

RULE 11 UNPAID LEAVE

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 (Revised December 17, 2020, Rule Revision Memo 62D)

When it is in the interest of the City, 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. Other than FMLA, ADA, and USERRA, authorized unpaid leave shall not last longer than 180 consecutive days. Authorized unpaid leave shall not be considered a break in service.

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
(Revised December 17, 2020, Rule Revision Memo 62D)

A. First Thirty Days of Authorized 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 medical, dental, and life insurance; or
2. Accrual of paid time off (PTO), sick and vacation leave, and holiday eligibility.

B. After Thirty Days of Authorized Unpaid Leave:

1. The City will continue to pay its portion of medical benefits, but the employee must arrange for payment of the employee's portion of the employee's medical benefits by executing a deduction agreement allowing the City to make monthly deductions from the employee's accrued paid leave (PTO or vacation leave) and holiday leave accruals equal to the amount of employee owed premiums. Upon exhaustion of paid leave, the employee must make arrangements with the City's COBRA administrator to pay any amount of premiums owed. An employee may cancel medical coverage, but will not be able to add that coverage back again until the next open enrollment period. An employee's failure to pay the cost of continuing medical coverage shall result in the discontinuance of such insurance.

2. City contributions to dental, and life insurance shall be discontinued, except for employees on Family and Medical Leave Act (“FMLA”) leave.
 - a. An employee may cancel coverage for dental and life insurance as well as supplemental coverages (i.e. vision and supplemental life), but will not be able to add those coverages back again until the next open enrollment period.
 - b. An employee may continue dental, and life insurance, as well as any supplemental insurance coverages (i.e. vision and supplemental life), by depositing the amount due with the City’s COBRA administrator every month. An employee’s failure to pay the cost of continuing insurance coverage shall result in the discontinuance of such insurance.
3. Employees will no longer be able to earn PTO, sick and vacation leave, or paid holidays.

11-25 Other Provisions Regarding Extended Authorized Unpaid Leave
(Revised December 17, 2020, Rule Revision Memo 62D)

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

(Revised September 17, 2020; Rule Revision Memo 58D)

The following rules apply when the Mayor of the City and County of Denver decides to furlough city employees, or to allow appointing authorities to furlough employees of their agencies, due to budgetary reasons.

- 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. Exempt employees become non-exempt employees during any week that a furlough day is taken. Furlough hours are not considered hours worked for purposes of calculating overtime.
- B. Furlough days are based on an eight-hour workday. In order to ensure the cost savings that furloughs are intended to achieve, during the workweek in which an employee takes one or more furlough days, the furlough hours taken and hours actually worked plus any paid leave taken (including holidays and comp time used) should not total more than forty (40) hours. An employee who exceeds this 40-hour limitation will not get full credit for the furlough hours taken in that week. Instead, those furlough hours will be reduced in proportion to the overage and have to be made up on another date, preferably within the same payroll period.
- C. Scheduled furlough days declared by the Mayor will be taken in eight (8) hour increments, unless an employee receives supervisory approval to work part of the day and make up the remaining hours at a later time, preferably within the same payroll period. The Department of Finance will determine how furloughs declared by the Mayor, other than scheduled furlough days, will be implemented, including whether they may be taken in less than eight (8) hour increments. When the Mayor has allowed an appointing authority to furlough employees, the appointing authority may determine how such furloughs will be implemented.
- D. The Mayor may exempt certain employees and/or classifications from mandatory furloughs 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. If the Mayor decides to impose, or allows an appointing authority to impose, an extended furlough of 30 consecutive days or more, the number of consecutive furlough days taken shall not count towards the probationary period of employees on employment probation when placed on the extended furlough. Such employees will resume their probationary period upon returning from the extended furlough. This suspension of the probationary period during an extended furlough shall not be considered an extension of employment probation under Rule 5-34E.

- G. If an employee on extended furlough of 30 consecutive days or more obtains other employment, the employee must promptly submit to their supervisor and/or OHR either a request for approval of outside employment in accordance with the Denver Code of Ethics or a notice of resignation effective no later than one day prior to the first day of their new employment.
- H. Maintenance of benefits: (Revised December 17, 2020, Rule Revision Memo 63D)
1. During furloughs of three (3) consecutive months or less, the City will continue to provide:
 - a. employees with accrued PTO, or sick and vacation leave, and
 - b. paid holiday leave for observed holidays, even if the workday immediately preceding and/or immediately following the holiday is a scheduled furlough day, and
 - c. payment of the employer's share of medical, dental, and life insurance premiums.
 2. For furloughs exceeding one (1) month, the employee must arrange for payment of the employee's portion of the employee's medical, dental, and life insurance premiums as well as supplemental insurance coverages such as vision and supplemental life insurance by executing a deduction agreement allowing the City to make monthly deductions from the employee's accrued paid leave (PTO or vacation leave) and holiday leave accruals equal to the amount of employee owed premiums. Upon exhaustion of paid leave, employees must deposit the amount of all premiums due with the City's COBRA administrator every month. The employee's failure to pay premiums will result in coverage being cancelled. Insurance coverages that are cancelled cannot be reinstated until the next open enrollment period.
 3. For furloughs exceeding three (3) consecutive months, benefits will be administered as follows:
 - a. City contributions to the employer's portion of medical premiums will continue for the length of the stability period as defined in DRMC Sec. 18-172(2). The employee must arrange for payment of the employee's portion of the employee's medical benefits through the deduction agreement referred to above and upon exhaustion of paid leave, employees must deposit the amount of all premiums due with the City's COBRA administrator every month. The employee's failure to pay premiums will result in coverage being cancelled. Insurance coverages that are cancelled cannot be reinstated until the next open enrollment period.

