). A complaint must include the name and address of the employer, a summary of the basis for the complaint, and a request for relief.

§ 1002.289 How will VETS investigate a USERRA complaint?

(a) In carrying out any investigation, VETS has, at all reasonable times, reasonable access to and the right to interview persons with information relevant to the investigation. VETS also has reasonable access to, for purposes of examination, the right to copy and receive any documents of any person or employer that VETS considers relevant to the investigation.

(b) VETS may require by subpoena the attendance and testimony of witnesses and the production of documents relating to any matter under investigation. In case of disobedience of or resistance to the subpoena, the Attorney General may, at VETS' request, apply to any district court of the United States in whose jurisdiction such disobedience or resistance occurs for an order enforcing the subpoena. The district courts of the United States have jurisdiction to order compliance with the subpoena, and to punish failure to obey a subpoena as a contempt of court. This paragraph does not authorize VETS to seek issuance of a subpoena to the legislative or judicial branches of the United States.

§ 1002.290 Does VETS have the authority to order compliance with USERRA?

No. If VETS determines as a result of an investigation that the complaint is meritorious, VETS attempts to resolve the complaint by making reasonable efforts to ensure that any persons or entities named in the complaint comply with the Act.

If VETS' efforts do not resolve the complaint, VETS notifies the person who submitted the complaint of:

(a) The results of the investigation; and,

(b) The person's right to proceed under the enforcement of rights provisions in 38 U.S.C. 4323 (against a State or private employer), or 38 U.S.C. 4324 (against a Federal executive agency or the Office of Personnel Management (OPM)).

§ 1002.291 What actions may an individual take if the complaint is not resolved by VETS?

If an individual receives a notification from VETS of an unsuccessful effort to resolve his or her complaint relating to a State or private employer, the individual may request that VETS refer the complaint to the Attorney General.

§ 1002.292 What can the Attorney General do about the complaint?

(a) If the Attorney General is reasonably satisfied that an individual's complaint is meritorious, meaning that he or she is entitled to the rights or benefits sought, the Attorney General may appear on his or her behalf and act as the individual's attorney, and initiate a legal action to obtain appropriate relief.

(b) If the Attorney General determines that the individual's complaint does not have merit, the Attorney General may decline to represent him or her.

Enforcement of Rights and Benefits Against a State or Private Employer

§ 1002.303 Is an individual required to file his or her complaint with VETS?

No. The individual may initiate a private action for relief against a State or private employer if he or she decides not to apply to VETS for assistance.

§ 1002.304 If an individual files a complaint with VETS and VETS' efforts do not resolve the complaint, can the individual pursue the claim on his or her own?

Yes. If VETS notifies an individual that it is unable to resolve the complaint, the individual may pursue the claim on his or her own. The individual may choose to be represented by private counsel whether or not the Attorney General decides to represent him or her as to the complaint.

§ 1002.305 What court has jurisdiction in an action against a State or private employer?

(a) If an action is brought against a State or private employer by the Attorney General, the district courts of the United States have jurisdiction over the action. If the action is brought against a State by the Attorney General, it must be brought in the name of the United States as the plaintiff in the action.

(b) If an action is brought against a State by a person, the action may be brought in a State court of competent jurisdiction according to the laws of the State.

(c) If an action is brought against a private employer or a political subdivision of a State by a person, the district courts of the United States have jurisdiction over the action.

(d) An action brought against a State Adjutant General, as an employer of a civilian National Guard technician, is considered an action against a State for purposes of determining which court has jurisdiction.

§ 1002.306 Is a National Guard civilian technician considered a State or Federal employee for purposes of USERRA?

A National Guard civilian technician is considered a State employee for USERRA purposes, although he or she is considered a Federal employee for most other purposes.

§ 1002.307 What is the proper venue in an action against a State or private employer?

(a) If an action is brought by the Attorney General against a State, the action may proceed in the United States district court for any district in which the State exercises any authority or carries out any function.

(b) If an action is brought against a private employer, or a political subdivision of a State, the action may proceed in the United States district court for any district in which the employer maintains a place of business.

§ 1002.308 Who has legal standing to bring an action under USERRA?

An action may be brought only by the United States or by the person, or representative of a person, claiming rights or benefits under the Act. An employer, prospective employer or other similar entity may not bring an action under the Act.

§ 1002.309 Who is a necessary party in an action under USERRA?

In an action under USERRA only an employer or a potential employer, as the case may be, is a necessary party respondent. In some circumstances, such as where terms in a collective bargaining agreement need to be interpreted, the court may allow an interested party to intervene in the action.

§ 1002.310 How are fees and court costs charged or taxed in an action under USERRA?

No fees or court costs may be charged or taxed against an individual if he or she is claiming rights under the Act. If the individual obtains private counsel for any action or proceeding to enforce a provision of the Act, and prevails, the court may award reasonable attorney fees, expert witness fees, and other litigation expenses.

§ 1002.311 Is there a statute of limitations in an action under USERRA?

USERRA does not have a statute of limitations, and it expressly precludes the application of any State statute of limitations. At least one court, however, has held that the four-year general Federal statute of limitations, 28 U.S.C. 1658, applies to actions under USERRA. *Rogers* v. *City of San Antonio,* 2003 WL 1566502 (W.D. Texas), *reversed on other grounds,* 392 F.3d 758 (5th Cir. 2004). But see *Akhdary* v. *City of Chattanooga,* 2002 WL 32060140 (E.D. Tenn.). In addition, if an individual unreasonably delays asserting his or her rights, and that unreasonable delay causes prejudice to the employer, the courts have recognized the availability of the equitable doctrine of *laches* to bar a claim under USERRA. Accordingly, individuals asserting rights under USERRA should determine whether the issue of the applicability of the Federal statute of limitations has been resolved and, in any event, act promptly to preserve their rights under USERRA.

§ 1002.312 What remedies may be awarded for a violation of USERRA?

