



## ADMINISTRATIVE DIRECTIVE

<b>MILITARY LEAVE</b>	NUMBER <b>2.01-7G</b>	PAGE <b>1 of 5</b>
	EFFECTIVE DATE <b>November 23, 2010</b>	

### I. PURPOSE

To ensure that City of Tucson policies and practices conform with state and federal law concerning Military Leave including, but not limited to, leave entitlements under the Family Medical Leave Administrative Directive 2.01-7C, the Family Medical Leave Act (FMLA) codified in Title 29 of the Code of Federal Regulations (29 CFR 825.800), and the Uniform Service Employment and Reemployment Rights Act (USERRA).

### II. COVERAGE AND ELIGIBILITY POLICY

Employees who are members of any branch, reserve, or auxiliary of the armed forces shall receive Military Leave benefits as provided under state and federal law. Coverage and Eligibility for Military Family Leave (MFL) under FMLA will be administered by the Human Resources Leave Administrator in accordance with Section IV of the Family Medical Leave Administrative Directive. Department designees must contact the Human Resource Leave Administrator immediately upon notification that an employee may require Military Family Leave (MFL).

### III. DEFINITIONS

- A. **12-Month Period** – Means a rolling 12-month period measured forward from the first day designated Military Family Leave (MFL) is taken by the employee. Military caregiver leave is calculated based on a separate 12-month period beginning with the first instance of leave to care for a Covered Servicemember. Unused MFL cannot be carried forward to another 12-month period and cannot exceed the maximum allowable under federal law.
- B. **Active Duty** – Means service as an active duty member of the Armed Forces of the United States or a call or order to active duty (or notification of an impending call or order to active duty) under any provision of law during a war or during a national emergency declared by the President or Congress so long as it is in support of a contingency operation.
- C. **Covered Servicemember** – Means the employee or the employee's spouse, son, daughter, or parent who is serving or has served active duty or ordered to active duty status. This definition does not include "in-law", unless the "in-law" is identified as the next of kin for the purpose of military caregiver.
- D. **Child** – For the purposes of MFL, a child "regardless of age" includes a biological, adopted or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis. This definition does not include "in-law".
- E. **Extended Military Leave** – Means continuous Military Leave in excess of thirty (30) days.



ADMINISTRATIVE DIRECTIVE

<b>MILITARY LEAVE</b>	NUMBER	PAGE
	<b>2.01-7G</b>	<b>2 of 5</b>
	EFFECTIVE DATE	
<b>November 23, 2010</b>		

- F. **Leave Administrator** – The Human Resources Director or Designee.
- G. **Next of Kin** – For the purposes of MFL, the nearest blood relative other than the Covered Servicemember's spouse, parent, or child, in order of priority or as designated by the Covered Servicemember in accordance with 29 CFR 825.800.
- H. **Parent** – For purposes of MFL, a Covered Servicemember's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the Covered Servicemember. This definition of parent does not include "in law."
- I. **Qualifying Exigency** – Includes the following: (1) short-notice deployments (seven or fewer days notice); (2) attending military events such as ceremonies and briefings; (3) arranging for childcare/school on account of call to duty; (4) addressing financial and/or legal arrangements related to the call to duty; (5) attending counseling sessions related to the call to duty; (6) periods of rest and recuperations for service member (up to five days leave); (7) attending post-deployment activities such as arrival ceremonies and briefings; or (8) additional activities arising out of service if permitted by the employer.
- J. **Serious Injury or Illness** – An injury or illness incurred by a Covered Servicemember in the line of duty on active duty that may render the Covered Servicemember medically unfit to perform the duties of the military member's office, grade, rank, or rating and requires undergoing medical treatment, recuperations, or therapy.
- K. **Service in Uniform Services** – As defined by USERRA, means the performance of duty on a voluntary or involuntary basis in a uniformed service, including, but not limited to: active duty, active duty for training, initial active duty for training and inactive duty training, full-time National Guard duty, absence from work for examinations to determine a person's fitness for any of the above types of duty; funeral honors duty and duty performed as disaster response.

**IV. PAID MILITARY LEAVE – NOT TO EXCEED 30 CALENDAR DAYS IN ANY TWO (2) CONSECUTIVE FISCAL YEARS**

- A. Employees of the City of Tucson who are members of any branch, reserve or auxiliary of the armed forces, and are under orders for short tour training, attending camps, maneuvers, formations or drills, will be granted Military Leave as provided by state law and/or the Tucson City Code. This leave is not to exceed thirty (30) days in any two (2) consecutive federal fiscal years (October 1 - September 30), except as otherwise provided by the Tucson City Code for commissioned fire personnel (who receive up to thirty (30) 12-hour days in any single federal fiscal year). Up to the thirty-day (30) limitation, such employees will receive full City salary for normally scheduled working hours that fall within the periods of training duty unless otherwise provided by the



**ADMINISTRATIVE DIRECTIVE**

<b>MILITARY LEAVE</b>	NUMBER <b>2.01-7G</b>	PAGE <b>3 of 5</b>
	EFFECTIVE DATE <b>November 23, 2010</b>	

Tucson City Code. Employees shall not be charged Military Leave for days on which the employee was not otherwise scheduled for work.

