

# CITY OF CLAYTON, OHIO

ORDINANCE NO. O – 03 –23 - 05

**AN ORDINANCE APPROVING AMENDMENTS TO THE CITY’S PERSONNEL PRACTICES MANUAL AT ARTICLE 3, SECTION K (“PROBATION”) AND ARTICLE 6, ADDING SUBSECTION Q THERETO (“MILITARY LEAVE OF ABSENCE POLICY”)**

**WHEREAS**, pursuant to Charter Section 11.03, Council adopted Ordinance No. O-08-99-15 on October 7, 1999 adopting a Personnel Practices Manual; and

**WHEREAS**, the City Staff has recommended amendment of Article 3, Section K of the Personnel Practices Manual as shown on the attached *Exhibit A*; and

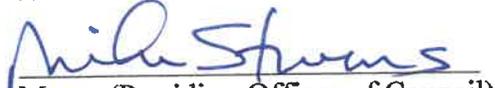
**WHEREAS**, the City Staff has recommended amendment of Article 6 of the Personnel Practices Manual to include Section Q -Military Leave of Absence Policy- as shown on the attached *Exhibit A*.

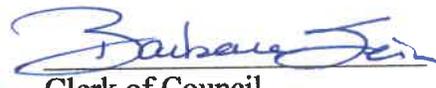
**NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLAYTON, STATE OF OHIO:**

1. That Article 3, Section K, and Article 6 of the City’s Personnel Practices Manual are hereby amended as delineated in the attached *Exhibit A*.
2. That the City Manager is authorized to revise those portions of the Personnel Practices Manual, if any, which are directly impacted by the above language revisions.
3. That in accordance with Clayton Charter Section 4.031 the requirement that this enactment be read on two (2) separate days is complied with by readings on March 2, 2023 and March 16, 2023.
4. That in accordance with Clayton Charter Section 4.031(H) this enactment shall become effective thirty days after its second reading and enactment.

ADOPTED BY COUNCIL ON MARCH 16, 2023.

AUTHENTICATION:

  
Mayor (Presiding Officer of Council)

  
Clerk of Council

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Law Director

CERTIFICATION OF PUBLICATION

This shall certify that that the text of the above referenced enactment or a summary thereof was published once in the following newspaper and a summary posted in three places of public access as designated by Council.

Name of newspaper	Date of publication
<u>Registered Herald</u>	<u>March 22, 2023</u>

  
\_\_\_\_\_  
CLERK

## **ARTICLE 3 EMPLOYEE SELECTION**

### **K. Probation**

Upon appointment by the City Manager, all appointees shall serve a minimum probationary period of twelve (12) months **unless a shorter period is recommended by the Department Director and approved by the City Manager**. Near the end of the probationary period, the Department Director shall evaluate the employee's performance and recommend employment status.

If in the opinion of the City Manager or a Department Director, any employee has not demonstrated the qualifications, judgment, and/or has not progressed to the point where he or she should be after the probationary period, the probation of the employee can be extended for another six (6) months, in three (3) month increments. Extension of probation shall be recommended by the Department Director and approved by the City Manager in writing. Employees promoted within their respective department shall be subject to an additional twelve (12) month probationary period. If the employee is promoted from part-time to full-time and shows adequate performance and progress within the new position, he or she may serve a probationary period of less than twelve (12) months with the approval of the Department Director and City Manager.

Probationary employees may be removed or demoted at any time without cause during the probationary period by simple written notice to the employee by the City Manager. Such removal or demotion shall not be subject to appeal. Copies of all such notices involving removal or demotion shall be filed with the Human Resource Administrator.

## **ARTICLE 6 HOURS OF WORK AND LEAVE**

### **E. Leave of Absence without Pay**

Leave of absence without pay may be granted or extended by the City Manager for such periods of time and for such reason as the City Manager may consider justifiable. Requests for unpaid leaves of absence must be in writing and must demonstrate justification for approval of the request. Any non-medical related leave of absence without pay, **with the exception of military leave**, shall not exceed a 60-day period of time.

Part-time or seasonal employees do not need City Manager approval for leave of absences without pay, unless the leave of absence is longer than one hundred twenty (120) days. If a part-time or seasonal employee does not obtain City Manager approval and does not work for one hundred twenty (120) days, he/she will be separated from their position with the City of Clayton.

The affected employee shall be responsible for the full cost of the premium associated with health, dental and life insurance coverage for any term of absence in which he or she are in an unpaid status. Employees in an unpaid status are not eligible for City funded HSA contributions. A leave of absence without pay due to an FMLA qualifying event is covered by Article 6 Section O of this Personnel Manual.

#### **Q. Military Leave of Absence Policy**

The City of Clayton is committed to protecting the job rights of employees absent on military leave. In accordance with federal and state law, it is the City of Clayton's policy that no employee or prospective employee will be subjected to any form of discrimination based on that person's membership in or obligation to perform service for any of the uniformed services of the United States. Specifically, no person will be denied employment, reinstatement, promotion, or other benefit of employment based on such membership. Furthermore, no person will be subjected to retaliation or adverse employment action because such person has exercised his or her rights under applicable law or this policy. If any employee believes that he or she has been subjected to discrimination in violation of this policy, the employee should immediately contact the Human Resource Administrator.

##### ***Eligibility***

Employees taking part in a variety of military duties are covered under this policy. Such military duties include leaves of absence taken by members of the uniformed services, including active duty, reserve, or National Guard, for training, periods of active military service and funeral honors duty, as well as time spent being examined to determine fitness to perform such service. This policy also covers individuals serving in the active components of the armed forces and the National Disaster Medical System (NDMS) as well as reservists for the Federal Emergency Management Agency (FEMA) when they are deployed to disasters and emergencies on behalf of FEMA. Subject to certain exceptions under the law, these benefits are generally limited to five years of leave of absence.