In any action or proceeding the court may award relief as follows:

(a) The court may require the employer to comply with the provisions of the Act;

(b) The court may require the employer to compensate the individual for any loss of wages or benefits suffered by reason of the employer's failure to comply with the Act;

(c) The court may require the employer to pay the individual an amount equal to the amount of lost wages and benefits as liquidated damages, if the court determines that the employer's failure to comply with the Act was willful. A violation shall be considered to be willful if the employer either knew or showed reckless disregard for

whether its conduct was prohibited by the Act.

(d) Any wages, benefits, or liquidated damages awarded under paragraphs (b) and (c) of this section are in addition to, and must not diminish, any of the other rights and benefits provided by USERRA (such as, for example, the right to be employed or reemployed by the employer).

§ 1002.313 Are there special damages provisions that apply to actions initiated in the name of the United States?

Yes. In an action brought in the name of the United States, for which the relief includes compensation for lost wages, benefits, or liquidated damages, the compensation must be held in a special deposit account and must be paid, on order of the Attorney General, directly to the person. If the compensation is not paid to the individual because of the Federal Government's inability to do so within a period of three years, the compensation must be converted into the Treasury of the United States as miscellaneous receipts.

§ 1002.314 May a court use its equity powers in an action or proceeding under the Act?

Yes. A court may use its full equity powers, including the issuance of temporary or permanent injunctions, temporary restraining orders, and contempt orders, to vindicate the rights or benefits guaranteed under the Act.

APPENDIX TO PART 1002—NOTICE OF YOUR RIGHTS UNDER USERRA

Pursuant to 38 U.S.C. 4334(a), each employer shall provide to persons entitled to rights and benefits under USERRA a notice of the rights, benefits, and obligations of such persons and such employers under USERRA. The requirement for the provision of notice under this section may be met by posting the following notice where employers customarily place notices for employees. Posting one of the original notices published in 70 FR 75316 (Dec. 19, 2005) will also satisfy this requirement. The following text is provided by the Secretary of Labor to employers pursuant to 38 U.S.C. 4334(b).

TEXT FOR USE BY ALL EMPLOYERS

Your Rights Under USERRA

A. The Uniformed Services Employment and Reemployment Rights Act

USERRA protects the job rights of individuals who voluntarily or involuntarily leave employment positions to undertake military service or certain types of service in the National Disaster Medical System. USERRA also prohibits employers from discriminating against past and present members of the uniformed services, and applicants to the uniformed services.

B. Reemployment Rights

You have the right to be reemployed in your civilian job if you leave that job to perform service in the uniformed service and:

- You ensure that your employer receives advance written or verbal notice of your service;
- You have five years or less of cumulative service in the uniformed services while with that particular employer;
- You return to work or apply for reemployment in a timely manner after conclusion of service; and
- You have not been separated from service with a disqualifying discharge or under other than honorable conditions.

If you are eligible to be reemployed, you must be restored to the job and benefits you would have attained if you had not been absent due to military service or, in some cases, a comparable job.

C. Right To Be Free From Discrimination and Retaliation

If you:

- Are a past or present member of the uniformed service;
- Have applied for membership in the uniformed service; or
- Are obligated to serve in the uniformed service; then an employer may not deny you
- Initial employment;
- Reemployment;
- Retention in employment;
- Promotion; or
- Any benefit of employment

because of this status.

In addition, an employer may not retaliate against anyone assisting in the enforcement of USERRA rights, including testifying or making a statement in connection with a proceeding under USERRA, even if that person has no service connection.

D. Health Insurance Protection

- If you leave your job to perform military service, you have the right to elect to continue your existing employer-based health plan coverage for you and your dependents for up to 24 months while in the military.

• Even if you do not elect to continue coverage during your military service, you have the right to be reinstated in your employer's health plan when you are reemployed, generally without any waiting periods or exclusions (e.g., pre-existing condition exclusions) except for service-connected illnesses or injuries.

E. Enforcement

• The U.S. Department of Labor, Veterans' Employment and Training Service (VETS) is authorized to investigate and resolve complaints of USERRA violations.

For assistance in filing a complaint, or for any other information on USERRA, contact VETS at 1–866–4–USA–DOL or visit its Web site at *http://www.dol.gov/vets.* An interactive online USERRA Advisor can be viewed at *http://www.dol.gov/elaws/userra.htm.*

• If you file a complaint with VETS and VETS is unable to resolve it, you may request that your case be referred to the Department of Justice or the Office of Special Counsel, as applicable, for representation.

• You may also bypass the VETS process and bring a civil action against an employer for violations of USERRA.

The rights listed here may vary depending on the circumstances. The text of this notice was prepared by VETS, and may be viewed on the Internet at this address: *http://www.dol.gov/vets/programs/userra/poster.htm.* Federal law requires employers to notify employees of their rights under USERRA, and employers may meet this requirement by displaying the text of this notice where they customarily place notices for employees. U.S. Department of Labor, Veterans' Employment and Training Service, 1–866–487–2365.

[73 FR 63632, Oct. 27, 2008]

PART 1010—APPLICATION OF PRIORITY OF SERVICE FOR COVERED PERSONS

Subpart A—Purpose and Definitions

Sec.

Subpart B—Understanding Priority of Service

Subpart C—Applying Priority of Service

AUTHORITY: Pub. L. 109–461 (Dec. 22, 2006), section 605 [38 U.S.C. 4215 Note]; 38 U.S.C. 4215.

SOURCE: 73 FR 78142, Dec. 19, 2008, unless otherwise noted.

Subpart A—Purpose and Definitions

§ 1010.100 What is the purpose and scope of this part?

(a) Part 1010 contains the Department regulations implementing priority of service for covered persons. Priority of service for covered persons is authorized by section 2(a)(1) of JVA (38 U.S.C. 4215). These regulations fulfill section 605 of the Veterans Benefits, Health Care, and Information Technology Act of 2006, Pub. L. 109–461 (Dec. 22, 2006), which requires the Department to implement priority of service via regulation.

(b) As provided in §1010.210, this part applies to all qualified job training programs.

§ 1010.110 What definitions apply to this part?

The following definitions apply to this part:

Covered person as defined in section 2(a) of the JVA (38 U.S.C. 4215(a)) means a veteran or eligible spouse.

Department or DOL means the United States Department of Labor, including its agencies and organizational units and their representatives.