- b. City contributions to dental, and life insurance shall be discontinued. An employee may continue dental, and life insurance, as well as any supplemental insurance coverages (i.e. vision and supplemental life), by depositing the entire cost to the City's COBRA administrator every month. The employee's failure to pay premiums will result in coverage being cancelled. Insurance coverages that are cancelled cannot be reinstated until the next open enrollment period.
- 4. For furloughs extending more than twelve (12) consecutive months, benefits will be administered as follows:
 - a. City contributions to the employer's portion of medical premiums will be discontinued. An employee may continue to receive medical benefits by paying both the employer and the employee cost of continuing coverage by depositing the amount due with the City's COBRA administrator every month. The employee's failure to pay premiums will result in coverage being cancelled. Insurance coverages that are cancelled cannot be reinstated until the next open enrollment period.
 - b. An employee may continue dental, and life insurance, as well as any supplemental insurance coverages (i.e. vision and supplemental life), by depositing the entire cost to the City's COBRA administrator every month. The employee's failure to pay premiums will result in coverage being cancelled. Insurance coverages that are cancelled cannot be reinstated until the next open enrollment period.
- 5. If an employee resigns employment or is laid off from the City during or after an extended furlough of 30 consecutive days or more, the City will deduct any unpaid employee benefit premiums from the employee's accrued paid leave and holiday leave accrual prior to the payout of those amounts as addressed in CSA Rules 10-26 and 10-36.
 - I. Nothing herein precludes the Mayor from designating specific furlough days or otherwise determining how to implement 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
(Revised December 17, 2020, Rule Revision Memo 64D)

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. During unpaid military leave of three (3) consecutive months or less, the City will continue to provide:
 - a. employees with accrued PTO, or sick and vacation leave, and
 - b. paid holiday leave for observed holidays, and
 - c. payment of the employer's share of the employee's medical, dental, and life insurance premiums.
2. For unpaid military leave exceeding one (1) month, if continuing coverage, the employee must arrange for payment of the employee's portion of the employee's medical, dental, and life insurance premiums as well as supplemental insurance coverages such as vision and supplemental life insurance by executing a deduction agreement allowing the City to make monthly deductions from the employee's accrued paid leave (PTO or vacation leave) and holiday leave accruals equal to the amount of employee owed premiums. Upon exhaustion of paid leave, the employee must deposit the amount of all premiums due with the City's COBRA administrator every month. The employee's failure to pay premiums will result in coverage being cancelled. The employee must notify the office of human resources upon return from military leave to reinstate coverage.
3. For unpaid military leave exceeding three (3) consecutive months, benefits will be administered as follows:
 - a. City contributions to the employer's portion of medical premiums will continue for the length of the stability period as defined in DRMC Sec. 18-172(2). The employee must arrange for payment of the

employee's portion of the employee's medical benefits through the deduction agreement referred to above and upon exhaustion of paid leave, employees must deposit the amount of all premiums due with the City's COBRA administrator every month. The employee's failure to pay premiums will result in coverage being cancelled. The employee must notify the office of human resources upon return from military leave to reinstate coverage.

b. City contributions to dental, and life insurance shall be discontinued. An employee may continue dental, and life insurance, as well as any supplemental insurance coverages (i.e. vision and supplemental life), by depositing the entire cost to the City's COBRA administrator every month. The employee's failure to pay premiums will result in coverage being cancelled. The employee must notify the office of human resources upon return from military leave to reinstate coverage.

4. For unpaid military leave extending more than twelve (12) consecutive months, benefits will be administered as follows:

a. City contributions to the employer's portion of medical premiums will be discontinued. An employee may continue to receive medical benefits by paying both the employer and the employee cost of continuing coverage by depositing the amount due with the City's COBRA administrator every month. The employee's failure to pay premiums will result in coverage being cancelled. The employee must notify the office of human resources upon return from military leave to reinstate coverage.

b. An employee may continue dental, and life insurance, as well as any supplemental insurance coverages (i.e. vision and supplemental life), by depositing the entire cost to the City's COBRA administrator every month. The employee's failure to pay premiums will result in coverage being cancelled. The employee must notify the office of human resources upon return from military leave to reinstate coverage.

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.