



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

June 10, 2013

Ordinance 17605

Proposed No. 2013-0195.2

**Sponsors Gossett, von Reichbauer,
Dembowski and Dunn**

1 AN ORDINANCE relating to personnel policies; providing
2 military leave differential pay, leave accruals and health
3 benefits for King County employees who serve in the
4 United States Uniformed Services for the period of time
5 that they retain reemployment rights; and amending
6 Ordinance 12014, Section 26, as amended, and K.C.C.
7 3.12.260 and Ordinance 9967, Section 2, as amended, and
8 K.C.C. 3.12.262.

9 BE IT ORDAINED BY THE COUNTY COUNCIL OF KING COUNTY:

10 SECTION 1. Findings:

11 A. The federal Uniform Services Employment and Reemployment Rights Act of
12 1994, 38 U.S.C. Secs. 4301 through 4335 ("USERRA"), was enacted to minimize the
13 disruption to the lives of persons serving in the military and to provide guidance for
14 employers. USERRA largely regulates the reemployment of service members and
15 affords certain job-related protections to them related to returning from service. It is the
16 current policy of King County to support to the extent possible those employees who
17 volunteer for or are ordered to serve in the Uniformed Services.

18 B. King County and Washington state provide protections in addition to those
19 required under USERRA. In response to the terrorist attacks on September 11, 2001,

20 many King County employees who were reservists were called to active duty. Soon
21 thereafter and in consideration of employee service in the military, the county provided
22 differential pay to employees who were ordered to involuntary active service on or before
23 September 11, 2001.

24 Also, in consideration of employee service in the military, the county provides
25 medical, dental, vision and life insurance benefits and vacation and sick leave accruals to
26 county employees who volunteers, is ordered to serve, or receives associated training.
27 The county first began offering extended health insurance benefits to reservists serving
28 on active duty status in 1999. Additionally, under RCW 38.40.060, Washington state
29 provides for twenty-one days of paid military leave of absence from work for those
30 public employees, including county employees, engaged in military duty, training or
31 drills.

32 C. Over the last decade, the United States has engaged in continual activations
33 into war zones, and numerous county employees have volunteered for or have been
34 ordered to active duty, including military training duty, for those and other military
35 engagements. County employees have also been deployed to provide similar service for
36 other emergent events.

37 D. In May 2010, the King County council issued a proclamation pledging
38 continued support for King County employees who serve in the Uniformed Services. In
39 November 2011, Ordinance 17223 was enacted, which extended differential pay to all
40 county employees who volunteered or were ordered to serve, not just those who were
41 ordered to involuntary active service on or before September 11, 2001. However, the
42 ordinance provided that the differential pay was only available to those who volunteered

43 or were ordered to serve by December 31, 2012. In 2012 the Washington state Auditor
44 conducted a military pay audit and submitted a management letter expressing concern
45 about the lack of time limitations for military pay and benefits, particularly in light of the
46 guidance provided under USERRA.

47 E. Under USERRA, an employee may perform service for a single period or in
48 cumulative periods totaling five years to retain reemployment rights, although there are
49 exceptions which would extend the five-year period. While USERRA does not require
50 an employer to provide military leave differential pay, where an employer adopts a policy
51 of providing the pay, USERRA will protect the employee's rights under that policy. The
52 county provides differential pay to its employees in active service. USERRA also
53 requires that vacation leave accrues in the same manner for employees in service as for
54 employees on other types of leave. The county provides those vacation leave accruals.
55 The county also allows employees in active service to continue to accrue sick leave in the
56 same manner as employees on other types of leave. While providing sick leave accruals
57 is beyond what is required by USERRA, it provides equity among employees on leave.

58 Limiting the receipt of differential pay and leave accruals to the period of time
59 that they retain reemployment rights under USERRA, which is generally up to five years,
60 comports with the general protections set forth under federal act while still providing
61 additional support to county employees in service.

62 F.1. Under USERRA regulations, nothing precludes the county from being more
63 generous in its health plan coverage or other benefits than the safeguards set forth under
64 USERRA.

