



**CHAPTER: Leave Benefits**

**SUBJECT: Military Leave**

**POLICY NUMBER: 4.705**

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**RELATED POLICIES:  
260-1988**

**ENABLING RESOLUTION:  
143-2005  
144-2005**

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**DEPARTMENT OF PRIMARY RESPONSIBILITY: HUMAN RESOURCES**

**SPECIAL NOTES: This Policy/Procedures Manual does not in any way constitute an employment contract. Sedgwick County reserves the right to amend this Manual at any time subject only to approval by the Board of County Commissioners and the Governing Body of Sedgwick County Fire District Number One.**

## **I. Purpose**

The purpose of this Policy is to inform employees of their rights and obligations if they are inducted into, or volunteer for, the United States Armed Forces in compliance with The Uniformed Services Employment and Reemployment Rights Act (USERRA).

The Uniformed Services Employment and Reemployment Rights Act (USERRA) prohibits discrimination against any employee or prospective employee because of past, present, or future application for, or membership in, a uniformed service.

## **II. Policy**

A. An employee who leaves his/her job with Sedgwick County to enter active duty in the Armed Forces of the United States, shall be entitled to reinstatement to the job he/she vacated, after his/her discharge or release from active duty, if he/she meets the following eligibility criteria:

1. He/she must hold an "other than temporary" appointment. (The job need not be "permanent".)
2. He/she must leave his/her job for the purpose of going on active duty.
3. He/she must not remain on active duty longer than five years. The 5-year total does not include: inactive duty training (drills); annual training; involuntary recall to or retention on active duty; voluntary or involuntary active duty in support of a war, national emergency, or certain operational missions; or additional training requirements determined and certified in writing by the Service Secretary, and considered to be necessary for professional development or for completion of skill training or retraining.

4. He/she must be discharged or released from active duty under honorable conditions.
  5. He/she must apply for reinstatement with Sedgwick County in accordance with the period of time he or she was away on duty. (See IV. Procedures (B))
- B. When on military leave, an employee shall receive no County pay.
  - C. An employee who is not accepted for military service shall be reinstated in his/her position without loss of status or reduction in pay.
  - D. Sedgwick County shall continue payment of the employer share of the premium for Sedgwick Premier Benefits for ninety (90) calendar days during military leave of absence for the purpose of active duty. The employee shall be responsible for his/her share of the premium payment to the County. After ninety (90) calendar days, total premium payments will be the obligation of the employee. The employee shall be responsible for payment of premiums for any optional payroll deductions during this leave.
  - E. Employees returning to County service shall have available for his/her use any unused sick leave and vacation leave existing at the time of taking military leave.
  - F. The returning Veteran will be placed in his/her position at the precise point he/she would occupy had he/she kept his/her position continuously during his/her military service in accordance with the seniority "escalator principle". Active duty time counts toward eligibility to take time off from work under the Family and Medical Leave Act (FMLA).
  - G. This Policy Procedure shall apply to persons who are inducted (drafted) into the Armed Forces; to persons who volunteer directly for active duty; to Reservists and members of the National Guard who are called to active duty and initial active duty training.
  - H. Employees who serve more than 180 days cannot be discharged without cause for 12 months after reemployment. Those who serve for 31 to 180 days cannot be discharged without cause for six months after reemployment. Individuals who serve for 30 days or less have no protected period.

### **III. Definition**

Seniority "escalator principle" - later ratified by Congress, the U.S. Supreme Court established the "escalator principle" stating: "(The returning veteran) does not step back on the seniority escalator at the point he stepped off. He steps back on at the precise point he would have occupied if he had kept his position continuously during (his military service)".

The U.S. Department of Labor further defines this principle stating:

"Although the 'escalator' normally goes up or remains in place, there are times when it goes down. If the employer can establish that the Veteran would have been downgraded if he had remained continuously employed, he/she will be entitled to reinstatement in the lower job. If the employer can establish that the Veteran would have been laid off in accordance with seniority, he/she may be entitled to 'reinstatement' into a layoff position, with recall rights. If the employer can establish that the Veteran's pre-service employment relationship would have been severed altogether, the Veteran may be entitled to severance pay. The whole point of the VVR law is to place the returning Veteran in the job he/she would have attained if he/she had remained continuously employed instead of going on active duty." (Fact Sheet No. OASVET-86-2)

#### **IV. Procedures**

- A. An employee leaving Sedgwick County in order to perform active duty should notify the Division Director, Department Head or Elected Official, as soon as practical unless conditions make it impossible for the employee to provide notice. The notice may be either written or oral. The Division Director, Department Head or Elected Official may not insist on knowing exactly when the employee will return to work; however, the employee can be asked to furnish the approximate beginning and concluding dates of his/her leave. The Division Director, Department Head or Elected Official shall submit a Personnel Action Form (PAF) to Human Resources placing the employee on military leave.
- B. Except for Reservists or National Guard members returning from initial active duty training, an individual wishing to return from military leave shall apply for reinstatement by notifying the department of his/her desire to return to work. The amount of time a returning employee has to reapply for work depends on how long he or she was away on duty. Individuals who serve more than 180 days must reapply for work within 90 days of completing service. Those who serve 31 to 180 days must reapply for reinstatement within 14 days of the end of service. Individuals who serve for 30 days or less have no protected period; they must report to their employer at the start of the next regularly scheduled shift following eight hours of returning directly home.

These time limits may be extended for up to two years if an individual is hospitalized or convalescing from an injury caused by active duty.

Reservists or National Guard members wishing to return from initial active duty training must apply for re-employment within thirty-one (31) days. The Division Director, Department Head or Elected Official shall submit a Personnel Action Form (PAF) reinstating the employee to Human Resources.