

Texas Woman's University University Regulation and Procedure

Regulation and Procedure Name: Military Leave for Employees

**Regulation and Procedure
Number: URP: 05.550**

Policy Owner: Finance and Administration

POLICY STATEMENT

Texas Woman's University ("TWU" or "University") is committed to protecting the employment rights of employees absent on military leave. In accordance with the Uniform Service Employment and Reemployment Rights Act ("USERRA") and applicable state laws, it is the University's policy that no employee or prospective employee will be subjected to any form of discrimination on the basis of an individual's membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services. Furthermore, these protections are extended to any individual who assisted in the enforcement of a protection afforded a returning service member under USERRA or applicable state laws.

APPLICABILITY

This policy is applicable to TWU Employees.

DEFINITIONS

1. "Employee" means a regular full-time (100% FTE) staff or faculty member, and regular part-time (50%-99% FTE) staff or faculty member who is employed to work for a period of at least four and one-half months, excluding students employed in positions which require student status as a condition of employment. Hourly paid employees are not eligible for leave. Regular employment may be:
 - a. Full-time, with a normal schedule of forty hours per week; or
 - b. Part-time with a normal schedule of at least 20 but less than forty hours per week.
2. "Federal Fiscal Year" means the 12-month period beginning October 1 and extending through the following September 30.
3. "Service in the Uniformed Services" means 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, full-time National Guard duty, an absence from work for an examination to determine the fitness of the person for any of the preceding types of duty, and funeral honors duty performed by National Guard or reserve members.

4. "Texas Army National Guard" means the Texas Army National Guard, the Texas Air National Guard, the Texas State Guard, or any other military force organized under Texas state law.
5. "Uniformed Services" means the U.S. Armed Forces (Army or Army Reserve, Navy or Navy Reserve, Marine Corps or Marine Corps Reserve, Air Force or Air Force Reserve, Coast Guard or Coast Guard Reserve), the Army National Guard, and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service or any other category of individuals designated by the President of the United States in time of war or emergency.
6. "Workday" means a day on which work is performed as distinguished from a day off.

REGULATION AND PROCEDURE

I. General Information

Benefits eligible employees are entitled to use military leave to accommodate the following:

- A. Service in the Uniformed Services of the United States.
- B. Authorized training or active duty for the state's military forces and members of any reserve branch of the U.S. Armed Forces.
- C. Activation of the state's military forces by the Governor or the federal government.
- D. State employees participating in state or federally authorized urban search and rescue teams.
- E. Duty performed by intermittent disaster response personnel for the Public Health Service, and approved training to prepare for such service.
- F. Any other category of individuals designated by the President of the United States in time of war or emergency.

G. Funeral Honors Duty

1. USERRA's definition of "service in the uniformed services" includes National Guard or reserve members performing authorized funeral honors duty.
2. Funeral honors duty performed by individuals who are not members of the Uniformed Services, such as members of veteran's service organizations, is not "service in the uniformed services" and therefore is not eligible for leave under this policy.

II. Call to National or State Duty or Authorized Training for Duty

A state employee who is called to active duty or authorized training for duty is entitled to a leave of absence of fifteen (15) workdays in each federal fiscal year without loss of pay or benefits. The fifteen (15) workdays need not be consecutive. After exhausting the fifteen (15) workdays of paid military leave, the employee may use accrued vacation or be placed in a leave without pay status for the remainder of the active duty period. An employee who does not use all fifteen (15) workdays of military leave in a federal fiscal year will be allowed to carry forward the unused portion of military leave to the next federal fiscal year, up to a maximum of forty-five (45) workdays.

III. Emergency Military Service and Paid Emergency Leave

- A. As an institution of higher education, the Chancellor and President ("Chancellor") must grant sufficient emergency leave to provide a pay differential if an employee's military pay is less than the employee's state gross pay. The combination of gross military pay and emergency leave pay may not exceed the employee's actual TWU gross pay.
- B. A state employee called to federal active duty for the purpose of providing assistance to civil authorities in a declared emergency or for training for that purpose is entitled to receive paid emergency leave for not more than twenty-two (22) workdays without loss of military leave or vacation leave. The combination of gross military pay and emergency leave pay may not exceed the employee's actual TWU gross pay.

IV. Benefits While on Military Leave

- A. While on military leave, the employee retains any accrued sick or vacation leave. If the employee is out for an extended deployment or training, they are not required to exhaust their accrued sick or vacation leave.