65 2. Beginning in 1999, the county offered employees who were called or
66 volunteered to active duty health insurance coverage continuation. Limiting the receipt
67 of health plan coverage to the period of time that they retain reemployment rights under
68 USERRA, which is generally up to five years, continues to provide additional support to
69 county employees in service while ensuring administrative consistency.

70 SECTION 2. Ordinance 12014, Section 26, as amended, and K.C.C. 3.12.260 are
71 each hereby amended to read as follows:

72 A.1. A leave of absence shall be granted, in accordance with applicable
73 provisions of state or federal law, to any employee who voluntarily or upon demand by
74 the Washington state or the United States government leaves his or her position with the
75 county, either to determine his or her physical fitness to enter or to actually enter active
76 duty or training in the ~~((United States Armed Forces, including without limitation))~~
77 United States Uniformed Services, which includes, but is not limited to, the Armed
78 Services, the Washington National Guard, ~~((the United States Air National Guard, the~~
79 United States Army National Guard, and the United States Coast Guard or)) and the
80 United States Public Health Service Commissioned Corps and its reserve. Under the
81 Uniform Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. Secs.
82 4301 through 4335, Uniformed Services may also include an appointee when the
83 National Disaster Medical System is activated.

84 2. The leave of absence shall continue until the ~~((conclusion of the employee's~~
85 active-duty service)) employee has exhausted his or her employment and reemployment
86 rights under the Uniform Services Employment and Reemployment Rights Act of 1994,

87 38 U.S.C. Secs. 4301 through 4335, which is generally up to five years, subject to certain
88 exceptions provided under federal law.

89 B. Employees are required to give their employing county agency advance notice
90 of the need for military leave, preferably in writing, though oral notification is sufficient.
91 Notice should be provided as soon as is reasonable under the circumstances, and, if
92 feasible to do so, service members should provide thirty days advance notice; however,
93 advance notice is not required if prevented by military necessity or otherwise impossible
94 or unreasonable under the circumstances, to the extent provided in federal law and
95 regulations. Written notice should be accompanied by a validated copy of the military
96 orders (~~ordering the active duty or active training duty~~). Oral notice should be
97 supplemented as soon as is reasonable with a validated copy of the military orders.

98 C. An employee who ~~((1))~~ is eligible for benefits under K.C.C. 3.12.040, ~~((2))~~
99 and volunteers or is ordered to serve in the ~~((Armed Forces or the United States Public~~
100 ~~Health Service Commissioned Corps))~~ United States Uniformed Services, as described in
101 subsection A.1. of this section, or to receive associated training that requires a leave of
102 absence from the employee's county position, and ~~((3))~~ has exhausted annual military
103 leave provided pursuant to state and federal law or a collective bargaining agreement,
104 shall be granted a paid leave of absence from the employee's county position at the
105 employee's regular base rate of county pay less the amount of the employee's regular base
106 rate of military pay to which the employee is entitled. The paid leave of absence shall
107 continue until the lesser of the conclusion of the employee's ~~((active duty))~~ service in the
108 ~~((Armed Forces or the United States Public Health Service Commissioned Corps. This~~
109 ~~section applies only to employees who volunteer or are ordered to serve in the Armed~~

110 ~~Forces or the United States Public Health Service Commissioned Corps no later than~~
111 ~~December 31, 2012, or whatever later date the council might designate by ordinance))~~
112 United States Uniformed Services, or until the employee has exhausted his or her
113 employment and reemployment rights under the Uniform Services Employment and
114 Reemployment Rights Act of 1994, 38 U.S.C. Secs. 4301 through 4335, which is
115 generally up to five years, subject to certain exceptions provided under federal law.

116 D. Receipt of the pay provided for in the preceding section is contingent upon the
117 employee providing the employing county agency with supporting documentation
118 verifying:

- 119 ~~((4))~~ 1. ~~((1))~~The employee's rank~~((2))~~;
- 120 2. ~~((1))~~That the employee is on active duty~~((3))~~; and
- 121 ~~((3) the amount of military pay to which the employee is entitled))~~ 3. The
122 employee's military pay grade statement and military pay grade change statement.