##### ***Procedures for Military Leave***

Unless military necessity prevents it, or is otherwise impossible or unreasonable, an employee should provide notice of the need for leave in accordance with Article 6 of the Personnel Manual or the applicable bargaining agreement. The supervisor or Department Director must submit a copy of the request for leave to the Human Resource Administration.

HR will review the request for leave of absence, collect any applicable insurance premiums from the employee, generate other applicable documents, and process the leave of absence accordingly.

Employees on temporary or extended military leave may, at their option, use any or all accrued paid employee leave, vacation leave, personal leave, floating holidays, or compensatory time during their absence.

When the employee intends to return to work from a leave of absence of more than 31 days, they must make an application for reinstatement to HR within the application period set forth below. If the employee does not intend to return to work, he or she should notify HR as soon as practicable.

### ***Benefits***

If an employee is absent from work due to military service, benefits will continue as follows:

An employee on extended military leave may elect to continue group medical, dental, and vision insurance coverage for the employee and covered dependents under the same terms and conditions for a period not to exceed 31 days from the date the military leave of absence begins, and paid leave is not utilized, or when paid leave has been exhausted. The employee must pay, per pay period, the premium normally paid by the employee. After the initial 31-day period, the employee and covered dependents can continue group health insurance for up to 24-months at the overall (both employer and employee) premium rate in accordance with the Consolidated Omnibus Budget Reconciliation Act (COBRA). Employees must elect coverage and make the required payments to HR in a timely manner to continue coverage.

The group term life/AD&D insurance provided by the City of Clayton will be in accordance with the terms of the group policy benefit.

Employees do not accrue employee leave, extended sick leave, vacation, or sick leave while on military leave of absence status when service is more than 31 days, and the employee is in unpaid status.

With respect to City's retirement plan (Ohio Public Employees Retirement System or Ohio Police and Fire Pension Fund), upon reinstatement, employees who have taken military leave will be credited for purposes of vesting with the time spent in military service and will be treated as not having incurred a break in service. Immediately upon reinstatement, the employee may, at the employee's election, make any or all employee contributions that the employee would have been eligible to make had the employee's employment not been interrupted by military service. Such contributions must be made within a period that begins with the employee's reinstatement and that is not greater in duration than three times the length of the employee's military service. Employees will receive all associated employer contributions.

### ***Reinstatement***

Upon an employee's prompt application for reinstatement (as defined below), an employee will be reinstated to employment in the following manner depending upon the employee's period of military service:

- Less than 91 days of military service – reinstated to their job with the same pay, benefits, and seniority they would have attained had they not been away on duty; or, if found not qualified for such position after reasonable efforts by the City, in the position in which the employee had been employed prior to military service.

- **More than 90 days and less than 5 years of military service – reinstated to their job with the same pay, benefits, and seniority they would have attained had they not been away on duty or a position of like seniority, status and pay, the duties of which the employee is qualified to perform; or, if proved not qualified after reasonable efforts by the City, in the position the employee left, or a position of like seniority, status and pay, the duties of which the employee is qualified to perform.**

**Employee with a service-connected disability - if after reasonable accommodation efforts by the employer, an employee with a service-connected disability is not qualified for employment in the position he or she would have attained or in the position that he or she left, the employee will be employed in another position of similar seniority, status and pay for which the employee is qualified or could become qualified with reasonable efforts by the City; or, if no such position exists, in the nearest approximation consistent with the circumstances of the employee's situation.**

#### ***Application for Reinstatement***

**An employee who has engaged in military service must, to be entitled to the reinstatement rights set forth above, submit an application for reinstatement to HR according to the following schedule:**

- **If service is less than 31 days - the employee must report for reinstatement at the beginning of the first full regularly scheduled working period on the first calendar day following completion of service and the expiration of eight hours after a time for safe transportation back to the employee's residence.**
- **If service is for 31 days or more but less than 181 days - the employee must apply for reinstatement with HR no later than 14 days following the completion of service.**
- **If service is over 180 days - the employee must apply for reinstatement with HR no later than 90 days following the completion of service.**
- **If the employee is hospitalized or convalescing from a service-connected injury - the employee must apply for reinstatement with HR no later than two years following completion of service.**

#### ***Exceptions to Reinstatement***

**In addition to the employee's failure to apply for reinstatement in a timely manner, an employee is not entitled to reinstatement as described above if any of the following conditions exist:**

- **City of Clayton's circumstances have so changed as to make reinstatement impossible or unreasonable.**
- **Reinstatement would pose an undue hardship upon the City of Clayton.**
- **The employee's employment prior to the military service was merely for a brief, non-recurrent period and there was no reasonable expectation that the employment would have continued indefinitely or for a significant period.**
- **The employee did not receive an honorable discharge from military service.**

#### ***General Benefits Upon Reinstatement***

**Employees reemployed following military leave will receive seniority and other benefits determined by seniority that the employee had at the beginning of the military leave, plus any additional seniority and benefits the employee would have attained, with reasonable certainty, had the individual remained continuously employed. An employee's time spent on active military duty will be counted toward eligibility for FMLA leave. Additionally, upon reinstatement, a covered employee will not be discharged except for cause for up to one year following reinstatement.**

***Documentation***

**The HR Administrator will, upon the employee's reapplication for employment, request that the employee provide City of Clayton with military discharge documentation to establish the timeliness of the application for reinstatement, the duration of the military service, and the honorable discharge from the military service, if applicable.**