

## RESOLUTION 2023-32

### A RESOLUTION OF THE BOARD OF DIRECTORS OF THE BEAUMONT-CHERRY VALLEY WATER DISTRICT AMENDING THE DISTRICT'S POLICIES AND PROCEDURES MANUAL ADOPTING THE POLICY 3235 MILITARY LEAVE

**WHEREAS**, on March 18, 2009 the Board of Directors of the Beaumont-Cherry Valley Water District adopted Resolution 2009-05, establishing a Policy and Procedures Manual applicable to Board of Directors and District staff; and

**WHEREAS**, upon review and discussion, the Personnel Committee of the Board of Directors has recommended revisions to the Policy and Procedures Manual based on advice given by the District's legal counsel and human resources consultant; and

**WHEREAS**, the Board of Directors has reviewed and considered the new Military Leave policy attached hereto as Exhibit A, finds the new policy relevant and acceptable, and it to be in the best interests of the District that the following actions be taken,

**NOW THEREFORE, BE IT RESOLVED** by the Board of Directors of the Beaumont-Cherry Valley Water District that the new Military Leave policy be adopted as follows:

The new policy is added to the BCVWD Policies and Procedures Manual:

Attachment	Policy No.	Title
Exhibit A	3235	Military Leave

**ADOPTED** this 13<sup>TH</sup> day of DECEMBER, 2023, by the following vote:

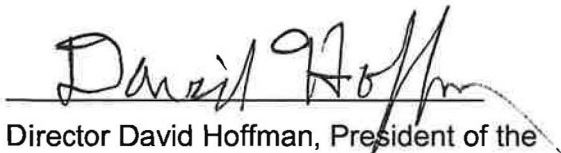
AYES: COVINGTON, HOFFMAN, RAMIREZ, SLAWSON, WILLIAMS

NOES:

ABSTAIN:

ABSENT:

ATTEST:



Director David Hoffman, President of the  
Board of Directors of the  
Beaumont-Cherry Valley Water District



Director Daniel Slawson, Secretary to the  
Board of Directors of the  
Beaumont-Cherry Valley Water District

Attachment: Exhibit A - Policy 3235

## EXHIBIT A

**POLICY TITLE:** MILITARY LEAVE  
**POLICY NUMBER:** 3235

### 3235.1 Purpose.

Military leave is governed by state and federal law. (Military and Veterans Code §§ 389 et seq. and the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. §§ 4301 et seq.) The intent of this policy is to set out the basic parameters of applicable law and is not intended to expand any rights beyond those provided by law, except as specifically stated herein. In the event of any inconsistency between this policy and applicable law, the federal or state law will prevail.

3235.2. Employees who are or become a member of the reserve corps of the Armed Forces of the United States, and eligible forces in section 3235.5 below shall be entitled to leaves of absence and employment rights and privileges provided by the Military and Veterans Code of the State of California.

3235.3 Military Leave shall be in accordance with Federal and State Law and will correlate with the District's "most favorable" benefits.

3235.4 A Beaumont-Cherry Valley Water District regular or part time employee may be entitled to the following rights as outlined below:

3235.5 **Eligibility.** Eligible employees are members of the Armed Forces of the United States (including the US. Air Force, Army, Navy, Marine Corps, Space Force, Coast Guard, Revenue Marine Service, and the Army and Navy Nurse Corps), the National Guard, the commissioned corps of the National Atmospheric Administration, the California State Guard (Military Reserve), Federal Emergency Management Agency reserves, the National Disaster Medical System (NDMS) and the commissioned corps of the Public Health Service (PHS), or as otherwise described in federal and state law.

### 3235.5.1 Definitions.

3255.6.1 **Military Leave:** the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority, and includes active duty, active duty for training, initial active duty for training (weekend drills), full-time National Guard duty, and a period for which an employee is absent for the purpose of an examination to determine the fitness of the person to perform any such duty.

3235.6.2 **Active Duty:** ordered duty as a member of a reserve component of the Armed Forces of the United States, as a member of the National Guard or Naval Militia.

3235.6.3 **Inactive Duty:** drills and other types of training performed periodically by reserve and National Guard members whose status is inactive and does not change to active during the time of their participation. This is usually two (2) days per month for most reserve units to drill, or as otherwise provided by law.

