

Military Leave of Absence

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I. **Policy Guidelines**

The University of Texas Arlington provides various types of military leave to employees who are members of the state military forces, the United States Armed Forces reserve components, or the United States Armed Forces as provided by state and federal law.

II. **Overview and Purpose**

Military Leave provides employment protection, income protection and a means for employees to secure time off when called to uniformed U.S. military service.

A. **Scope**

Military Leave, per the Uniformed Services Employment and Reemployment Rights Act of 1994 ([USERRA](#)), covers all categories of military training and service, including duty performed on a voluntary or involuntary basis, in time of peace or war. It applies to the National Guard and reserve military personnel and also applies to persons serving in the active components of the Armed Forces as provided by state and federal law. Temporary employees and students employed in positions that require student status as a condition of employment are not covered by this policy.

B. Benefit

The employee will receive full pay for up to 15 work days in any federal fiscal year (Oct. 1 - Sept. 30) for authorized training or duty in the National Guard or armed forces reserves. The days need not be consecutive. The law requires all employees to provide their employers with advance notice of military service and policy requires a copy of the orders be provided to the supervisor.

C. Eligibility

Employees who meet the following criteria are eligible for military leave:

- State employees called to active duty or authorized military training for the State's military forces or any reserve branch of the U.S. armed forces.
- State employees who are members of a reserve branch of the U.S. armed forces and who are called to duty due to a national emergency.
- State employees, who are members of the state military forces called to state active duty by the Governor, are entitled to paid emergency leave for the time in which they are on active duty. This time is not limited and does not count against military leave or annual leave.

All military leave, other than active duty in the National Guard for an emergency as called by the *Governor*, is subject to a maximum of 15 days leave per federal fiscal year.

III. Paid Annual Military Leave

A. Applicability

Eligible employees, who are members of the state military forces or the United States Armed Forces reserve components, engaged in authorized training or duty are entitled up to fifteen (15) business days of paid military leave in a federal fiscal year (October 1 - September 30) without loss of vacation leave or salary.

B. Coordination with Other Leave

After exhausting the fifteen (15) business days of annual military leave, the employee may use previously accrued and available vacation leave or be placed on leave without pay status (or a combination of the two) for the remainder of the military duty period. This leave may be used intermittently throughout the leave period.

C. Vacation, Sick Leave, and State Service

The employee accrues vacation and sick leave while out on military leave even if part of the month is on leave without pay. Vacation and sick leave that

accrues while the employee is out on leave or extended military leave is frozen, to be held for the employee until return to employment.

The employee on an unpaid leave of absence during military duty during a national emergency who serves in a reserve component of the armed forces continues to accrue vacation and sick leave and state service credit for purposes of longevity pay. Vacation and sick leave that accrues while the employee is on unpaid leave of absence is frozen, to be reinstated for the employee upon return to employment.

The employee accrues state service credit while on extended military leave.

IV. Unpaid Extended Military Leave

After exhausting the fifteen (15) business days of paid annual military leave, eligible employees are entitled to unpaid extended military leave under the following conditions:

- As members of the United States Armed Forces reserve components called to active duty during a national emergency or
- As members of the state military forces, the United States Armed Forces reserve components, or the United States Armed Forces leaving a university position to enter active military service.

V. Military Pay Differential

Military pay is comprised of Base Pay, Basic Allowance for Housing (BAH) and Basic Allowance for Subsistence (BAS), and other special allowances, including Family Separation Allowance, Hardship Duty Pay, and Hostile Fire/Imminent Danger Pay.

Military pay (Base pay plus BAH and BAS) should be included when calculating military pay differential. For purposes of determining military differential pay, Texas Government Code, Section 661.9041, specifically excludes only pay received while serving in a combat zone, hardship duty pay, and family separation pay from the calculation used to determine the pay differential. The combination of emergency leave (differential) and military pay may not exceed the employee's actual state gross pay.

To claim differential pay, the employee must submit to Employee Leave Services a copy of his or her Leave and Earnings Statement (LES) with a copy of the orders. Leave Services will coordinate with payroll to calculate any differential due.

VI. Employee Responsibilities

Notification or Request for Military Leave

The employee must notify the supervisor of the call to military service as soon as the information is known. Service members must provide advance written or verbal notice to their employers for all military duty unless giving notice is impossible, unreasonable, or precluded by military necessity. A copy of the orders is required, and may be provided at the end of such leave should circumstances prevent the employee from providing it in advance.

VII. Supervisor and Department Responsibilities

- The supervisor shall adjust the eligible employee's work schedule so that two (2) days off each month coincide with two (2) days of military duty to be performed by the employee.
- The supervisor must verify that the employee has accurately recorded the leave and signed the time report.
- The department shall place the employee on extended military leave without pay status when applicable.

