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## **UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT** **(USERRA, *Reference CLRC Meeting No. 11-03, Item 1 and CLRC Meeting No. 26-06, Item 1*)**

### **I. Introduction**

It is and has been the intent of the Coast Parties to comply with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and any applicable state laws. For purposes of benefits under the PCL&CA, the Coast Parties additionally intend by this Policy to provide some benefits, as stated here, greater than may be required by these laws as they currently exist. In doing so, the Coast Parties do not waive any applicable defenses to any claim which may be raised outside the context of the PCL&CA and do not intend to suggest that any greater remedies are available outside the PCL&CA than are provided by statute.

This Policy explains the benefits available to those eligible as a result of leaves of absence covered under USERRA, which became effective October 13, 1994. Any benefits sought as a result of military service pre-dating USERRA will be addressed on a case-by-case basis and with consideration of the then-applicable statute(s). This Policy clarifies, updates, and replaces Section 6.6 of the Coastwise Rules, all PCL&CA provisions, JCLRC Meeting Minutes, Arbitration Awards, etc. regarding military service.

### **II. Who Is Covered By This Policy?**

Under USERRA, a covered employee may take unpaid leave(s) “necessitated by reason of service in the uniformed

services” not to exceed a cumulative total of five years (with certain statutory exceptions, such as service required by a declared war or national emergency) (“Uniformed Services Leave”) and, upon returning and meeting certain statutory requirements, including timely reapplication/return to work, promptly be reinstated.

Covered Employees are those who, prior to Uniformed Services Leave, performed longshore or clerk work under the PCL&CA that was not for a “brief, nonrecurrent period” (for which “there is no reasonable expectation that such employment will continue indefinitely or for a significant period”). Therefore, only employees on jointly recognized lists (Unidentified and Identified Casuals, Class “B” and Class “A” Registrants) who are of active status and are eligible for dispatch at the time when they begin taking Uniformed Services Leave will be eligible for coverage under this Policy.

An employee is on a “jointly recognized list” only if Coast Labor Relations Committee or Joint Port Labor Relations Committee meeting Minutes adds the employee by name to the Casual, Class “B” or Class “A” ranks, or adopts into those ranks a written list containing the employee’s name and the employee has not subsequently been removed from those ranks. A permanent revocation of dispatch rights or the permanent placement on a non-dispatch list is conclusive evidence of an employee’s removal from the Casual, Class “B” or Class “A” ranks. However, other evidence, such as the fulfillment of the reason the parties created a “jointly recognized list,” also may be evidence of an employee’s removal from those ranks.

Covered Service means voluntary or involuntary active duty, active duty for training, initial active duty for training,

inactive duty training, full-time National Guard duty, and absences for certain related exams. This includes periodic/intermittent obligations (for example, annual National Guard and/or Reserve obligations, for weekend drills, training exercises, etc.). Covered “uniformed services” mean the Armed Forces (the Army, Navy, Air Force, Marine Corps, Coast Guard), including Reserve units, the Army National Guard and Air National Guard, the Commissioned Corps of the Public Health Service, and any other categories designated by the President in time of war or national emergency.

### **III. What Must Be Done To Obtain Benefits Under This Policy?**

To be entitled to benefits under this Policy, and consistent with USERRA, an employee (or his/her military representative) must: (1) provide advance notice of military service obligations to the JPLRC, care of PMA (preferably in writing), unless giving advance notice is impossible, unreasonable, or precluded by military necessity – in that case, notice must be provided as soon as possible; (2) complete his/her service on honorable terms and not be disqualified for various reasons set forth in USERRA; and (3) promptly (as defined below) upon completing military service seek reinstatement from the JPLRC, care of PMA (preferably in writing), and provide available documentation of the length and character of service and nature of discharge.

Requests for reinstatement, or seniority credits, must be filed with the JPLRC within ninety (90) days of completing any service. Employees are encouraged to bundle together timely requests for seniority credits, so that the JPLRC may address them all at once. However, seniority credits will only be

provided through the return-to-work-notice periods provided by statute, which are explained in Section IV below and vary depending on how long the employee was on leave.

Any employee who is injured or ill as a result of his/her Uniformed Services Leave is encouraged to contact the JPLRC at his/her earliest opportunity and to review the ADA Policy & Procedures.

To the extent provided by USERRA, reinstatement may be denied where circumstances have changed which make reemployment impossible, unreasonable or an undue hardship (where, for example, a position was eliminated for unrelated business reasons). The Coast Parties do not intend by this Section to modify their rights or obligations under the PCL&CA.

