RULE 11
UNPAID LEAVE
(Revised May 9, 2016; Rule Revision Memo 19D)

Purpose statement:

The purpose of this rule is to provide guidelines and policies for administering unpaid leave. For rules regarding extended illness or injury leave please see Rule 12 LEAVE AND ACCOMMODATIONS FOR PREGNANCY AND EXTENDED ILLNESSES OR INJURIES. (Revised May 22, 2018; Rule Revision Memo 41D)

Section 11-10 Leave Defined

Leave: Any absence during regularly scheduled work hours. The following types of unpaid leave are covered in this rule:

A. Authorized;
B. Unauthorized;
C. Leave for victims of violence;
D. Budget-required furlough;
E. Military (unpaid).

Section 11-15 Designees

Appointing authorities, including the Office of Human Resources (“OHR”) Executive Director, may delegate any authority given to them under this rule to a subordinate employee.

Section 11-20 General Provisions

11-21 Authorized Unpaid Leave

Appointing authorities may permit the use of unpaid leave by employees who either do not have paid leave available or who have requested permission to use unpaid leave when it is in the interest of the City to do so.
11-22 Unauthorized Unpaid Leave

A. Absences from work shall be treated as unauthorized, unpaid leave:
   1. When an employee has not requested permission to use a type of leave for which permission is required; or
   2. When a leave request has been denied; or
   3. When an employee has not complied with reporting procedures; or
   4. Which are not otherwise authorized under these rules.

B. Employees on unauthorized, unpaid leave may be subject to discipline, up to and including dismissal.

11-23 Exempt and Non-exempt Employees

A. An exempt employee on unpaid leave shall have his or her pay reduced on an hourly basis for the duration of the absence when the absence is less than a day and is due to sickness or personal reasons, and:
   1. The employee did not request leave; or
   2. A request for leave was denied; or
   3. The employee has no available leave; or
   4. The employee requested, and was granted unpaid leave.

B. Non-exempt employees on unpaid leave shall receive no pay for the duration of the absence.

11-24 Maintenance of Benefits During Extended Absences

This section applies to the maintenance of benefits during extended absences except as otherwise provided in these rules.

A. First Thirty Days of Unpaid Leave:

   The first thirty (30) consecutive calendar days of authorized, voluntary unpaid leave in a calendar year, shall have no effect on the following:
   1. City contributions to health, dental, and life insurance; or
   2. Accrual of paid time off (PTO), sick and vacation leave, and holiday eligibility.
B. After Thirty Days but Before One Hundred and Eighty-one Days:

After the first thirty (30) consecutive calendar days of authorized, voluntary unpaid leave in a calendar year:

1. City contributions to health, dental, and life insurance shall be discontinued, except for employees on Family and Medical Leave Act (“FMLA”) leave; and

2. Employees will no longer be able to earn PTO, sick and vacation leave, or paid holidays.

C. After One Hundred and Eighty Days:

After the first one hundred and eighty (180) consecutive calendar days of authorized, voluntary unpaid leave, City contributions to health, dental, and life insurance shall be discontinued for all employees.

D. 1. An employee may pay the cost of continuing his or her health, dental, and life insurance, as well as any supplemental insurance coverage(s), such as vision and supplemental life insurance, during extended absences from work by:

   a. Depositing the amount due with the OHR every month; or

   b. Taking at least one day of paid leave from which the amount due shall be deducted.

2. An employee’s failure to pay the cost of continuing insurance coverage shall result in the discontinuance of such insurance.

11-25 Other Provisions Regarding Extended Unpaid Leave

A. A period of unpaid leave shall not constitute a break in service.

B. A period of unpaid leave lasting longer than one hundred and eighty (180) consecutive calendar days and occurring during an employee’s probationary period shall not be counted as part of that period. The employee to whom such leave has been granted will resume his or her probationary period upon returning from the period of unpaid leave.