Eligible spouse as defined in section 2(a) of the JVA (38 U.S.C. 4215(a)) means the spouse of any of the following:

ATTACHMENT E

MILITARY AND VETERANS CODE - MVC

DIVISION 2. THE MILITARY FORCES OF THE STATE [100 - 567] *(Division 2 enacted by Stats. 1935, Ch. 389.)*

PART 1. THE STATE MILITIA [100 - 491.3] *(Part 1 enacted by Stats. 1935, Ch. 389.)*

CHAPTER 7. Privileges and Penalties [389 - 399.5] *(Chapter 7 enacted by Stats. 1935, Ch. 389.)*

389. (a) As used in this chapter, "temporary military leave of absence" means a leave of absence from public employment to engage in ordered military duty for a period which by the order is not to exceed 180 calendar days including travel time for purposes of active military training, encampment, naval cruises, special exercises or like activity as a member of the reserve corps or force of the armed forces of the United States, or the National Guard, or the Naval Militia.

(b) "Public employee" means any officer or employee of a public agency, except for those officers or employees of the state subject to the provisions of Chapter 11 (commencing with Section 19770) of Part 2 of Division 5 of Title 2 of the Government Code.

(c) "Public agency" means the state, or any county, city and county, city, municipal corporation, school district, irrigation district, water district, or other district.

(d) "Armed forces" or "armed forces of the United States" means the "armed forces" as defined in Section 18540 of the Government Code.

(e) "Recognized military service" means service as defined in Section 18540.3 of the Government Code.

(Amended by Stats. 1973, Ch. 174.)

390. No person belonging to or on duty with the active militia of the state, or engaged in the performance of military duty on call of the Governor or in pursuance of an order of the President of the United States shall be arrested on any civil process while going to, remaining at, or returning from any place at which he may be required to attend for military duty.

(Amended by Stats. 1967, Ch. 1188.)

391. Every member of the active militia shall be exempt from road tax and head tax of every description, from jury duty (including service on coroners' juries) except that members of the National Guard who are not on active duty shall not be exempt from jury duty in any noncriminal proceeding, and from service on any posse comitatus, if the member furnishes the certificate of his or her immediate commanding officer that the member has performed the duties required of him or her for the year immediately preceding a summons to act as juror or during the period of the member's service if less than one year.

(Amended by Stats. 1994, Ch. 114, Sec. 46. Effective January 1, 1995.)

392. (a) Members of the militia in the active service of the state shall not be liable civilly or criminally for any act or acts done by them in the performance of their duty.

(b) Subdivision (a) shall not apply to any act or acts by members of the militia in the active service of the state done by them outside the performance of their military duty, including, but not limited to, sexual assault, as defined in Section 470.5, and sexual harassment, as defined in Section 475.

(Amended by Stats. 2021, Ch. 183, Sec. 3. (SB 352) Effective January 1, 2022.)

393. (a) In an action or proceeding of any nature commenced in any court against an active member of the militia or a member of the militia in active service in pursuance of an order of the President of the United States as a result of a state emergency for an act done by such member in an official capacity in the discharge of duty, or an alleged omission to do an act which it was the member's duty to perform, or against any person acting under the authority or order of an officer or by virtue of a warrant issued by an officer pursuant to law:

(1) The defendant in all cases may make a general denial and give special matter in evidence.

(2) A defendant in whose favor a final judgment is rendered in any such action or proceeding shall recover treble costs.

(b) The Attorney General shall defend such active member or person where the action or proceeding is civil. The senior judge advocate on the state staff or one of the judge advocates shall defend such active member or person where the action or proceeding is criminal, and the Adjutant General shall designate the senior judge advocate on the state staff, or one of the judge advocates, to defend such active member or person.

(c) In the event such active member or person is not indemnified by the federal government, Section 825 of the Government Code shall apply to such active member or person.

(Amended by Stats. 1980, Ch. 114.)

394. (a) A person shall not discriminate against a member of the military or naval forces of the state or of the United States because of that membership. A member of the military forces shall not be prejudiced or injured by a person, employer, or officer or agent of a corporation, company, or firm in terms, conditions, or privileges with respect to that member's employment, position or status or be denied or disqualified for employment by virtue of membership or service in the military forces of this state or of the United States.

(b) An officer or employee of the state, or of any county, city and county, municipal corporation, or district shall not discriminate against a member of the military or naval forces of the state or of the United States because of that membership. A member of the military forces shall not be prejudiced or injured by an officer or employee of the state, or of any county, city and county, municipal corporation, or district in terms, conditions, or privileges with respect to that member's employment, appointment, position, or status or be denied or disqualified for or discharged from that employment or position by virtue of membership or service in the military forces of this state or of the United States.

(c) A person shall not prohibit or refuse entrance to a member of the Armed Forces of the United States or of the military or naval forces of this state into any public entertainment or place of amusement or into any of the places described in Sections 51 and 52 of the Civil Code because that member wears the uniform of the organization to which the member belongs.

(d) An employer or officer or agent of a corporation, company, or firm, or other person, shall not discharge a person from employment because of the performance of any ordered military duty or training or by reason of being a member of the military or naval forces of this state or of the federal reserve components of the Armed Forces of the United States, or hinder or prevent that person from performing any military service or from attending any military encampment or place of drill or instruction the person may be called upon to perform or attend by proper authority; prejudice or harm the person in any manner in the person's terms, conditions, or privileges of employment, position, or status by reason of performance of military service or duty or attendance at military encampments or places of drill or instruction; or dissuade, prevent, or stop any person from enlistment or

accepting a warrant or commission in the California National Guard, State Guard, or Naval Militia or the federal reserve components of the Armed Forces of the United States by threat or injury to the person in respect to the person's terms, conditions, or privileges of employment, position, status, trade, or business because of enlistment or acceptance of a warrant or commission.

(e) (1) A private employer or officer or agent of a corporation, company, or firm, or other person, shall not restrict or terminate any collateral benefit for employees by reason of an employee's temporary incapacitation incident to duty in the National Guard, State Guard, or Naval Militia or the federal reserve components of the Armed Forces of the United States. As used in this subdivision, "temporary incapacitation" means any period of incapacitation of 52 weeks or less.

