



## Legislation Text

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Clerk 04/17/13

AN ORDINANCE relating to personnel policies; providing military leave differential pay, leave accruals and health benefits for King County employees who serve in the United States Uniformed Services for the period of time that they retain reemployment rights; and amending Ordinance 12014, Section 26, as amended, and K.C.C. 3.12.260 and Ordinance 9967, Section 2, as amended, and K.C.C. 3.12.262.

BE IT ORDAINED BY THE COUNTY COUNCIL OF KING COUNTY:

**SECTION 1. Findings:**

A. The federal Uniform Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. Secs. 4301 through 4335 ("USERRA"), was enacted to minimize the disruption to the lives of persons serving in the military and to provide guidance for employers. USERRA largely regulates the reemployment of service members and affords certain job-related protections to them related to returning from service. It is the current policy of King County to support to the extent possible those employees who volunteer for or are ordered to serve in the Uniformed Services.

B. King County and Washington state provide protections in addition to those required under USERRA. In response to the terrorist attacks on September 11, 2001, many King County employees who were reservists were called to active duty. Soon thereafter and in consideration of employee service in the military, the county provided differential pay to employees who were ordered to involuntary active service on or before September 11, 2001.

Also, in consideration of employee service in the military, the county provides medical, dental, vision and life insurance benefits and vacation and sick leave accruals to county employees who volunteers, is ordered to serve, or receives associated training. The county first began offering extended health insurance benefits to reservists serving on active duty status in 1999. Additionally, under RCW 38.40.060, Washington state provides for twenty-one days of paid military leave of absence from work for those public employees, including county employees, engaged in military duty, training or drills.

C. Over the last decade, the United States has engaged in continual activations into war zones, and numerous county employees have volunteered for or have been ordered to active duty, including military training duty, for those and other military engagements. County employees have also been deployed to provide similar service for other emergent events.

D. In May 2010, the King County council issued a proclamation pledging continued support for King County employees who serve in the Uniformed Services. In November 2011, Ordinance 17223 was enacted, which extended differential pay to all county employees who volunteered or were ordered to serve, not just those who were ordered to involuntary active service on or before September 11, 2001. However, the ordinance provided that the differential pay was only available to those who volunteered or were ordered to serve by December 31, 2012. In 2012 the Washington state Auditor conducted a military pay audit and submitted a management letter expressing concern about the lack of time limitations for military pay and benefits, particularly in light of the guidance provided under USERRA.

E. Under USERRA, an employee may perform service for a single period or in cumulative periods totaling five years to retain reemployment rights, although there are exceptions which would extend the five-year period. While USERRA does not require an employer to provide military leave differential pay, where an employer adopts a policy of providing the pay, USERRA will protect the employee's rights under that policy. The county provides differential pay to its employees in active service. USERRA also requires that vacation leave accrues in the same manner for employees in service as for employees on other types of leave. The

county provides those vacation leave accruals. The county also allows employees in active service to continue to accrue sick leave in the same manner as employees on other types of leave. While providing sick leave accruals is beyond what is required by USERRA, it provides equity among employees on leave.

Limiting the receipt of differential pay and leave accruals to the period of time that they retain reemployment rights under USERRA, which is generally up to five years, comports with the general protections set forth under federal act while still providing additional support to county employees in service.

F.1. Under USERRA regulations, nothing precludes the county from being more generous in its health plan coverage or other benefits than the safeguards set forth under USERRA.

2. Beginning in 1999, the county offered employees who were called or volunteered to active duty health insurance coverage continuation. Limiting the receipt of health plan coverage to the period of time that they retain reemployment rights under USERRA, which is generally up to five years, continues to provide additional support to county employees in service while ensuring administrative consistency.

SECTION 2. Ordinance 12014, Section 26, as amended, and K.C.C. 3.12.260 are each hereby amended to read as follows:

A.1. A leave of absence shall be granted, in accordance with applicable provisions of state or federal law, to any employee who voluntarily or upon demand by the Washington state or the United States government leaves his or her position with the county, either to determine his or her physical fitness to enter or to actually enter active duty or training in the ~~((United States Armed Forces, including without limitation))~~ United States Uniformed Services, which includes, but is not limited to, the Armed Services, the Washington National Guard, ~~((the United States Air National Guard, the United States Army National Guard, and the United States Coast Guard or))~~ and the United States Public Health Service Commissioned Corps and its reserve. Under the Uniform Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. Secs. 4301 through 4335, Uniformed Services may also include an appointee when the National Disaster Medical System is activated.