C. At the expiration of a period of unpaid leave, the employee shall return to the position and classification he or she held before going on leave. Failure to report promptly at the expiration of a period of unpaid leave shall be considered to be a resignation.
11-26 Leave for Victims of Violence

Employees may use up to three days of unpaid leave to address issues arising from violence the employee has suffered (as defined in Executive Order 112), including but not limited to, obtaining a restraining order, obtaining medical care or counseling, locating safe housing, or preparing for or attending legal proceedings. The employee may elect to use available paid leave, instead of unpaid leave, to cover the absence. Appointing authorities may authorize the use of additional leave, or temporarily adjust an employee’s work schedule to allow a victim of violence to obtain necessary medical care, housing, counseling, legal, or other related assistance.

11-27 Budget Required Furlough

If the Mayor of the City and County of Denver decides or allows appointing authorities to furlough employees due to budgetary reasons, the following Career Service Rule applies:

A. This Rule is intended to comply with the Fair Labor Standards Act regulation 29 C.F.R. § 541.710, which permits furloughs for budgetary reasons without affecting the exemption status of an overtime exempt employee except in the workweek in which the furlough occurs and for which the employee’s pay is accordingly reduced.

B. Furloughs of overtime exempt employees may be taken in work day or workweek increments. During the workweek in which an overtime exempt employee takes one or more furlough days, the furlough hours taken and the hours worked plus any leave taken by the exempt employee should not total more than forty (40) hours. A work day is eight (8) hours for the purposes of this rule.

C. Furloughs of non-exempt employees need not be taken in work day or work week increments but cannot be taken in less than two (2) hour increments.

D. The Mayor may exempt certain employees from a mandatory furlough in order to maintain essential City services or for other necessary business reasons.

E. During the period of time in which the Mayor has declared mandatory furloughs, employees may take additional voluntary furlough days with the prior approval of the employee’s appointing authority. Except as otherwise provided, the same rules apply to voluntary furloughs that apply to mandatory furloughs.
F. **Maintenance of benefits:**

An employee on a furlough is entitled to;

a. Have the City continue paying its share of the employee’s health, dental, and life insurance premiums.

b. Earn PTO, or sick and vacation leave, and

c. Receive paid holiday leave for holidays observed during a furlough. During the first thirty consecutive calendar days of a furlough, furlough days will be treated as days worked for the purposes of determining whether the employee worked on the scheduled work days immediately preceding and immediately following the day on which the holiday is observed.

G. Nothing herein precludes the Mayor from designating specific furlough days or otherwise determining how to implement mandatory furloughs.

**Section 11-30 Unpaid Military Leave**

A. Employees who continue in military service beyond the initial one hundred twenty (120) hours for which paid military leave is allowed under Rule 10 **PAID LEAVE** shall be placed on unpaid military leave.

B. This rule is intended to comply with and be interpreted consistently with the Uniformed Services Employment and Reemployment Rights Act (“USERRA”). To the extent an issue is not addressed in this rule, or to the extent this rule is inconsistent with the USERRA, the USERRA and its corresponding regulations shall govern.

C. Requests for unpaid military leave may be made verbally or in writing, and shall be made in advance, when possible. If an employee is unable to provide advance notice due to military necessity, the employee may give notice after starting duty.

D. Employees who are called to active military duty with written orders for services exceeding one hundred and seventy nine (179) days because of war or national emergency may be eligible for a military pay differential.
11-31 Granting Unpaid Military Leave

Unpaid military leave shall be subject to the following provisions:

A. Duration:

Unpaid military leave shall be granted for the duration of active military service not to exceed five (5) years plus ninety (90) days from the date of discharge, subject to exceptions set forth in USERRA and its corresponding regulations.

B. Maintenance of Benefits:

1. First Thirty Days of Military Leave:

The first thirty (30) consecutive days of military leave (paid and unpaid) shall have no effect on the following:

a. City contributions to health, dental, and life insurance; and

b. Accrual of PTO or sick and vacation leave, and holiday eligibility.