(2) As used in this subdivision, "benefit" includes, but is not limited to, health care which may be continued at the employee's expense, life insurance, disability insurance, and seniority status.

(f) A person who provides lending or financing shall not discriminate against a person with respect to the terms of a loan or financing, including, but not limited to, the finance charge, based on that person's membership in the military or naval forces of this state or of the United States. With respect to a loan or credit transaction covered by Section 987 of Title 10 of the United States Code, as amended by 126 Stat. 1785 (Public Law 112-239), and Part 232 (commencing with Section 232.1) of Subchapter M of Chapter I of Subtitle A of Title 32 of the Code of Federal Regulations, as amended as published on July 22, 2015, on Page 43560 in Number 140 of Volume 80 of the Federal Register, a person that does not market or extend those transactions to covered borrowers shall not be in violation of this section. For purposes of this section, a covered borrower has the same meaning as provided for in Part 232 (commencing with Section 232.1) of Subchapter M of Chapter I of Subtitle A of Title 32 of the Code of Federal Regulations, as amended on the date described in this subdivision.

(g) A person violating this section is guilty of a misdemeanor. In addition, a person violating any of the provisions of this section shall be liable for actual damages and reasonable attorney's fees incurred by the injured party.

(h) The remedies provided for in this section are not intended to be exclusive but are in addition to the remedies provided for in other laws, including Sections 51 and 52 of the Civil Code.

(Amended by Stats. 2020, Ch. 97, Sec. 21. (AB 2193) Effective January 1, 2021.)

394.5. Any employee of any corporation, company, or firm, or other person, who is a member of the reserve corps of the armed forces of the United States or of the National Guard or the Naval Militia shall be entitled to a temporary leave of absence without pay while engaged in military duty ordered for purposes of military training, drills, encampment, naval cruises, special exercises or like activity as such member, providing that the period of

ordered duty does not exceed 17 calendar days annually including time involved in going to and returning from such duty.

(Added by Stats. 1957, Ch. 469.)

395. (a) Any public employee who is a member of the reserve corps of the Armed Forces of the United States or of the National Guard or the Naval Militia is entitled to a temporary military leave of absence as provided by federal law while engaged in military duty ordered for purposes of active military training, inactive duty training, encampment, naval cruises, special exercises or like activity, providing that the period of ordered duty does not exceed 180 calendar days, including time involved in going to and returning from that duty.

(b) Notwithstanding subdivision (a), a local public agency may, but is not required to, provide paid military leave of absence for periods of inactive duty training.

(c) The employee has an absolute right to be restored to the former office or position and status formerly had by him or her in the same locality and in the same office, board, commission, agency, or institution of the public agency upon the termination of temporary military duty. If the office or position has been abolished or otherwise has ceased to exist during his or her absence, he or she shall be reinstated to a position of like seniority, status, and pay if a position exists, or if no position exists the employee shall have the same rights and privileges that he or she would have had if he or she had occupied the position when it ceased to exist and had not taken temporary military leave of absence.

(d) Any public employee who has been in the service of the public agency from which the leave is taken for a period of not less than one year immediately prior to the date upon which a temporary military leave of absence begins, shall receive the same vacation, sick leave, and holiday privileges and the same rights and privileges to promotion, continuance in office, employment, reappointment to office, or reemployment that the employee would have enjoyed had he or she not been absent therefrom; excepting that an uncompleted probationary period, if any, in the public agency, must be completed upon reinstatement as provided by law or rule of the agency. For the purposes of this section, in determining the one year of service in a public agency all service of the employee in recognized military service shall be counted as public agency service.

(e) If this section is in conflict with a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action, except that if the memorandum of understanding requires the expenditure of funds, it shall not become effective unless approved by the Legislature in the annual Budget Act.

(Amended by Stats. 2000, Ch. 928, Sec. 1. Effective January 1, 2001.)

395.01. (a) Any public employee who is on temporary military leave of absence for military duty ordered for purposes of active military training, inactive duty training, encampment, naval cruises, special exercises, or like activity as such member, provided that the period of ordered duty does not exceed 180 calendar days including time involved in going to and returning from the duty, and who has been in the service of the public agency from which the leave is taken for a period of not less than one year immediately prior to the day on which the absence begins, is entitled to receive his or her salary or compensation as a public employee for the first 30 calendar days of any such absence. Pay for those purposes may not exceed 30 days in any one fiscal year. For the purposes of this section, in determining the one year of public agency service, all service of a public employee in the recognized military service shall be counted as public agency service.

(b) Notwithstanding subdivision (a), a local public agency may, but is not required to, pay an employee during a period of inactive duty training.

(c) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4, of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action, except that if those provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(Amended by Stats. 2000, Ch. 928, Sec. 2. Effective January 1, 2001.)

395.02. Every officer and employee of a public agency who is on military leave other than temporary military leave of absence who has been in the service of such public agency for a period of not less than one year immediately prior to the date on which the absence begins shall be entitled to receive his salary or compensation as such officer or employee for the first 30 calendar days while engaged in the performance of ordered military duty.

As used in this section only, the terms “officer” and “employee” mean an officer or employee who

(a) Is ordered into active military duty as a member of a reserve component of the armed forces of the United States;

(b) Is ordered into active federal military duty as a member of the National Guard or Naval Militia; or

(c) Is inducted, enlists, enters or is otherwise ordered or called into active duty as a member of the armed forces of the United States.

(Added by Stats. 1951, Ch. 1561.)

395.03. No more than the pay for a period of 30 calendar days shall be allowed under the provisions of Section 395.01 or 395.02 for any one military leave of absence or during any one fiscal year, except as otherwise authorized by resolution of the legislative body of a public agency or as provided in a memorandum of understanding reached with an employee organization pursuant to Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code.

(Amended by Stats. 2000, Ch. 928, Sec. 3. Effective January 1, 2001.)

395.04. During the time that as an officer or enlisted person of the California National Guard, who is on full-time active duty in the military service of the state, and is engaged, with the approval of the Adjutant General, in the military service of the state in attendance at drills, camps, or special exercises, sponsored by federal authority or by the United States Department of Defense, as a member of the National Guard of the United States, he or she shall receive salary, pay, and compensation as provided in Sections 320 and 321.