2. The leave of absence shall continue until the ~~((conclusion of the employee's active duty service))~~

employee has exhausted his or her employment and reemployment rights under the Uniform Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. Secs. 4301 through 4335, which is generally up to five years, subject to certain exceptions provided under federal law.

B. Employees are required to give their employing county agency advance notice of the need for military leave, preferably in writing, though oral notification is sufficient. Notice should be provided as soon as is reasonable under the circumstances, and, if feasible to do so, service members should provide thirty days advance notice; however, advance notice is not required if prevented by military necessity or otherwise impossible or unreasonable under the circumstances, to the extent provided in federal law and regulations. Written notice should be accompanied by a validated copy of the military orders (~~(ordering the active duty or active training duty)~~). Oral notice should be supplemented as soon as is reasonable with a validated copy of the military orders.

C. An employee who ~~((H))~~ is eligible for benefits under K.C.C. 3.12.040, ~~((2))~~ and volunteers or is ordered to serve in the ~~((Armed Forces or the United States Public Health Service Commissioned Corps))~~ United States Uniformed Services, as described in subsection A.1. of this section, or to receive associated training that requires a leave of absence from the employee's county position, and ~~((3))~~ has exhausted annual military leave provided pursuant to state and federal law or a collective bargaining agreement, shall be granted a paid leave of absence from the employee's county position at the employee's regular base rate of county pay less the amount of the employee's regular base rate of military pay to which the employee is entitled. The paid leave of absence shall continue until the lesser of the conclusion of the employee's ~~((active duty))~~ service in the ~~((Armed Forces or the United States Public Health Service Commissioned Corps. This section applies only to employees who volunteer or are ordered to serve in the Armed Forces or the United States Public Health Service Commissioned Corps no later than December 31, 2012, or whatever later date the council might designate by ordinance))~~ United States Uniformed Services, or until the employee has exhausted his or her employment and reemployment rights under the Uniform Services Employment and Reemployment Rights Act

of 1994, 38 U.S.C. Secs. 4301 through 4335, which is generally up to five years, subject to certain exceptions provided under federal law.

D. Receipt of the pay provided for in the preceding section is contingent upon the employee providing the employing county agency with supporting documentation verifying:

~~((4))~~ 1. ~~((1))~~ The employee's rank~~((, (2)))~~;

2. ~~((1))~~ That the employee is on active duty~~((, (3)))~~; and

~~((3) the amount of military pay to which the employee is entitled)~~ 3. The employee's military pay grade statement and military pay grade change statement.

SECTION 3. Ordinance 9967, Section 2, as amended, and K.C.C. 3.12.262 are each hereby amended to read as follows:

A. An employee who is eligible for benefits under K.C.C. 3.12.040 and who volunteers or is ordered to serve in the ~~((Armed Forces or the United States Public Health Service Commissioned Corps))~~ United States Uniformed Services, as described in K.C.C. 3.12.260.A.1, or to receive associated training that requires a leave of absence from the employee's county position, shall continue to receive medical, dental, vision~~((, (3)))~~ and life insurance benefits, and shall continue to accrue vacation and sick leave~~((, until the employee's active duty service in the Armed Forces or the United States Public Health Service Commissioned Corps))~~. Receipt of medical, dental, vision and life insurance benefits and vacation and sick leave accruals shall continue until the lesser of the conclusion of the employee's service in the United States Uniformed Services, or until the employee has exhausted his or her employment and reemployment rights under the Uniform Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. Secs. 4301 through 4335, which is generally up to five years, subject to certain exceptions provided under federal law.

B. Receipt of medical, dental, vision~~((, (3)))~~ and life insurance benefits and leave accruals is contingent upon the employee providing his or her employing county agency with supporting documentation verifying that the employee is ~~((on active duty))~~ in service. The documentation shall be provided by the employee upon

commencing military leave, annually in September and upon leaving military service.

SECTION 4. Severability. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances is not affected.