- B. The employee will continue to accrue state service credit for retirement, longevity pay, sick leave, and vacation leave for any month of military leave in which the employee receives any amount of state pay, or while on unpaid military leave due to active duty during a national emergency to serve in a reserve component of the U.S. Armed Forces under the U.S. Code, Title 10 (U.S. Armed Forces), or Title 32 (National Guard).
- C. An employee called to active duty may use any accrued vacation leave, earned compensatory leave, or overtime leave to maintain benefits for the employee or their dependents while the employee is on active duty. Before the employee leaves for active duty, the University shall review with the employee any issues relating to maintaining state health insurance coverage during the employee's active duty, including what the employee needs to do to maintain state health insurance coverage, how health insurance coverage is affected by paid or unpaid leave, and how to pay any premium required for the insurance coverage.
- D. An employee called to active duty may elect to make up any missed retirement program contributions for the period of military service once the employee has returned to their position.

V. Differential Pay

If state employees are called to active duty in support of the Homeland Security mission under US Code Title 10 (US Armed Forces) or Title 32 (National Guard) and their military pay is less than their gross state salary, TWU will grant sufficient emergency leave to provide a pay differential. The combination of military pay and emergency leave pay may not exceed the employee's actual TWU gross pay. Military pay does not include any allowances the employee receives for service in a combat zone, hardship duty, or family separation. To determine initial and ongoing eligibility for the emergency leave pay differential, the employee must submit their Military Leave and Earnings Statement to TWU's payroll department each month.

VI. Procedures for Military Leave

- A. Employees must provide notice of military leave to their immediate supervisor and the Office of Human Resources with advance notice, (either verbal or written) as soon as they have knowledge of upcoming military service. This notice may be provided to the Office of Human Resources by an appropriate military officer. All National Guard and Reserve members are encouraged to provide a copy of orders, the annual drill schedule, or

other type of documentation to their supervisor and the Office of Human Resources. An employee should provide documentation before the commencement of military duty however, to the extent that is not practicable, an employee should provide documentation as soon as it is made available to them.

- B. The employee must meet with the Office of Human Resources to discuss continuation of benefits, the paid or unpaid status of their military leave, and differential pay.
- C. To facilitate participation in military duties as a member of the Texas National Guard or the United States Armed Forces Reserve, supervisors will adjust the work schedule of the employee so that two (2) of the employee's days off work each month coincide with two (2) days of military duty required to be performed by the employee.

VII. Reinstatement of Employment

- A. The employee must notify the Office of Human Resources of their intent to seek reinstatement of their employment at TWU.
- B. To be eligible for reinstatement of employment at the conclusion of military service, the employee's separation from the service cannot be for other than honorable conditions and no later than five (5) years after induction, voluntary enlistment, or call to duty unless qualified under exceptions found in USERRA regulations.
- C. The employee must submit a written application for reinstatement after discharge, separation, or release from military service. Additional documentation that reflects evidence of honorable discharge, separation, or release must be attached to the written application. TWU may not delay or deny reemployment by demanding documentation that does not exist or is not readily available.
- D. Documents that satisfy eligibility for reemployment after a period of military service of more than thirty (30) days include the following:
 - 1. DD (Department of Defense) 214 Certificate of Release or Discharge from Active Duty;
 - 2. Copy of duty orders prepared by the facility where the orders were fulfilled carrying an endorsement indicating completion of the described service;

3. Letter from the commanding officer of a Personnel Support Activity or someone of comparable authority;
 4. Certificate of completion from military training school;
 5. Discharge certificate showing character of service;
 6. Copy of extracts from payroll documents showing periods of service; and,
 7. Letter from National Disaster Medical System ("NDMS") Team Leader or Administrative Officer verifying dates and times of NDMS training or Federal activation.
- E. The period an individual has to make application for reemployment or report back to work after military service is based on time spent on military duty. USERRA provides that a returning employee "be allowed sufficient time to return to their residence and be rested before they are to perform their work."
- F. The time lines for reporting for work or applying for reinstatement of employment are:
1. For a period of service of less than thirty-one (31) days, at the beginning of the first full shift on the first full day following the completion of service, the employee must report for work provided the employee has a period of eight (8) hours to rest following safe transportation to the person's residence. The individual does not need to submit an application of reemployment.
 2. If the individual served between thirty-one (31) and one hundred and eighty (180) days, they must make a verbal or written application for reemployment to the Office of Human Resources no more than fourteen (14) days after completing service. If it is impossible or unreasonable for the employee to apply within fourteen (14) days through no fault of the employee, they must submit the request not later than the "next full calendar day after it becomes possible to do so".
 3. If the individual served more than one hundred and eighty (180) days, they must make a verbal or written application for reemployment to the Office of Human Resources no more than ninety (90) days after completing service.