#### **IV. What Benefits Are Available Under This Policy?**

##### **A. Reinstatement, Hours Crediting, Registration**

USERRA generally provides for reinstatement to the position, along with applicable benefits, an employee would have held had s/he not taken Uniformed Services Leave. Reinstatement includes seniority and seniority-based benefits (for example, wage rates, registration, promotion, clerk transfers, welfare eligibility, pension credits) that would have been attained had the employee remained continuously employed (generally, only those which come about as a result of how long one is in or works in the Industry). USERRA does not entitle service members to any benefits to which they would not otherwise be entitled had they “remained continuously employed.”

When a JPLRC receives a request for reinstatement or other benefits under USERRA, it shall first determine whether the individual is entitled to benefits under USERRA (covered

employee, covered service, advance notice, timely request to return to work or receive credit, honorable terms of discharge, etc.). The JPLRCs have the discretion to waive the requirements for advance notice and/or to extend the 90-day time period for seeking reinstatement for leaves which began or were completed before this Policy was adopted.

Where the JPLRC determines that an employee is entitled to benefits under USERRA, reinstatement with appropriate seniority crediting shall be provided by calculating an appropriate hours credit. To determine seniority crediting, the JPLRC shall credit a hall employee with eight (8) hours of work for each time his/her plug or dispatch number came up for available work during the period of any Uniformed Services Leave, with the limitation that no more than eight (8) hours shall be credited for each 24 hour period of leave. For any period in which dispatch records are insufficiently available to conduct this review, the JPLRC shall credit a hall employee with the highest hours worked in his/her Port by a similarly situated employee during that period (so, using casual hours where a casual is on leave, Class "B" hall longshore hours where a Class "B" hall longshore employee is on leave, etc.). The JPLRC shall credit a steady employee with all hours provided by his/her steady work guarantee during the period of any Uniformed Services Leave.

The hours credit shall be considered to have accrued over the days, weeks, months or years during which the individual was absent due to Uniformed Services Leave, not to have accrued all at once when the hours credit is provided. While this Policy provides all employees with 90 days to seek reinstatement and seniority credits after returning from leave, seniority

credits will only be provided through the return-to-work-notice periods provided by statute, which vary depending on how long the employee was on leave: for leaves less than 31 days, this means the next workday falling eight hours after service ends; for leaves of 31-to-180 days, this means 14 days after service ends; for leaves of more than 180 days, this means 90 days after service ends. The JPLRC shall advise PMA promptly after completing the calculations so that the hours credit may promptly be entered into PMA's database.

Where a registration, elevation, or clerk transfer took place during the employee's Uniformed Services Leave, and/or prior to entry of his/her hours credits into the PMA database, to determine whether the employee returning from a Uniformed Services Leave should be considered for such registration, elevation or clerk transfer, the JPLRC shall, in addition to calculating the full hours credit described above, calculate how many of the hours credits or other seniority accrued before the generally applicable hours cut-off date (if any) for that registration, elevation or clerk transfer. Where the hours or seniority credit from a Uniformed Services Leave (including obligatory annual exercises – for example, National Guard or Reserve training) would have rendered an employee eligible for a registration, elevation or clerk transfer that occurred during his/her Uniformed Services Leave, the JPLRC shall promptly register, elevate or transfer him/her.

Where the JPLRC does not believe that an individual seeking reinstatement is currently qualified for the position to which s/he would otherwise be reinstated, the JPLRC shall promptly arrange for appropriate training necessary to achieve that qualification.

Appropriate documentation shall be included in the JPLRC minutes addressing USERRA requests. For example, the JPLRC shall include the amount of hours credited, the methodology used, the date range(s) reviewed and to which the credits apply.

### **B. Fringe Benefits**

Uniformed Service Members should direct questions about welfare and pension benefits (if any), to the appropriate plan. It is the intent of the JCLRC that all benefits required by USERRA be provided.

### **V. Statement of Non-Retaliation**

The ILWU and PMA prohibit discrimination or retaliation against anyone because of their past, current or future Uniformed Service Leaves, or for bringing a complaint or participating in proceedings under USERRA or applicable state statutes.

### **VI. Grievance Procedure**

Grievances regarding the treatment of Uniformed Services Leave under this Policy may be filed under Section 17 of the PCL&CA. Those seeking consideration under this Policy and/or grievants are requested to provide available documentation supporting their requests.

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