(Amended by Stats. 2018, Ch. 118, Sec. 35. (SB 1501) Effective January 1, 2019.)

395.05. (a) Any public employee who is a member of the National Guard, shall be entitled to absent himself from his duties or service, without regard to the length of his public service, while engaged in the performance of ordered military or naval duty and while going to and returning from such duty, provided such duty is performed during such time as the Governor may have issued a proclamation of a state of extreme emergency or during such time as the National Guard may be on active duty in one or more of the situations described or included in Section 146 of this code provided such absence does not exceed the duration of such emergency. During the absence of such officer or employee while engaged in such military service during such emergency and while going to and returning from such duty, and for a period not to exceed 30 calendar days, he shall receive his salary or compensation as such officer or employee and shall not be subjected by any person directly or indirectly by reason of such absence to any loss or diminution of vacation or holiday privilege or be prejudiced by reason of such absence with reference to promotion or continuance in office, employment, reappointment to office, or reemployment.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(Amended by Stats. 1979, Ch. 1072.)

395.06. (a) A private employer shall consider a former employee who meets the requirements of subdivision (b) as having been on a leave of absence during any period of the former employee's active service in the National Guard of any state, and is subject to both of the following:

(1) If the former position was a full-time position, and not a temporary position, the former employer shall restore the former employee to the former position or to a position of similar seniority, status, and pay without loss of retirement or other benefits, unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so, and shall not discharge the former employee from the position without cause within one year after restoring him or her to the position.

(2) If the position was a part-time position, and not a temporary position, the former employer shall restore the former employee to the former position, or to a position of similar seniority, status, and pay, if any exists, and shall not discharge the former employee from the position without cause within one year after restoring him or her to the position.

(b) To be eligible for the employment protections specified in paragraph (1), the former employee shall meet all of the following requirements:

(1) He or she is an officer or enlisted member of the National Guard of any state.

(2) He or she was called to active duty by the Governor of the state where he or she serves in the National Guard or by the President of the United States.

(3) He or she received a certificate of satisfactory service in the National Guard of the state where he or she serves in the National Guard.

(4) He or she is still qualified to perform the duties of the position.

(5) If he or she left a full-time position, he or she made application for reemployment within 40 days of being released from service. If he or she left part-time employment, he or she made application for reemployment within five days of being released from service.

(c) If any employer fails or refuses to comply with this section, the superior court of the county in which the employer maintains a place of business may, upon the filing of a motion, petition, or other appropriate pleading by

the person entitled to the benefits of this section, specifically require the employer to comply with this section and compensate the person for any loss of wages or benefits suffered by reason of the employer's unlawful action. The court shall order a speedy hearing and shall advance it on the calendar. Upon application to the district attorney of the county in which the employer maintains a place of business by any person claiming to be entitled to the benefits of this section, the district attorney, if reasonably satisfied that the person is entitled to these benefits, shall appear and act as attorney for the person in the amicable adjustment of the claim or in the filing of any motion, petition, or other appropriate pleading and the prosecution thereof to specifically require the employer to comply with this section. No fees or court costs are required to be paid by the person applying for these benefits.

(d) Upon application to the city prosecutor of the city in which the employer maintains a place of business by any person claiming to be entitled to the benefits of this section, the city prosecutor, if reasonably satisfied that the person is entitled to these benefits, may appear and act as attorney for the person in the amicable adjustment of the claim or in the filing of any motion, petition, or other appropriate pleading and the prosecution thereof to specifically require the employer to comply with this section. No fees or court costs are required to be paid by the person applying for these benefits.

(Amended by Stats. 2015, Ch. 183, Sec. 1. (AB 583) Effective January 1, 2016.)

395.07. (a) In addition to the benefits provided pursuant to Sections 395.01 and 395.02, any officer or employee of the legislative, executive, or judicial department of the state, who, as a member of the California National Guard or a United States Military Reserve organization, is called into active duty as a result of the Iraq-Kuwait crisis on or after August 2, 1990, shall have the benefits provided for in subdivision (b).

(b) Any officer or employee to which subdivision (a) applies, while on active duty, shall, with respect to active duty served on or after August 2, 1990, receive from the state, for a period not to exceed 180 calendar days, as part of his or her compensation, both of the following:

(1) The difference between the amount of his or her military pay and allowances and the amount the officer or employee would have received as a state officer or employee, including any merit raises which would otherwise have been granted during the time the individual was on active duty.

(2) All benefits which he or she would have received had he or she not been called to active duty unless the benefits are prohibited or limited by vendor contracts.

(c) Any individual receiving compensation pursuant to subdivision (b) who does not return to state service within 60 days of being released from active duty shall have that compensation treated as a loan payable with interest at

the rate earned on the Pooled Money Investment Account. This subdivision shall not apply to compensation received pursuant to Section 395.02.

(d) This section shall not apply to any active duty served voluntarily after the close of the Iraq-Kuwait crisis.

(Amended by Stats. 1991, Ch. 138, Sec. 2. Effective July 22, 1991.)

395.08. (a) In addition to the benefits provided pursuant to Sections 395.01 and 395.02, any officer or employee of the legislative, executive, or judicial department of the state, who, as a member of the California National Guard or a United States Military Reserve organization, is called into active duty as a result of the Bosnia crisis on or after November 21, 1995, shall have the benefits provided for in subdivision (b).

(b) Any officer or employee to which subdivision (a) applies, while on active duty, shall, with respect to active duty served on or after November 21, 1995, as a result of the Bosnia crisis, receive from the state, for a period not to exceed 180 calendar days, as part of his or her compensation, both of the following:

(1) The difference between the amount of his or her military pay and allowances and the amount the officer or employee would have received as a state officer or employee, including any merit raises that would otherwise have been granted during the time the individual was on active duty.

(2) All benefits that he or she would have received had he or she not been called to active duty unless the benefits are prohibited or limited by vendor contracts.