4. The deadlines to report to work or apply for reemployment can be extended up to two (2) years to accommodate a period during which a person was hospitalized for or convalescing from an injury or illness that occurred or was aggravated during a period of military service.
5. There are exceptions to the five (5) year reinstatement limit, which may increase the maximum military leave time allowed. Employees shall be considered for reinstatement to former employment upon honorable discharge after five (5) years from the date of enlistment or call to active service when:
 - a. Service required beyond five (5) years to complete an initial period of obligated service;
 - b. Service from which a person, through no fault of the person, is unable to obtain a release within the five (5) year limit;
 - c. Required training for reservists and National Guard members;
 - d. Service under an involuntary order to, or to be retained on, active duty during domestic emergency or national security related situations;
 - e. Service under an order to, or to remain on, active duty (other than for training) during a war or national emergency declared by the President or Congress;
 - f. Active duty (other than for training) by volunteers supporting “operational missions” for which Selected Reservists have been ordered to active duty without their consent;
 - g. Service by volunteers who are ordered to active duty in support of a “critical mission or requirement” in times other than war or national emergency and when no involuntary call-up is in effect; and
 - h. Federal service by members of the National Guard called into action by the President to suppress an insurrection, repel an invasion, or to execute the laws of the United States.

VIII. Job or Position after Military Leave of Absence

A. Upon compliance with the provisions stated above, the employee shall be reinstated to the same position or to a position of like seniority, status, and pay, if qualified physically and mentally to perform the essential functions of the position, with or without accommodation. An employee who has a disability incurred or aggravated during service must receive priority treatment in securing their previous position, if still qualified.

1. If the employee is not qualified to perform the essential functions of the former position because of a service-connected disability, the employee shall be restored to a position which most nearly approximates their former position in seniority, pay, and status.

B. Except with respect to individuals whose disability occurred in or was aggravated by military service, the position into which an employee will be reinstated is determined by priority, based on the length of military service.

1. An individual whose military service lasted one (1) to ninety (90) days must be "promptly reemployed" in the following order of priority:

- a. In the job the person would have held had the person remained continuously employed, so long as the person is qualified for the job or can become qualified after reasonable efforts by the employer, or
- b. In the job in which the person was employed on the date of the commencement of the service in the uniformed services, only if the person is not qualified to perform the duties of the position referred to in 1.(a) above after reasonable efforts to qualify the person.

2. If the employee cannot become qualified for either position described in 1.(a) or 1.(b) above (other than for a disability incurred in or aggravated by the military service) even after reasonable employer efforts, the person must be reemployed in a position that is the nearest approximation to the positions described above (in that order) which the individual is qualified to perform, with full seniority.

3. The law requires employers to promptly reemploy persons returning from military service of ninety-one (91) or more days in the following order of priority:
 - a. In the job the person would have held had the person remained continuously employed, or a position of like seniority status and pay so long as the person is qualified for the job or can become qualified after reasonable efforts, or
 - b. In the position of employment in which the person was employed on the date of the commencement of the service in the uniformed services, or a position of like seniority, status, and pay the duties of which the person is qualified to perform, only if the person is not qualified to perform the duties of a position referred to in (a) after reasonable efforts to qualify the individual.
4. If the employee cannot become qualified for either position described in (a) or (b) above: the employee is to be reemployed in any other position that most nearly approximates the above positions (in that order) that the employee is qualified to perform with full seniority.

REVIEW

This policy will remain in effect and published until it is reviewed, updated, or archived. This policy is to be reviewed once every six years. Interim review may be required as a result of updates to federal and state law or regulations, Board of Regents policies, or internal processes or procedures.

REFERENCES

Texas Government Code Sections 431.005, 661.903, 661.904, 658.008

[State Auditor's Office Military Pay Differential Guidelines](#)

[The Uniformed Service Employment and Reemployment Rights Act](#)

[10 U.S. Code, Armed Forces](#)

[32 U.S. Code, National Guard](#)

[Code of Federal Regulations 1002.103](#)

FORMS AND TOOLS

None

<p>Publication Date: 07/02/2021</p> <p>Revised: 05/23/2023</p>
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