3235.6.4 **Annual Training:** the District grants short-term military leave for annual training such as active duty military training, encampment, naval cruises and special exercises.

3235.6.5 **30-day period:** The first 30 calendar days of any military leave of absence. Military leave begins on the first day of ordered duty.

3235.6.6 **One Year of public agency service:** Includes the combination of all employment by BCVWD within one calendar year prior to the eligible leave.

### 3235.7 Types of Leave

3235.7.1 **Long-Term Military Leave:** an order to report for active duty in the Armed Forces, National Guard or Naval Militia for a period in excess of one hundred and eighty (180) days.

3235.7.2 **Temporary Military Leave:** an order for military duty for purposes of active military training, inactive duty training, encampment, naval cruises, special exercises or like activity, providing that the period of ordered duty does not exceed one hundred and eighty (180) calendar days, including travel time involved in going to and returning from that duty. (MVC § 395(a))

3235.7.3 **War or National Emergency Leave:** leave when the President of the United States has determined that it is necessary to augment the active forces for any operational mission, or in time of a national emergency declared by the President or the Congress of the United States.

3235.7.4 **Emergency Military Leave:** military leave for members of the National Guard during such time as the Governor of California may have issued a proclamation of a state of extreme emergency under the provisions of Section 143 or 146 of the Military and Veterans Code or during such time as the National Guard may be on active duty for one or more situations described in more detail in Section 146 of the Military and Veterans Code. (MVC §395.05 (a)). The leave period is not to exceed the duration of the emergency and time required to travel to and from duty.

3235.9 **Notice and Orders.** Employees who have been ordered to military service shall provide advance notice (orally or in writing) as soon as practicable to their immediate supervisor or department head unless military necessity prevents the giving of notice, or the giving of notice is impossible or unreasonable. A copy of military orders and/or the annual drill schedule must be submitted as soon as available. Official orders are required for periods of military leave exceeding thirty (30) days and may be required for other periods of military leave.

3235.10 **Length of Leave.** The length of military leave is the period of active duty not including travel time going to and returning from such duty unless the orders provide for additional travel time.

3235.10.1 To receive the rights and benefits of emergency military leave, an employee must begin active duty within 10 calendar days after:

- (1) the last day physically worked, or
- (2) the last day on vacation or compensating time off before the active duty date.

3235.11 **Pay While on Military Leave.** Pay means compensation that is equal to the employee's regular gross pay for the days and hours that the employee is normally scheduled to work. This involves the number of working hours the employee would normally work during a period of 30 calendar days and does not include overtime. This does not represent 30 workdays of pay.

3235.11.1 The District will pay the salary of an employee with one year of service to BCVWD on qualifying military leave up to a maximum of 30 calendar days one instance per year commencing on the time the employee is called for active duty for short- and long-term military leave.

3235.11.2 Employee shall be responsible to pay the required employee and dependent contributions, if any, toward any benefits.

3235.11.3 Except as otherwise provided by law or a duly adopted resolution, ordinance, memorandum of understanding, or this policy, an employee on active military duty whose gross military pay is less than his/her gross basic state pay is entitled to a differential pay for the duration of the Military Leave, computed as follows:

- (1) Determination of the monthly rate of both basic state pay and military pay including additional military compensation and overtime pay received, regardless of work hours for both the District and the military service in a month.

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(2) Subtracting the difference in military pay including additional military compensation received from gross basic state pay each month for the determination of the differential pay.

3235.11.3 (a) Employee on a military leave is responsible to provide Payroll Department their pay stub/s from the military service every first day of the month, after 30 calendar days paid period. Differential pay also accounts for the excess days incurred following the first day of the second month of active military service.

3235.11.4 If an employee is on active duty that extends from one fiscal year into the next fiscal year, the number of calendar days falling in the second calendar year will be included in the calculation of the 30 calendar day period for the second fiscal year.

3235.11.5 An employee on military leave is entitled to salary and benefits as provided by law or as outlined if:

(1) Employee has been in the service of the District for a period of not less than one year immediately prior to the day on which the absence begins

(2) There has been no break in the continuity of service to the District, and

(3) The employee has 26 qualifying pay periods of District service immediately prior to the active duty date, constituting one year of service.

3235.11.6 Unpaid period. An employee is not paid for the time between release from active military duty and reinstatement to District service.