(c) Any individual receiving compensation pursuant to subdivision (b) who does not return to state service within 60 days of being released from active duty shall have that compensation treated as a loan payable with interest at the rate earned on the Pooled Money Investment Account. This subdivision shall not apply to compensation received pursuant to Section 395.02.

(d) This section shall not apply to any active duty served voluntarily after the close of the Bosnia crisis.

(e) Benefits provided under paragraph (1) of subdivision (b) shall only be provided to an employee who was not eligible to participate in the federal Ready Reserve Mobilization Income Insurance Program (10 U.S.C. Sec. 12521 et seq.) or a successor federal program that, in the determination of the Director of Personnel Administration, is substantively similar to the federal Ready Reserve Mobilization Income Insurance Program. For an employee eligible to participate in the federal Ready Reserve Mobilization Income Insurance Program or a successor program, and whose monthly salary as a state employee was higher than the sum of his or her military pay and allowances and the maximum allowable benefit under the federal Ready Reserve Mobilization Income Insurance Program or a successor program, the employee shall receive the amount payable under paragraph (1) of subdivision (b), but that

amount shall be reduced by the maximum allowable benefit under the federal Ready Reserve Mobilization Income Insurance Program or a successor program. For individuals who elected the federal Ready Reserve Mobilization Income Insurance Program the state shall reimburse for the cost of the insurance premium for the period of time on active duty, not to exceed 180 calendar days.

(Added by Stats. 1997, Ch. 780, Sec. 2. Effective October 8, 1997.)

395.1. (a) Notwithstanding any other provision of law to the contrary, any officer or employee of the state not subject to Chapter 11 (commencing with Section 19770) of Part 2 of Division 5 of Title 2 of the Government Code, or any public officer, deputy, assistant, or employee of any city, county, city and county, school district, water district, irrigation district, or any other district, political corporation, political subdivision, or governmental agency thereof who, in time of war or national emergency as proclaimed by the President or Congress, or when any of the armed forces of the United States are serving outside of the United States or their territories pursuant to order or request of the United Nations, or while any national conscription act is in effect, leaves or has left his or her office or position prior to the end of the war, or the termination of the national emergency or during the effective period of any order or request of this type of the United Nations or prior to the expiration of the National Conscription Act, to join the armed forces of the United States and who does or did without unreasonable and unnecessary delay join the armed forces or, being a member of any reserve force or corps of any of the armed forces of the United States or of the militia of this state, is or was ordered to duty therewith by competent military authority and served or serves in compliance with those orders, shall have a right, if released, separated or discharged under conditions other than dishonorable, to return to and reenter upon the office or position within six months after the termination of his or her active service with the armed forces, but not later than six months after the end of the war or national emergency or military or police operations under the United Nations or after the Governor finds and proclaims that, for the purposes of this section, the war, national emergency, or United Nations military or police operation no longer exists, or after the expiration of the National Conscription Act, if the term for which he or she was elected or appointed has not ended during his or her absence; provided, that the right to return to and reenter upon the office or position shall not extend to or be granted to any officer or employee of the state not subject to Chapter 11 (commencing with Section 19770) of Part 2 of Division 5 of Title 2 of the Government Code, or any public officer, deputy, assistant, or employee of any city, county, city and county, school district, water district, irrigation district or any other district, political corporation, political subdivision or governmental agency thereof, who shall fail to return to and reenter upon his or her office or position within 12 months after the first date upon which he or she could terminate or could cause to have terminated his or her active service with the armed forces of the United States or of the militia of this state. He or she shall also have a right to return to and reenter upon the office or position during terminal leave from the armed forces and prior to discharge, separation or release therefrom.

(b) Upon return and reentry to the office or employment the officer or employee shall have all of the rights and privileges in, connected with, or arising out of the office or employment which he or she would have enjoyed if he or she had not been absent therefrom; provided, however, the officer or employee shall not be entitled to sick leave, vacation or salary for the period during which he or she was on leave from that governmental service and in the service of the armed forces of the United States.

If the office or position has been abolished or otherwise has ceased to exist during his or her absence, he or she shall be reinstated in a position of like seniority, status and pay if the position exists, or to a comparable vacant position for which he or she is qualified.

(c) Any officer or employee other than a probationer who is restored to his or her office or employment pursuant to this act shall not be discharged from that office or position without cause within one year after the restoration, and shall be entitled to participate in insurance or other benefits offered by the employing governmental agency pursuant to established rules and practices relating to those officers or employees on furlough or leave of absence in effect at the time the officer or employee left his or her office or position to join the armed forces of the United States.

(d) Notwithstanding any other provisions of this code, any enlisted person who was involuntarily ordered to active duty (other than for training) for a stated duration shall not lose any right or benefit conferred under this code if he or she voluntarily elects to complete the period of that duty.

(e) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(Amended by Stats. 1994, Ch. 146, Sec. 161. Effective January 1, 1995.)

395.2. Any employee of a board of school trustees or board of education in a position not requiring certification qualifications who enters the active military service of the United States of America or of the State of California, including active service in any uniformed auxiliary of, or to, any branch of such military service created or authorized as such auxiliary by the Congress of the United States of America or by the Legislature of the State of California, or in the full time paid service of the American Red Cross, during any period of National emergency declared by the President of the United States of America or during any war in which the United States of America is engaged, shall regain all rights to his position and shall be reinstated thereto upon his application at any time within six months of the termination of that service, but in any event within one year from the date of a treaty of

peace terminating the hostilities in which the United States is now engaged. The provisions of this act shall apply to service in the Merchant Marine as that phrase is now defined in any Federal statute relating to reemployment rights of persons in service in the Merchant Marine.

(Amended by Stats. 1946, 1st Ex. Sess., Ch. 32.)

395.3. In the event that any public officer or employee has resigned or resigns his or her office or employment to serve or to continue to serve in the Armed Forces of the United States or in the militia of this state, he or she shall have a right to return to and reenter the office or employment prior to the time at which his or her term of office or his or her employment would have ended if he or she had not resigned, on serving a written notice to that effect upon the authorized appointing power, or if there is no authorized appointing power, upon the officer or agency having power to fill a vacancy in the office or employment, within six months of the termination of his or her active service with the Armed Forces; provided, that the right to return and reenter upon the office or position shall not extend to or be granted to any public officer or employee, who shall fail to return to and reenter upon his or her office or position within 12 months after the first date upon which he or she could terminate or could cause to have terminated his or her active service with the Armed Forces of the United States or of the militia of this state.