123 SECTION 3. Ordinance 9967, Section 2, as amended, and K.C.C. 3.12.262 are
124 each hereby amended to read as follows:

125 A. An employee who is eligible for benefits under K.C.C. 3.12.040 and who
126 volunteers or is ordered to serve in the ~~((Armed Forces or the United States Public Health~~
127 ~~Service Commissioned Corps))~~ United States Uniformed Services, as described in K.C.C.
128 3.12.260.A.1, or to receive associated training that requires a leave of absence from the
129 employee's county position, shall continue to receive medical, dental, vision~~((3))~~ and life
130 insurance benefits, and shall continue to accrue vacation and sick leave~~((, until the~~
131 employee's active duty service in the Armed Forces or the United States Public Health
132 Service Commissioned Corps)). Receipt of medical, dental, vision and life insurance

133 benefits and vacation and sick leave accruals shall continue until the lesser of the
134 conclusion of the employee's service in the United States Uniformed Services, or until
135 the employee has exhausted his or her employment and reemployment rights under the
136 Uniform Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. Secs.
137 4301 through 4335, which is generally up to five years, subject to certain exceptions
138 provided under federal law.

139 B. Receipt of medical, dental, vision((;)) and life insurance benefits and leave
140 accruals is contingent upon the employee providing his or her employing county agency
141 with supporting documentation verifying that the employee is ((~~on active duty~~)) in
142 service. The documentation shall be provided by the employee upon commencing
143 military leave, annually in September and upon leaving military service.

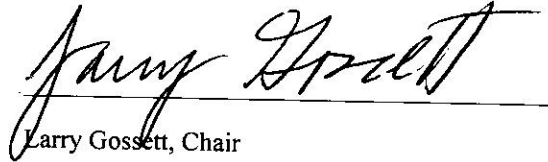
144 **SECTION 4. Severability.** If any provision of this ordinance or its application to

145 any person or circumstance is held invalid, the remainder of the ordinance or the
146 application of the provision to other persons or circumstances is not affected.
147

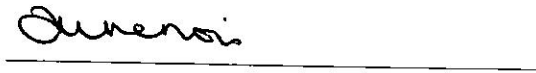
Ordinance 17605 was introduced on and passed by the Metropolitan King County Council on 6/10/2013, by the following vote:

Yes: 7 - Mr. Phillips, Mr. Gossett, Ms. Patterson, Ms. Lambert, Mr. Dunn, Mr. McDermott and Mr. Dembowski
No: 0
Excused: 2 - Mr. von Reichbauer and Ms. Hague

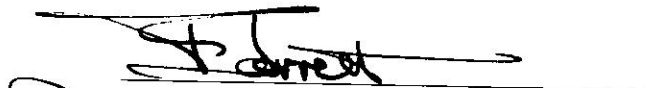
KING COUNTY COUNCIL
KING COUNTY, WASHINGTON


Larry Gossett, Chair

ATTEST:


Anne Noris, Clerk of the Council

APPROVED this 13th day of June, 2013.


Dow Constantine, County Executive

Attachments: None

RECEIVED
2013 JUN 13 PM 4:02
CLERK
KING COUNTY COUNCIL

Mike Struse

Ordinance Review Form

- Dept of Adult & Juvenile Detention
- Dept. of Development & Environmental Svcs.
- Dept. of Natural Resources and Parks
- Dept. of Transportation
- Office of Performance, Strategy, and Budget
- Dept. of Community & Human Services
- Dept. of Executive Services
- Dept. of Public Health
- Office of Labor Relations
- KCIT

Return to the Executive by 6-18-13

Title Summary <u>Ordinance 17605 - Personnel Policies - Military</u> <u>leave differential pay, leave accruals and health</u> <u>benefits - substituted -</u>
--

Recommendations

- _____ recommends the Executive:
- Sign the ordinance HRD CONCURS - OK TO SIGN
 - Allow the ordinance to lapse into law without signature
 - Veto the ordinance (attach a letter for the Executive's signature explaining why the ordinance is being vetoed)

Changes made to the ordinance by Council and the reason why:

MINOR TECHNICAL AMENDMENT TO BETTER ALIGN
PC DEFINITION OF "WHO IS ELIGIBLE FOR A LEAVE OF ABSENCE"
WITH TITLE IV, SECTION 41 OF US CODE.