- B. Employees who work an alternate work schedule (anything other than eight (8) hours per day) will be charged one day of Military Leave for each day during which they were scheduled to work. Fire Fighters assigned to suppression will be charged two (2) days of Military Leave for each twenty-four (24)-hour shift they are scheduled to work.

**V. MILITARY LEAVE EXCEEDING 30 CALENDAR DAYS IN ANY TWO (2) CONSECUTIVE FISCAL YEARS**

- A. When tours for temporary military training duty exceed the Military Leave allowance provided by state law and/or the Tucson City Code:
  - 1. Employees whose classifications are exempt from overtime may elect:
    - a. to receive their weekly City salary offset by the amount of military pay received for absences of less than a full workweek,
    - b. to use accrued vacation time for the period of leave,
    - c. to take full day increments of leave without pay (LWOP), or
    - d. to combine accrued vacation time and leave without pay.
  - 2. Employees whose classifications are eligible for overtime may elect to use:
    - a. accrued vacation time,
    - b. compensatory time, and/or
    - c. leave without pay (LWOP).

**VI. REQUESTS FOR MILITARY LEAVE AND REQUIRED DOCUMENTATION**

- A. Requests for Military Leaves of absence without pay shall be granted to all permanent and probationary employees in accordance with state and/or federal law. All requests for Military Leave will be forwarded to the Human Resources Leave Administrator to coordinate necessary benefits and leave entitlements.
- B. An employee under orders for military duty shall furnish documentation of the orders signed by a competent military authority to the department director prior to the commencement of Military Leave, unless such notice is precluded by military necessity. This policy is subject to exception upon approval by the Human Resources Department. The department director will forward such orders to the Human Resources Department for retention in the employee's record by the end of the pay period in which the leave commences.



## ADMINISTRATIVE DIRECTIVE

<b>MILITARY LEAVE</b>	NUMBER	PAGE
	<b>2.01-7G</b>	<b>4 of 5</b>
	EFFECTIVE DATE	
<b>November 23, 2010</b>		

### VII. RE-EMPLOYMENT AND REINSTATEMENT

Re-employment and reinstatement rights are governed by federal and state law. Questions regarding such re-employment/reinstatement shall be immediately directed to the City Attorney's Office for appropriate resolution.

### VIII. MILITARY FAMILY LEAVE UNDER FAMILY MEDICAL LEAVE ACT

In accordance with the Family and Medical Leave Act (FMLA), as amended by the National Defense Authorization Acts, Military Family Leave (MFL) provides eligible employees leave for up to twenty-six (26) weeks in a single twelve-month (12) period. Utilization of MFL runs concurrently with all other leaves (see: Administrative Directive 2.01-7D). MFL due to Qualifying Exigencies may be taken on an intermittent basis.

#### A. Military Family Leave can be used for the following reasons:

1. **Qualifying Exigency** - An eligible employee may be entitled to take up to twelve (12) weeks of leave to address certain Qualifying Exigencies, as defined in section III, of this AD, arising out of a Covered Servicemember's active duty or call to active duty in support of contingency operations.
  2. **Military Caregiver** - An eligible employee who is the spouse, child, parent, or next of kin of a Covered Servicemember recovering from a serious illness or injury sustained in the line of duty or at any time during the five (5) years preceding the date of treatment, recuperation or therapy from a serious illness or injury sustained in the line of duty is entitled to up to twenty-six (26) weeks of leave in a single twelve-month (12) period to care for the service member.
- B. The Leave Administrator may require that an employee's request for MFL be supported by an appropriate certification in accordance with 29 CFR 825.800.
- C. Recertification and/or second opinions are not permitted for certification of a Covered Servicemember's serious injury or illness or of a qualifying exigency. Any questions regarding recertification shall be directed to the Leave Administrator.
- D. Military Family Leave (MFL) shall be administered consistent with the applicable provisions of the Family Medical Leave Administrative Directive 2.01-7C.

### IX. EFFECT ON LEAVE ACCRUAL AND OTHER BENEFITS

- A. An employee on Military Leave regardless of pay status is entitled to accrue sick leave and vacation leave at the same accrual rate of an employee on leave for FML. Accrual will be added to the employee's leave balance(s) upon the employee's return to active employment status with the City.



