

**AN ORDINANCE TO AMEND CHAPTER 40 OF THE CITY CODE
REGARDING MILITARY LEAVE**

#0066

Sponsor:

**Council
Member
Johnson**

WHEREAS, the Uniformed Services Employment and Reemployment Rights Act (“USERRA”) provides a right of reemployment to employees who perform up to five years of cumulative military service; and

WHEREAS, the City is committed to proudly supporting employees who have military service obligations while balancing its ability to adequately staff operating departments and provide vital services to the citizens; and

WHEREAS, the City seeks to provide employees with military leave for up to five years of cumulative service, consistent with USERRA; and

WHEREAS, in light of the foregoing, City Council deems it necessary and appropriate to amend Section 40-338 of the Wilmington City Code regarding military leave.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON
HEREBY ORDAINS:**

SECTION 1. Section 40-338 of the Wilmington City Code is hereby amended by deleting the stricken language and adding the underlined language to read as follows:

Sec. 40-338. - Military leave, military differential pay and mobilization pay.

- (a) For purposes of this section "armed forces" is defined to include the Army, Navy, Marine Corps, Air Force and Coast Guard. "Reserve components" is defined to include the federally recognized National Guard and Air National Guard of the United States, the Officers' Reserve Corps, the Regular Army Reserve, the Air Reserve, the Enlisted Reserve Corps, the Naval Reserve, the Marine Corps Reserve and the Coast Guard.
- (b) Any employee of the city who is a member of the National Guard or any reserve component of the armed forces of the United States will be entitled to a leave of absence during any period in which s/he is engaged in the performance of official duty or training, under competent orders. An employee's leave of absence shall not exceed five years of cumulative service during the employee's entire employment with the City regardless of the employee's date of hire, consistent with the provisions of Uniformed Services Employment and Reemployment Rights Act (“USERRA”).

- (c) Full service credit with the city shall be allowed all employees for time spent in military service, for up to five years of cumulative service during the employee's entire employment with the City provided the employee goes directly from city employment into military service and makes application for reemployment as provided by the Uniformed Services Employment and Reemployment Rights Act ("USERRA"), 38 U.S.C. § 4301 et seq.
- (d) Employees on military leave for required annual training shall be eligible for a salary differential equivalent to their regular base pay less military pay for a period not to exceed a total of 15 working days in the calendar year.
- (e) To receive payment of the salary differential, an employee must file with the personnel department a copy of his/her official orders prior to commencement of the leave; upon the employee's return, s/he must provide the personnel department with a certification from his/her commanding officer of the performance of duty in accordance with terms of the orders.
- (f) Any city employee who enters active duty or is called to active duty, other than for voluntary training, as a result of a reserve or national guard obligation shall receive the difference between his or her city base salary and his or her military pay, provided that the employee's city base pay is greater. This differential shall be paid for a time period up to one year from the date the employee reports to active military service duty and shall cease upon termination of the active duty assignment.
- (g) Other benefits. Eligible city employees shall receive uninterrupted health insurance benefits at the same level as before the employee was called to active duty for a period of up to one year from the date the employee actually reports to active military service. The employee shall also be allowed to continue pension contributions based on his or her normal base pay, and vacation and sick leave shall continue to accrue.
- (h) The employee must notify the director of personnel immediately upon receiving notification of his or her orders to report to active military duty, and provide a hard copy of those orders as soon as they become available.
- (i) The employee must provide the director of personnel with a copy of his or her military pay stub and/or his or her leave earnings statement. Military pay shall be defined as the employee's military base pay plus any additional payments, including, but not limited to, hazardous, flight, combat and temporary assignment pay, but excluding any military housing allowance. Under no circumstances shall the supplemental benefit paid by the city, combined with the employee's military pay, exceed the amount the employee would have received as his or her city base salary.
- (j) An employee shall not be eligible to receive mobilization pay or his/her salary during that period of time after leaving active military duty and before his/her actual resumption of city employment.

- (k) This section shall be reviewed by the administrative board prior to September 11, 2004. Any employee called to active duty up to September 10, 2004, shall be eligible for this benefit.

SECTION 2. This Ordinance shall not apply to any bargaining unit employee, as such term is defined in Section 40-6 of the Wilmington City Code, whose employment is governed by a collective bargaining agreement whose terms conflict with the provisions of this Ordinance.

SECTION 3. This Ordinance shall become effective upon its passage by City Council and approval by the Mayor.

First Reading.....June 5, 2025
Second Reading.....June 5, 2025
Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ____ day of _____, 2025.

Mayor

SYNOPSIS: This Ordinance amends Section 40-338 of the City Code regarding military leave to provide that an employee shall be entitled to a leave of absence not to exceed five years of cumulative service during the employee's entire employment with the City regardless of the employee's date of hire, consistent with the provisions of the Uniformed Services Employment and Reemployment Rights Act ("USERRA"). The terms of this Ordinance shall

not apply to any bargaining unit employee, as such term is defined in Section 40-6 of the City Code, whose employment is governed by a collective bargaining agreement whose terms conflict with the provisions of this Ordinance.

FISCAL IMPACT STATEMENT: The fiscal impact of this Ordinance is anticipated to be *de minimis*.