



SUB-TOPIC

**EXTENDED UNPAID MILITARY LEAVE**

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) protects and gives reemployment rights to employees returning from military service, as long as they have given advance notice to the University of their military service or obligation. It provides protection to members of the U.S. Armed Services (including reservists), the Army National Guard, the Air National Guard, and the commissioned corps of the Public Health Service. USERRA applies to voluntary as well as involuntary military service. It does not apply to active duty service in the State of Texas National Guard.

Eligibility

Individuals who are covered by the USERRA must meet the following conditions for reemployment:

1. must have been employed by The University of Texas at Dallas. (The position that was held must have been of a recurrent nature with reasonable expectation of continuation for a significant period of time.)
2. must have given written or verbal notice to their supervisor prior to leaving the job for military training or service except when precluded by military necessity.
3. must not have exceeded the five-year cumulative limit on period of military service.
4. must have been released from service under conditions other than dishonorable.
5. must report back to their previous job in a timely manner or submit an application for reemployment, with time limits established by law. The time limits are based on the length of military service (see below).

Entitlements of Returning Military Service Member

There are four basic entitlements, provided the individual meets the criteria set forth above:

1. Prompt reinstatement to employment. Generally, reinstatement should occur within a matter of days, but this will depend on the length of the absence.
2. Accrued seniority, as if the employee had been continuously employed. This would include credit for state service for longevity pay and vacation accrual rate, any legislated across-the-board increase that may have been implemented in their absence, and credit towards the Teachers Retirement Service (TRS) if enrolled in that program. The returning employee must be allowed to make up any missed contributions to TRS or the Optional Retirement Program (ORP) over a



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period equal to three times the period of military leave to a maximum of five years. Deposits of the University's contributions toward TRS or the Optional Retirement Program (ORP) will be made upon reemployment.

3. Training or retraining and other necessary accommodations, particularly in cases of long periods of absence or service-connected disability.
4. Special protection against discharge for the twelve-month period following reemployment.

Requirements for Reemployment

For periods of military service of less than 91 days, USERRA requires that the employee is entitled to the job he or she would have attained if the employee had not been called for military service, provided the individual is or can become qualified for the job. If the individual is unable to become qualified for a new job after a reasonable effort by the employer, the person is entitled to the job he or she left.

For periods of military service of 91 days or more, the individual is entitled to the job he or she would have attained if the individual had not been called for military service, or in a position of "like seniority, status, and pay," the duties of which the individual is qualified to perform. If not qualified to perform the duties of this new position after reasonable effort by the employer, the individual is entitled to the job he or she left or a position of "like seniority, status, and pay" that the individual is qualified to perform.

Reasonable efforts are actions, including training, that do not cause an undue hardship to the University.

Obligations of Employees Following Military Service

For periods of military service of up to thirty consecutive days, the individual must report back to work for the first full regularly scheduled work period on the first full calendar day following the completion of the period of service and safe transportation home, plus an eight-hour period for rest. If reporting back to work within this deadline is impossible or unreasonable through no fault of the employee, he or she must report back to work as soon as possible after the expiration of the eight-hour period.



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After a period of military service of 31 to 180 days, the individual must submit a written or verbal application for reemployment with the employer not later than fourteen days after the completion of the period of service. If submitting an application within fourteen days is impossible or unreasonable through no fault of the employee, he or she must submit it as soon as possible thereafter.

After a period of military service of 181 days or more, the individual must submit an application for reemployment not later than 90 days after completion of the period of service. These deadlines to report to work or apply for reemployment can be extended for up to two years to accommodate a period during which a person was hospitalized for or convalescing from an injury or illness resulting from or aggravated by a period of military service. The individual will be required to provide documentation about any delay in reporting for reemployment within the specified time periods.

Reemployment Rights of the Disabled Service Member

The University will make "reasonable efforts" to accommodate persons with a disability incurred during or aggravated by military service. If a person returns from military service with a disability that cannot be accommodated by reasonable efforts, the individual will be reemployed in another position he or she is qualified to perform. This position must be the "nearest approximation" of the position to which the individual is otherwise entitled, in terms of status and pay, with full seniority.

Proof of Military Service for Reemployment Purposes

Following periods of military service of 31 days or more, individuals who wish to return to employment must provide documentation that establishes the length and character of the service and the timeliness of the application for reemployment. Reemployment may not, however, be delayed if documentation is not readily available.

The following documents would satisfy proof of eligibility for reemployment: discharge papers, leave and earnings statements, school completion certificates, endorsed orders, or a letter from a proper military authority.



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Right to Continuation of Benefits During Military Service

When an employee has a period of military service of one calendar month or more, he/she may elect to continue health insurance coverage for him or herself and his or her dependents. If the employee is on leave without pay for an entire calendar month, he/she must pay the entire premium and will not be eligible for premium sharing provided by the state and the University.

If the employee elects coverage, he/she may continue in a leave without pay status for twelve months and continue to pay premiums during that time. If the period of military service exceeds a twelve-month period of leave without pay, the employee is removed from the payroll and is given the opportunity to continue benefits under the Consolidated Omnibus Budget Reconciliation Act (COBRA). If an employee returns after a break-in-service, he/she will be given credit for months of state service equivalent to the months of unpaid military leave, as required by law.

During a period of military leave without pay, individuals will not earn vacation, sick leave or holiday pay, but they will continue to earn state service credit for the months that they are on leave. When they return to work, they will be eligible for reinstatement of any balances of accrued vacation and sick leave that they had had before going on military leave.

Prohibition Against Discrimination

Provisions of the USERRA provide protection against discrimination for individuals returning from military duty:

"A person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in the uniformed services shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation."

"An employer may not discriminate in employment against or take any adverse employment action against any person because such person has taken an action to



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enforce a protection afforded any person under this chapter, has testified or otherwise made a statement in or in connection with any proceeding under this chapter, has assisted or otherwise participated in an investigation under this chapter, or has exercised a right provided for [under USERRA]."

This second provision of the law, prohibits reprisals against any person without regard to military connection who testifies or otherwise assists in an investigation or other proceeding under USERRA.

Procedures

1. An employee eligible under USERRA must notify his or her supervisor verbally or in writing as soon as possible after becoming aware that he/she is being called for extended military service. He/she must also notify the Benefits Section of the Office of Human Resources so that arrangements can be made for insurance coverage.
2. Before departing on military leave, copies of military orders must be provided to the supervisor so that the employee can be placed on military leave. The employee's department will inform the Office of Human Resources that the employee will be on USERRA leave.
3. Provided the employee meets the criteria for eligibility upon return from military service, he/she must contact their former department and the Office of Human Resources. Representatives from the Office of Human Resources will work with the returning individual to ensure that all necessary documentation is provided for reemployment.
4. The Office of Human Resources will work with the employing department to ensure that the reemployment process is facilitated and that the employee is returned to a position that meets the requirements of USERRA.
5. The Office of Human Resources will also ensure that all benefits to which the employee is entitled are reinstated and will provide information to the employee regarding contributions they may make to the retirement plan in which they are enrolled.
6. If the department has a reason to terminate the employee within twelve months of their return to employment, reasons for termination must be reviewed and approved by the Office of Human Resources.