2. After Thirty Days of Military Leave:

a. 1. Employees on military leave (paid and unpaid) for thirty-one (31) days or longer, are eligible for health benefit coverage from the military. In addition, an employee on military leave for thirty-one (31) days or longer may continue his or her individual and/or family coverage under the City's group health plan for the duration of military leave. Employees opting for continuing coverage under the City's group health plan are responsible for paying 100% of the premium costs.

2. During military leave, the employee may continue supplemental insurance coverage(s), such as dental, vision, and supplemental life insurance, for the duration of military leave. Employees opting for continuing supplemental insurance coverage are responsible for paying 100% of the premium costs.

b. Paid time off (“PTO”), sick and vacation leave shall not be earned during military leave that lasts over thirty (30) consecutive calendar days, and employees on such extended leave will not be eligible for paid holiday leave.

C. Employees may use any available paid leave (except sick leave) for some or all of their unpaid military leave.
D. **Break in service:**

Unpaid military leave shall not constitute a break in service.

E. **Completion of probationary period:**

(Revised October 19, 2018; Rule Revision Memo 46D)

A probationary employee who is on unpaid military leave before or during the employee’s probationary period shall be required to complete the remainder of their probationary period when the employee returns to work.

11-32 **Return from Unpaid Military Leave**

Employees returning from unpaid military leave after an absence of ninety (90) days or less shall return to their former position. Employees returning after ninety-one (91) days or longer shall return to their former position or a job of equal status and pay, subject to the following provisions:

A. **Due date for notice of return:**

Upon completing military service, an employee on military leave (whether paid or unpaid) must notify his or her appointing authority of the employee’s intent to return to work. The amount of notice required depends on the amount of time served.

1. Employees who served longer than one hundred eighty (180) days shall give notice within ninety (90) days after completing service.

2. Employees who served thirty-one (31) to one hundred eighty (180) days shall give notice within fourteen (14) days after completing service.

3. Employees who served less than thirty-one (31) days shall give notice within three (3) days after completing service.

B. **Certificate of satisfactory completion of military service:**

A return from unpaid military leave shall be conditional upon submission of a certificate confirming release from active duty under honorable conditions.

C. **Effect of hospitalization for service connected medical condition:**

In the event that the employee was hospitalized after military discharge for medical conditions which occurred during the military service, the employee’s unpaid military leave shall be extended up to two (2) years. Application for return from unpaid military leave must be made within ninety (90) days after the employee’s medical provider releases him or her to return to work. Extensions beyond two (2) years may be granted.
D. **Qualifications for return from military service:**

The employee must be physically and mentally qualified and possess the necessary skills, knowledge and/or training to perform the essential functions of the position to which the employee is returning with or without reasonable accommodations. The City will provide appropriate training to returning employees.

E. **Effect of service connected disability:**

If the employee is not qualified to perform the essential functions of the position with or without reasonable accommodations by reason of disability sustained during active military service, the appointing authority may transfer the employee to any other available position, the duties of which the employee is qualified to perform and which will provide like seniority, status and pay, or the nearest approximation thereof, as the employee achieved in the position from which he or she was granted military leave.

F. **Effect of failure to give notice for return:**

Failure to give notice for return from unpaid military leave within the time limits stated may be considered a resignation.

11-33 **Military Pay Differential**

A. Career Service employees who are called to active military duty in time of war or national emergency are eligible for a military pay differential as provided by the Denver Revised Municipal Code.

B. A written request for military pay differential shall be made by an eligible employee to the employee’s department or agency as soon as possible after the employee’s return to City employment using the application form provided by the OHR. Requests for military pay differential may also be made while the employee is on military leave.

C. The employee shall provide copies of the following documents:

1. Written military orders for reporting and/or discharge;

2. Leave and earnings statements from the military;

3. All military pay vouchers, including vouchers for temporary duty and travel; and

4. Any other documentation deemed necessary to process the request by the OHR or the Department of Finance.

D. Any overpayment of funds to the employee shall be reimbursed to the City in accordance with the City’s Fiscal Accountability Rules.