As used in this section, "public officers and employees" includes all of the following:

(a) Members of the Senate and of the Assembly.

(b) Justices of the Supreme Court and the courts of appeal, judges of the superior courts, and all other judicial officers.

(c) All other state officers and employees not within Chapter 11 (commencing with Section 19770) of Part 2 of Division 5 of Title 2 of the Government Code, including all officers for whose selection and term of office provision is made in the California Constitution and laws of this state.

(d) All officers and employees of any county, city and county, city, township, district, political subdivision, authority, commission, board, or other public agency within this state.

The right of reentry into public office or employment provided for in this section shall include the right to be restored to the civil service status as the officer or employee would have if he or she had not so resigned; and no other person shall acquire civil service status in the same position so as to deprive the officer or employee of his or her right to restoration as provided for herein.

This section shall be retroactively applied to extend the right of reentry into public office or employment to public officers and employees who resigned prior to its effective date.

This section does not apply to any public officer or employee to whom the right to reenter public office or employment after service in the Armed Forces has been granted by any other provision of law.

If any provision of this section, or the application of this section to any person or circumstance, is held invalid, the remainder of this section, or the application of this section to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(Amended by Stats. 2003, Ch. 62, Sec. 208. Effective January 1, 2004.)

395.4. Whenever the United States is engaged in war or whenever the Governor finds and proclaims that an emergency exists in preparing for the National defense, any employee or officer, other than an elected officer, of a county, city, political subdivision, school, irrigation, public district, or other local authority or public body whatsoever who enters the armed forces of the United States shall be entitled to a leave of absence for service with such armed forces for the duration of the war or until the Governor finds and proclaims that the emergency no longer exists, and for 90 days thereafter, or until 90 days after the termination of such service.

(Added by Stats. 1941, Ch. 82.)

395.5. (a) The Military Department shall comply with the provisions of Section 4301 of Title 38 of the United States Code, the Uniformed Services Employment and Reemployment Rights Act (USERRA).

(b) For purposes of USERRA, Military Department personnel who are on state active duty and are deployed, mobilized, or otherwise subject to any federal active service under voluntary or involuntary conditions, shall be considered employees and provided the same federal reemployment protections and benefits given to other employees under USERRA.

(Added by Stats. 2006, Ch. 680, Sec. 2. Effective January 1, 2007.)

395.6. (a) The Governor may appoint a mediator in his or her office to take complaints, regarding possible violations or other issues dealing with the Uniformed Service Employment and Reemployment Rights Act (38 U.S.C.

Sec. 4301 et seq.), hereafter USERRA, and Section 395.06, and to resolve and coordinate the resolution of those complaints or issues, from state employees who satisfy both of the following:

(1) Are members of either of the following:

(A) The California National Guard.

(B) A reserve component of the Armed Forces of the United States.

(2) Encounter problems regaining their state position when they return from service in the California National Guard or from service in a reserve component of the United States Armed Forces.

(b) Each state agency and department may appoint a mediator to take complaints, regarding possible violations of USERRA and other issues relating to state pay, and to resolve and coordinate the resolution of those complaints with, if necessary, the assistance of the Governor-appointed ombudsman, from employees of that department or agency who are members of either the California National Guard or a reserve component of the Armed Forces of the United States.

(c) Mediators appointed under the provisions of subdivisions (a) and (b) shall become knowledgeable about USERRA law and, to the extent possible, work with the California Committee for Employer Support of the Guard and Reserve, a Department of Defense organization, and the California National Guard.

(Added by Stats. 2008, Ch. 642, Sec. 1. Effective January 1, 2009.)

395.8. Any officer, elective or otherwise, who leaves or shall have left the service of any city in order to enter upon active service with the armed forces of the United States shall be reinstated and restored to his office upon his discharge or release from such active service with the armed forces; provided, such discharge or release is prior to the expiration of the term for which he has been elected or appointed.

The rights created by this section shall have no application to any officer who shall have been dishonorably discharged or released from such armed forces, or shall have been so mentally or physically disabled as to be incapable of performing the duties of his office or shall fail to present himself to the legislative body or other appointing authority of such city ready and willing to assume the duties of his office, within six months from the time of his discharge or release from active service with the armed forces.

The office from which such officer absents himself to enter upon active service with the armed forces shall not be considered to be vacant but the legislative body or other appointing authority, as the case may be, may appoint an officer to temporarily replace any such officer so absenting himself to enter upon active service with the armed

forces. Such temporary officers shall have all of the powers and duties of the office to which he may be temporarily appointed and shall hold said office until the expiration of the term thereof or until the officer returns from service with the armed forces, whichever event first occurs.

(Amended by Stats. 1946, 1st Ex. Sess., Ch. 32.)

395.9. Any public employee and any employee of a corporation, company, firm, or other person who is a member of the State Guard is entitled to a temporary military leave of absence without pay while engaged in military duty for purposes of military training, drills, unit training assemblies, or similar inactive duty training for not to exceed 15 calendar days annually, including time involved in going to and returning from that duty.

(Amended by Stats. 2020, Ch. 97, Sec. 22. (AB 2193) Effective January 1, 2021.)

395.10. (a) Notwithstanding any other provision of law, a qualified employer shall allow a qualified employee to take up to 10 days of unpaid leave during a qualified leave period.

(b) For purposes of this section:

(1) "Period of military conflict" means either of the following:

(A) A period of war declared by the United States Congress.

(B) A period of deployment for which a member of a reserve component is ordered to active duty pursuant to either of the following:

(i) Sections 12301 and 12302 of Title 10 of the United States Code.

(ii) Title 32 of the United States Code.

(2) "Qualified employee" means a person who satisfies all of the following:

(A) Is the spouse of a qualified member.

(B) Performs service for hire for an employer for an average of 20 or more hours per week, but does not include an independent contractor.

(C) Provides the qualified employer with notice, within two business days of receiving official notice that the qualified member will be on leave from deployment, of his or her intention to take the leave provided for in subdivision (a).