3235.11.7 The District does not pay for Inactive Duty Training (MVC 395.01(b))

### **3235.12 Travel Time.**

3235.12.1 Travel time is not included in military leave for purposes of pay unless the orders clearly state travel time is part of the active duty.

3235.12.2 An employee may use the day prior to the active duty date for travel unless the orders indicate otherwise. If traveling on a working day, the employee may use any accrued paid time off except sick leave to receive pay for the travel time.

3235.12.3 If travel time is used, the District must consider the travel time when computing whether the employee qualifies for pay.

### **3235.13 Inactive Duty Training.**

3235.13.1 Inactive duty such as scheduled reserve drill periods also qualifies for a military leave of absence.

3235.13.1 The District does not grant paid time off for inactive duty leaves.

3235.13.2 An employee may use any accrued paid time off except sick leave to attend scheduled reserve drill periods or perform other inactive duty reserve obligations.

### **3235.14 Health Insurance and Insurance Premium Benefits.**

3235.14.1 Long Term or Temporary Military Leave. BCVWD will continue to pay its designated contribution toward the cost of health and life insurance premiums for the employee and any dependents for the length of military leave, whether such leave is paid or unpaid.

**3235.15 Retirement Benefits:** An employee on military leave retains membership in the California Public Employees' Retirement System (CalPERS). While on unpaid military leave, retirement contributions are not deducted from the employee's payroll. An employee may apply for CalPERS service credit for military duty by contacting CalPERS. The employee bears the cost of service credit, unless the employee qualifies for no member cost.

**3235.16 Other Benefits:** BCVWD offers additional benefits such as supplemental insurance, an employee assistance program, and others. Questions regarding other benefit plans should be referred to Human Resources.

**3235.17 Notification of Intent Not to Return.** Any employee on military leave who knowingly provides written notice of intent not to return to his or her position of employment after service in the Armed Forces (uniformed services) is not entitled to rights and benefits that are not determined by seniority as are generally provided by the District to employees having similar seniority, status, and pay who are on furlough or leave of absence under a contract, agreement, Section, practice, or plan in effect at the commencement of such service.

### **3235.18 Vacation, Sick Leave, Holiday Pay**

#### **3235.18.1 Vacation and Sick Leave**

(a) An employee on military leave will continue to accrue vacation and sick leave for up to one hundred and eighty (180) days. Upon return, these credits will be given at the same rate that would have applied if the employee had remained on the job.

(b) After War or national emergency military leave: Employee is eligible to receive vacation and sick leave for up to 24 months, based on the length of military leave. Employee begins earning vacation and sick leave immediately upon return at the rate they would have received had they remained on the job.

(c) All military service will be counted as District service for the purpose of vacation benefits accrual.

(d) Unused vacation or sick leave will be credited upon the employee's return to work.

**3235.18.2 Holiday Pay:** An employee will be paid for any BCVWD holidays that fall during a period of military leave to the extent that the employee would otherwise be eligible for holiday pay.

**3235.18.3** While on military leave an employee may draw from accrued paid time off, except for sick leave, at any time. Human Resources must be notified to process this request. (38 U.S.C. §4316)

#### **3235.19 Reinstatement.**

**3235.19.1** Reinstatement rights will be as provided by state and/or federal law.

**3235.19.2** If the employee was serving in a probationary period at the time of military leave the time remaining to be served in the probationary period must be completed upon return.

**3235.19.3** To return to the job after completing military leave, the employee should contact Human Resources or the Director of Finance and Administration to request reinstatement. A written request is encouraged.

(a) **Military Leave of 30 Days or Less:** An employee performing 30 days or less of military service must report back to work at the beginning of the next regularly scheduled work shift that begins after the employee's safe return home plus 24 hours. If reporting back to work within this time period is impossible or unreasonable through no fault of the employee, the employee must report back to work as soon as possible after the employee's safe return home plus 24 hours.

(b) **Military Leave of 31 Days to 180 Days:** An employee returning from 31 days to 180 days of military leave must submit notice for reemployment no later than 14 days after completion of military service. If submitting the notice within 14 days is impossible or unreasonable through no fault of the employee, the employee must submit a notice for reemployment on the next first full calendar day when submission of the notice becomes possible.