ADMINISTRATIVE DIRECTIVE

<b>MILITARY LEAVE</b>	NUMBER <b>2.01-7G</b>	PAGE <b>5 of 5</b>
	EFFECTIVE DATE <b>November 23, 2010</b>	

- B. Employees' anniversary dates will not be affected by use of LWOP, while on a Military Leave of absence.
- C. Employees on unpaid Military Leave or supplemental pay status under section 10-48 of the Code are NOT eligible for holiday pay, allowances, premium pay, or accrual of sick leave or vacation leave (beyond accruals provided in subsection A above), birthday, personal/floating holiday or compensation time.
- D. Employee pension benefits are governed according to the Tucson Supplemental Retirement System or the Public Safety Personnel Retirement System depending upon which system the employee is a member.
- E. For information about continuation of benefits while on military leave, please refer to Section VII, Employee Leaves Administrative Directive 2.01-7

**Appendices**

Appendix A  
Overview of Leave and Benefit Protections for Military Members

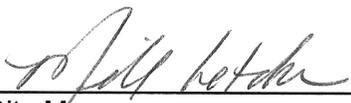
**References** (for a complete list of references for the entire AD Leaves series, please see AD 2.01-7)

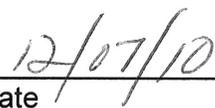
Tucson City Code  
29 CFR 825.800 Family and Medical Leave Act  
2.01-7C Family and Medical Leave  
No other Administrative Directives are specifically cited in this Administrative Directive as reference.

**Review Responsibility and Frequency**

The Director of Human Resources will review this directive annually, based on date of publication.

**Authorized**

  
\_\_\_\_\_  
City Manager

  
\_\_\_\_\_  
Date

OVERVIEW OF LEAVE AND BENEFIT PROTECTIONS FOR MILITARY MEMBERS

Category	Federal Law	State Law	City of Tucson
<p><b>Military Leave</b></p>	<p>USERRA - provides employment and reemployment rights to uniform services members (up to 5 years w/extension exceptions).</p> <p>FMLA - Military Leave Entitlements - provides leave to member and their eligible "family" member for qualifying exigency (up to 12 weeks) and for the medical caregiver of a covered service member (up to 26 weeks)</p>	<p>Arizona Revised Statute Section 26-168 – provides military leave for a period not to exceed 30 days in two years.</p> <p>Also note that Title 26 of the Arizona Revised Statute incorporates USERRA protection for military members regardless of status.</p>	<p>Military Leave Entitlements Administrative Directive 2.01-7G complies with federal and state laws noted herein.</p>
<p><b>Pay</b></p>	<p>Federal law does not require paid leave but its does provide that a military member is entitled to the most favorable benefit provided to similarly situated employees on leave status.</p>	<p>Requires leave be provided for the covered period, (30 days in two year period), without loss of pay or benefits.</p>	<p>In addition to federal and state entitlements noted herein, section 10-48 of the Tucson City Code provides military supplemental pay for extended military leave. (Extended Military Leave means a continuous period of military leave exceeding 30 days).</p>
<p><b>Sick, Vacation and Comp Leave</b></p>	<p>Employee is entitled to use leave benefits</p>	<p>None</p>	<p>In addition to state entitlement, section V of the Military Leave Entitlements Administrative Directive provides the following leave options for military leave exceeding the 30 days.</p> <p><b>Exempt Employee may elect:</b></p> <p>A. to receive their weekly City salary <b>offset (not supplement)</b> by the amount of military pay received for absences of less than a full workweek,</p> <p>B. to use accrued vacation time for the period of leave,</p> <p>C. to take full day increments of leave without pay (LWOP), or</p> <p>D. to combine accrued vacation time and leave without pay.</p> <p><b>Non-Exempt Employee may elect:</b></p> <p>A. accrued vacation time,</p> <p>B. compensatory time, and/or leave without pay (LWOP).</p>

**APPENDIX A  
A.D. 2.01-7G**

Category	Federal Law	State Law	City of Tucson
<b>Sick and Vacation Leave Accruals</b>	Federal law does not require. But the law does provide that a military member is entitled to the greatest benefit provided to similarly situated employees on leave status	Requires leave be provided for the covered period, (30 days in two year period), without loss of pay or benefits.	Military member is entitled to the greatest benefit of similarly situated employee: FMLA allows employees to accrue any leave that would have otherwise accrued during an unpaid period of FML (Maximum FML is 12 weeks in a 12 month period) . Military members are entitled to this accrual every 12 months. For example: A military member leaves on October 1, 2009 and returns on December 2011. October 2009, October 2010 and October 2011 would be the annual anniversary dates for accrual.
<b>Allowances</b>	Same as Above	Same as Above	Follow federal and state laws.
<b>Medical Benefit</b>	Employer must provide Military Member the option to continue coverage up to 24 months - the member cannot be charged more than 102% of the premium. Military member is also entitled to COBRA coverage upon termination of the 24 months.	Same as Above	Benefits are provided for 24 months. First 12 months the City will pay employer portion of premium and employee is required to pay employee portion of premium. For leave that exceeds 12 months up to 24 months, the employee is responsible payment of the full premium.
<b>TSRS Pension</b> (For Public Safety personnel contact PSPRS)	USERRA provides that an employee returning from military service must be treated as not having incurred a break in service and military service must be considered service with an employer for vesting and benefit accrual purposes. The employer is liable for funding any obligation required to provide the benefit. The employee is entitled to accrued benefits contingent upon employee contributions only to the extent that their person repays the employee contributions.	Same as Above	Chapter 22 of the Tucson Code is consistent with federal law. Contact the Benefits and Retirement Office for specific information.