(D) Submits written documentation to the qualified employer certifying that the qualified member will be on leave from deployment during the time the leave provided for in subdivision (a) is requested.

(3) "Qualified employer" includes any individual, corporation, company, firm, state, city, county, city and county, municipal corporation, district, public authority, or any other governmental subdivision, that employs 25 or more employees.

(4) "Qualified member" means a person who is any of the following:

(A) A member of the Armed Forces of the United States who has been deployed during a period of military conflict to an area designated as a combat theater or combat zone by the President of the United States.

(B) A member of the National Guard who has been deployed during a period of military conflict.

(C) A member of the Reserves who has been deployed during a period of military conflict.

(5) "Qualified leave period" means the period during which the qualified member is on leave from deployment during a period of military conflict.

(c) A qualified employer shall not retaliate against a qualified employee for requesting or taking the leave provided for in this section.

(d) The leave provided for in this section shall not affect or prevent a qualified employer from allowing a qualified employee to take a leave that the qualified employee is otherwise entitled to take.

(e) This section shall not affect a qualified employee's rights with respect to any other employee benefit provided for in other laws.

(Added by Stats. 2007, Ch. 361, Sec. 1. Effective October 9, 2007.)

396. The commanding officer of any portion of the militia parading or performing any military duty in any street or highway may require persons in such street or highway to yield the right of way to such militia, except that the carriage of the United States mail, the legitimate functions of the police, and the progress and operations of hospital ambulances, fire engines, and fire departments and apparatus shall not be interfered with thereby.

Any person who hinders, delays, or obstructs any portion of the militia parading or performing any military duty, or who attempts so to do, is guilty of a misdemeanor.

(Enacted by Stats. 1935, Ch. 389.)

397. When an emergency has been declared to exist by the Governor and during the continuance thereof, any person belonging to the military or naval forces of the State or of the United States shall, together with his conveyance, personal baggage, and the military property of the State or of the United States in his charge, be allowed to pass free through all tollgates and over all toll bridges and all ferries, if he presents an order for duty in the military or naval service of the State or of the United States. The provisions of this section do not apply to any tollgate, toll bridge or ferry owned or operated by any private individual, corporation or utility, or owned or operated by any municipal corporation or bridge and highway district.

(Amended by Stats. 1945, Ch. 791.)

398. Any person who trespasses upon any campground, armory, airport, or other place devoted to military duty, or who in any way or manner interrupts or molests the orderly discharge of military duty, or who disturbs or prevents the passage of troops going to or returning from any duty is guilty of a misdemeanor and may be placed under arrest by or at the direction of the commanding officer of the troops or of the place concerned. The Adjutant General may cause any place to be declared "off limits" to members of the National Guard if necessary to protect the health, safety, morals or general welfare of such members during such times as the National Guard may be on active duty or in attendance at an encampment, maneuvers or extended exercise.

(Amended by Stats. 1949, Ch. 536.)

399. (a) (1) The Secretary of the California Department of Veterans Affairs, or his or her designees, shall assist any eligible member or veteran who returns or has returned to this state in obtaining a best practice health screening test for exposure to depleted uranium. The screening should consist of a bioassay procedure capable of detecting depleted uranium at low levels and discriminating between different uranium isotopes. State funds shall not be used to pay for the tests or any other federal treatment services.

(2) The eligible member or veteran must return or have returned to this state after service in an area where depleted uranium was used or that was designated as a combat zone by the President of the United States after 1990. The eligible member or veteran shall either be assigned a risk level I, II, or III for depleted uranium exposure by his or her branch of service, be referred by a military physician, or have reason to believe that he or she was exposed to depleted uranium during his or her service.

(b) (1) In order to effectively provide the assistance required by subdivision (a), the Secretary of the California Department of Veterans Affairs, or his or her designees, shall develop and implement a plan for outreach to eligible members and veterans who have returned from combat areas where depleted uranium was used.

(2) The outreach plan shall provide information to eligible members and veterans concerning their potential exposure to depleted uranium, the possible hazards associated with exposure, and the right to federal depleted uranium screening services.

(c) For purposes of this section, all of the following apply:

(1) "Eligible member" means a member who served in the Persian Gulf War, as defined in Section 101 of Title 38 of the United States Code, in an area designated as a combat zone by the President of United States during Operation Enduring Freedom or Operation Iraqi Freedom, or in any other combat theater where depleted uranium was used.

(2) "Member" or "member of the Armed Forces" means a member of the Armed Forces of the United States, including the California National Guard, who is a resident of this state.

(3) "Military physician" means a provider who is under contract with the United States Department of Defense to provide physician services to members of the Armed Forces.

(Added by Stats. 2006, Ch. 686, Sec. 3. Effective January 1, 2007.)

399.5. (a) (1) The Secretary of the California Department of Veterans Affairs, or his or her designees, shall assist any eligible member or veteran who returns or has returned to this state in obtaining an appropriate health screening test for traumatic brain injury and post-traumatic stress disorder.

(2) The eligible member or veteran must return or have returned to this state after service.

(b) (1) In order to effectively provide the assistance required by subdivision (a), the Secretary of the California Department of Veterans Affairs, or his or her designees, shall develop and implement a plan for outreach to eligible members and veterans who have returned from combat. The Adjutant General, or his or her designee, shall also develop and implement a plan for outreach to eligible members of the California National Guard who have returned from combat and remain on duty in order to effectively provide the service required by subdivision (a).

(2) Each outreach plan shall provide information to eligible members and veterans concerning traumatic brain injury and post-traumatic stress disorder, the possible impacts associated with traumatic brain injury and post-traumatic stress disorder, and the right to screening services.

(c) For purposes of this section, both of the following apply:

(1) "Eligible member" means a member who served under Title 10 of the United States Code as designated by Executive Orders Nos. 12744 and 13239 of the President of the United States.

(2) "Member" or "member of the Armed Forces" means a member of the Armed Forces of the United States, including the California National Guard, who is a resident of this state.

(Added by Stats. 2008, Ch. 593, Sec. 1. Effective January 1, 2009.)