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- (c) **Military Leave of 180 Days or More:** An employee returning from 180 days or more of military leave must submit a notice for reemployment no later than 90 days after the completion of military service.
- (d) **Illness or Injury Incurred During Performance of Military Service:** An employee who is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of military service must either report to HR or submit a notice for reemployment (in the case of an employee described in Subsections ii and iii above) at the end of the period that is necessary for the employee to recover from such illness or injury. Such period of recovery may not exceed two (2) years.
- (e) **Notice of Reemployment Requirements:** A notice or application for reemployment may be oral or written, however a writing is strongly encouraged. Additionally, a copy of the military separation document will be required to submit with the notice. The separation document may be:
  - Department of Defense Form 214 (DD214) or
  - any other correspondence which either identifies the branch of service or is printed on the official letterhead of the branch of the military service.

### 3235.19.4 The military separation document must provide:

- The condition of the employee's release from the military service (for example, "honorable," "general," "under honorable conditions" are considered satisfactory discharges),
- The date the employee entered active duty, and
- The date the employee was released from duty.

**3235.20 Reemployment Position:** An employee returning from military service will be placed in the reemployment position with the pay, rights and benefits required by law. Generally, the returning employee is returned to the same or equivalent position with equivalent benefits, pay and other terms and conditions of employment and without loss of job seniority or any other status or benefits accrued prior to or during military leave, provided the employee would still be employed if military leave had not been taken.

**3235.20.1** If an employee has not yet completed his/her probationary period at the time his/her military leave commences, his/her probationary period must be completed upon reinstatement. Time spent on military leave(s) shall not count toward completion of a probationary period. An employee's probationary period will be extended by the length of the military leave, and is further subject to any other requirements of the Personnel Rules and Regulations, Memoranda of Understanding, and/or Department-specific policies.

**3235.20.2** If the employee's position has been abolished or otherwise has ceased to exist during the employee's absence, the employee will be reinstated to a position of like seniority, status, and pay if a position exists, or if no position exists the employee will have the same rights and privileges as though he or she had occupied the position when it ceased to exist.

### 3235.21 Employees with Less than One Year of Service.

**3235.21.1** If an employee has served less than one year of employment with BCVWD, any periods of military leave will be unpaid.

**3235.21.2** For an employee with more than thirty (30) days employment but less than one year of employment with BCVWD, the employer's designated contribution toward the cost of health and insurance for the employee and dependents will be paid up to four (4) months while the employee is on military leave.

3235.21.3 An employee with less than one year of service with BCVWD may use accrued vacation time, holidays or other compensatory time, except for sick leave, for any military leave. Benefits shall continue to accrue normally during any paid leave period.

3235.22 **Military Family Leave.** An employee who is a military spouse may be eligible for unpaid family leave for up to ten (10) days. (MVC §395.10)

3235.22.1 For an employee to qualify for this unpaid leave, the spouse must meet the following conditions:

- (a) Is a member of the U.S. Armed Forces, National Guard, or Reserves; and
- (b) If a member of the U.S. Armed Forces, has been deployed during wartime to an area designated as a combat theater or combat zone; and
- (c) If a member of the National Guard or Reserves, has been ordered to active duty during a period of military conflict, pursuant to Sections 12301 or 12302 of Title 10 of the U.S. Code or Title 32 of the U.S. Code.

3235.22.1.1 When requesting this unpaid leave, the military spouse must provide documentation to BCVWD that shows both the requested leave and the spouse's deployment will occur during the same period.

3235.23 **Special Protection Against Discharge, Except for Cause:** Under certain circumstances, an employee cannot be discharged for a period of time without cause after returning to their employment with the District.

3235.23.1 Pursuant to USERRA, a reemployed employee may not be discharged without cause (1) for one year after the date of reemployment if the person's period of military service was for 181 days or more; or (2) for 180 days after the date of reemployment if the person's period of military service was for 31 to 180 days.

3235.23.2 This special protection provision applies even if the employee was in an at-will or probationary status before leaving for service. As applied in this policy, "cause" shall have the same meaning as set forth in the applicable provision of the Personnel Rules and Regulations, memorandum of Understanding, employment contract, or Department policy, whichever governs the employee's relationship with the District.

3235.24 **Discrimination and Retaliation Prohibited.** Discrimination and retaliation against persons who have served or are serving in the uniformed services, including those who apply to be a member of or to perform service, are prohibited, as provided in Federal and State laws.