We have identified the following problems with the ordinance:

NO PROBLEMS

MIKE STRUSE 6/12/13
 Name date

Executive Review

 Name date

Received from Council _____ Due back to Council _____

Some of these protections already existed in section 3.12.260 and 3.12.262 of the King County Code (Attachment 3), but they did not provide for paid leaves of absence.

Both state and federal law also provides support for employees who are serving in the military. Section 38.40.060 of the Revised Code of Washington (Attachment 5) provides for 21 days of paid military leave of absence from work per year for public employees who are members of the Armed Forces, the National Guard, or the Armed Forces Reserves, so that they can attend required military duty, training, or drills. The federal Uniform Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301 through 4335 ("USERRA"), largely regulates the reemployment of service members and affords certain job-related protections to them related to returning from service.

It continues to be the policy of King County to support to the extent possible those employees who are serving their country in the Uniformed Services. In May 2010, the King County Council issued a proclamation pledging continued support for King County employees who serve in the Uniformed Services (Attachment 6).

Still, there was a gap in the existing support provisions. Consequently, the Council passed ordinance 17223, in November 2011, which extended differential pay to all county employees who volunteered or were ordered to serve, not just those who were ordered to involuntary active service on or before September 11, 2001. A sunset provision provided that only those employees in service no later than December 31, 2012, could receive the differential pay. Currently, this sunset provision has not been adjusted.

As a result, the County's military leave and pay practices which were in place under the 2001 Executive Order and the King County Code (before Ordinance 17223), realistically, remain the status quo. With that, the gap in the existing support provisions has resurfaced. Further, the Washington State Auditor conducted a military pay audit and submitted a Management Letter to the County expressing concern about the failure to address a period of duration for leave and the receipt of military pay and benefits for those in service, particularly in light of the guidance provided under USERRA.

Proposed Ordinance 2013-0195 would fill the gap in existing support provisions through the following:

1. Provide clarification on what qualifies as "Uniformed Service";
2. Provide military leave differential pay, leave accruals and health benefits for all King County employees who serve in the Uniformed Services; and
3. Provide specification on the duration for receipt of pay and benefits.

ANALYSIS

Provide clarification on what qualifies as "Uniformed Service"

Council staff has identified an issue with Section 2, Subsection A of the proposed legislation, which defines who is eligible for a leave of absence. The County definitions differ from the Title 10, Section 101 of the United States Code.

As it is proposed now, those serving or called to serve in the "United States Uniformed Services (Uniformed Services), which includes, but is not limited to, the Armed Services, the Washington National Guard, the United States Air National Guard, the United States Army National Guard, and the United States Coast Guard and its reserve, and the United States Public Health Service

Mike Strase

Ordinance Review Form

- Dept of Adult & Juvenile Detention
- Dept. of Development & Environmental Svcs.
- Dept. of Natural Resources and Parks
- Dept. of Transportation
- Office of Performance, Strategy, and Budget
- Dept. of Community & Human Services
- Dept. of Executive Services
- Dept. of Public Health
- Office of Labor Relations
- KCIT

Return to the Executive by 6-18-13

Title Summary Ordinance 17605 - Personnel Ordinance - Military
leave differential pay, leave accruals and health
benefits - substitute -

Recommendations

_____ recommends the Executive:

- Sign the ordinance
- Allow the ordinance to lapse into law without signature
- Veto the ordinance (attach a letter for the Executive's signature explaining why the ordinance is being vetoed)

Changes made to the ordinance by Council and the reason why:

We have identified the following problems with the ordinance:

Name _____ date _____

Executive Review

Name _____ date _____

Received from Council _____ Due back to Council _____