

HEALTH SCIENCE CENTER HANDBOOK OF OPERATING PROCEDURES

Chapter 4	General Personnel Policies	Effective:	January 2003
Section 4.7	Work and Leave Administration	Revised:	February 2009
Policy 4.7.2	Uniformed Services Employment and Re-employment Rights	Responsibility:	Vice President for Human Resources

UNIFORMED SERVICES EMPLOYMENT AND RE-EMPLOYMENT RIGHTS

Policy

The purpose of this policy is to provide for the administration of requirements of the *Uniformed Services Employment and Reemployment Rights Act of 1994*, (USERRA), and the Texas state statutes.

The USERRA protects and gives reemployment rights to Health Science Center 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. See [Section 4.7.3](#) of the *Handbook of Operating Procedures* (HOP) for “State Military Forces and Reserve Duty”.

Eligibility for Re-employment

When returning from military service, the employee may be eligible for a position of like status, pay, and seniority. This eligibility is subject to the employee being qualified for the position. The employee must meet four general criteria to establish eligibility for re-employment at the University after military service:

1. The University was given advance notice of the military service;
2. The employee was gone because of military service less than five (5) years;
3. The employee returned to work or applied for re-employment in a timely manner after completing military service; and,
4. The employee was separated from military service for reasons other than dishonorable conditions.

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Return to Work Requirements

Time frames for the employee to report back to work at the University vary depending on the length of military service.

<u>Time Away in Military Service</u>	<u>When the Employee Must Report to Work</u>
Less than 31 days	Must report to the University by the beginning of the first regularly scheduled work day occurring eight (8) hours after the employee returns home.
More than 30 days but less than 181 days	Must submit an application for reemployment to the University no later than fourteen (14) days after completion of military service.
More than 180 days	Must submit an application for reemployment to the University no later than ninety (90) days after completion of military service.
NOTE: If the employee sustained a service-connected injury/illness, the deadline to re-apply to the University is extended to two (2) years for those hospitalized or convalescing after completion of military service.	

Differential Pay

Under the Texas state statute:

1. The Health Science Center shall provide pay differential if an employee's military pay is less than the employee's state gross pay. In order to determine differential pay, the employee's military "Leave Earnings Statement" (LES) is required. Pay received while assigned to a combat zone, hardship duty pay, and family separation pay is excluded when computing military differential pay. Promotions and changes in allowances could change military pay, which might then affect differential pay. For this reason, the LES should be reviewed on a periodic basis to make sure that differential pay is still applicable and to make sure the amount is still correct. Departments should send a copy of the LES to the Payroll Services Office with a copy to the Office of Human

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Resources (OHR). Differential pay is the individual department's financial responsibility.

2. Only state employees called to active duty in support of the Homeland Security mission under United States Code Title 10 or Title 32 are entitled to military differential pay. Service members involved in routine military training or who are attending military schools are not entitled to this differential pay.
3. Differential pay will be charged to the originally assigned payroll project in the case of MSRDP funds. If the originally assigned payroll project is grant funds or state funds, contact the Budget Office for guidance.

**Insurance Plans
(Benefits)**

1. Employees leaving the University to perform military service have the right to elect up to 24 months of continued coverage in The University of Texas System's health plan. They are not eligible for premium sharing.
2. Employees can choose to drop coverage for themselves, but maintain coverage for their dependents. This option is available for health, dental, vision, long-term care, and accidental death and dismemberment (AD&D) coverages. There are specific exclusions for injury, disability, or death that may be caused by, contributed to, or result from an act of war.
3. When employees return from military duty, they must be reinstated immediately in The University of Texas System's health plan, even if they did not elect to continue coverage. Eligible dependents must be reinstated immediately as well.

Retirement Plans

1. Employees must be allowed to make up any missed contributions to either Teacher Retirement System (TRS) or their Optional Retirement Program (ORP) over a period of time equal to three (3) times the length of military leave up to a maximum of five (5) years.

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2. Deposits of the University's contributions toward TRS or an ORP will be made upon the employee's re-employment at the University.
 3. The same time frames apply for these supplemental retirement programs:
 - a. IRS Sec 403(b) (UTSaver Tax-Sheltered Annuity Program); and,
 - b. IRS Sec 457(b) (UTSaver Deferred Compensation Plan).

**Intermittent
Related Time Off**

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1. Employees may need time off intermittently before military service for brief, but repeated periods to put their affairs in order. For example, time may be necessary to interview child care providers, meet with bank officers regarding financial matters, or seek assistance for elderly parents. The amount of time a department should grant to employees depends on:
 - a. Duration of the military service;
 - b. Amount of notice supplied to employees called to military service; and,
 - c. Location of this service.
 2. These intermittent times off are covered and protected leave, but are not part of the cumulative five (5) year limit. (See "Eligibility for Re-employment" above for an explanation of the five (5) year limit.)

**Employment
Status While on
Military Leave**

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1. An employee's status while on extended military leave is "Leave of Absence" (LOA).
 2. An employee may choose to terminate employment rather than be placed on LOA.
 3. Employees cannot waive their rights under USERRA. This means

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that they still hold the right to re-employment, benefits, etc., even if they chose to terminate employment with the University.

**State Service
Months and Leave
Accruals**

1. Employees must receive credit for state service months covering their time in the military. Upon their return to the University, employees will have their service months updated by OHR.
 2. Any previously accrued leave balances will be made available to employees when they return from military service. During the time of military service, the employee will not accrue leave balances.
 3. The University may not require employees to use accrued vacation, annual, or any similar leave to cover any part of the time the employees are absent due to military service.
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**Special
Considerations**

1. When employees return from a military LOA, they are entitled to receive immediately any pay increases (across the board, merit, etc.) that were given while they were on LOA.
2. An employee returning from military service is protected from termination without cause according to the following schedule:

<u>Length of Military Service</u>	<u>USERRA Protection from Termination</u>
More than 181 days	1 year
More than 30 but less than 181 days	180 days
30 days or less	Not addressed by USERRA