VIII. Funeral Honors Duty

Funeral honors duty can be used by employees for the purpose of performing authorized funeral honors duty under section 10 U.S.C. 12503. (Section 10 references "service in the uniformed services.")

- USERRA's definition of "service in the uniformed services" includes a period for which an employee is absent from employment for the purpose of performing authorized funeral honors duty under 10 U.S.C. 12503 (members of Reserve ordered to perform funeral honors duty) or 32 U.S.C. 115 (Member of Air or Army National Guard ordered to perform funeral honors duty).
- Funeral honors duty performed by persons who are not members of the uniformed services, such as members of veterans' service organizations, is not "service in the uniformed services."

IX. Family and Medical Leave

A. Military Caregiver Leave

Military Caregiver Leave (MCL) provides up to 26 weeks of unpaid leave to an employee to care for a family member (spouse, son, daughter, parent, or next of kin) who is injured while serving on active military duty or for veterans who are undergoing medical treatment, recuperation or therapy for serious injury or illness that occurred any time during the five years preceding the date of treatment.

To apply for Military Caregiver Leave, turn in two forms to Human Resources:

- *Request for Family and Medical Leave* ([Form 3-23](#))
- [Certification for Serious Injury or Illness of Covered Service member for Military Family Leave form](#) or written documentation confirming that the covered service member's injury or illness was incurred in the line of duty on active duty, that the covered service member is undergoing treatment for such injury or illness by a health care provider, and that the specific information on the amount and duration of leave the employee needs is listed.

B. Qualifying Exigency Leave

Qualifying Exigency Leave (QEL) provides up to 12 weeks of leave for urgent, non-medical needs related to a reservist or active duty service member's (spouse, son, daughter, or parent's) call to active service.

Definition of urgent needs under Qualifying Exigency Leave-The Department's final rule defines qualifying exigency by referring to a number of broad categories for which employees can use FMLA leave:

- Short-notice deployment;
- Military events and related activities;
- Childcare and school activities;
- Financial and legal arrangements;
- Non-medical Counseling;
- Rest and recuperation;
- Post-deployment activities; and
- Additional activities not encompassed in the other categories, but agreed to by the employer and employee.

Two forms are needed to apply for Qualifying Exigency Leave:

- *Request for Family and Medical Leave* ([Form 3-23](#))
- [Certification of Qualifying Exigency for Military Family Leave form](#)

X. Insurance Benefits

A. University Medical and Dental Insurance

Employees who become active members of the armed forces may continue coverage for themselves in University health plans for up to either (a) eighteen months, or (b) the day after the date the employee is required to apply for reemployment with the University after discharge from military service, whichever time period is shorter. Employees who become active members of the armed forces may continue coverage for their dependents. If the employee does not elect to maintain coverage and coverage under the plans is terminated by reason of the employee's military service, then, upon reemployment with the University, coverage will be reinstated without medical examination, and without an exclusion or waiting period, provided the employee makes application within ninety (90) days upon return to employment.

B. Group Life, Disability and Accident Insurance

Group life, disability, and accident insurance may be continued during the employee's extended military leave. Due to the war exclusions set forth in the disability and accident coverages, some employees may elect not to continue group life, disability and accident insurance coverage during active military duty and to reinstate their coverage upon return to employment. Group life and disability insurance may be reinstated without an exclusion or waiting period and without a medical examination, provided the employee makes application within ninety (90) days of return to employment. No medical examination is required for group accident coverage.

C. Insurance Elections

A person who wishes to elect continued insurance coverage during the extended military leave must obtain the appropriate forms from Human Resource Services.

D. Premium Payments

A person electing coverage during the extended military leave shall pay the full premium amount directly to the University.

E. Non-payment of Premiums by Employee

If the employee fails to pay the insurance premium by the due date, the University shall cancel the employee's insurance coverage at the end of the last month for which a complete payment is made.

XI. Retirement Benefits

An employee who returns to employment with The University after a period of active military service in accordance with this policy is referred to as a Returning Employee.

For all purposes related to a Returning Employee's retirement benefits, a Returning Employee will be treated as not having incurred a break in service with The University by reason of their period of active military service.

At any time after a Returning Employee returns to employment with The University, for purposes of determining whether retirement benefits are vested or are forfeited, the period of active duty military service served by the Returning Employee will be counted as service with The University.

At any time after a Returning Employee returns to employment with The University, for purposes of determining the accrual of retirement benefits, the period of active duty military service served by the Returning Employee will be counted as service with The University.

If a Returning Employee's accrued retirement benefits are contingent upon the making of, or are derived from, the Returning Employee's contributions or elective deferrals to the retirement plan, the Returning Employee is entitled to those accrued retirement benefits only to the extent that the Returning Employee makes payments to the retirement plan. A Returning Employee will be allowed to make up payments to the retirement plan missed as a result of active military service after returning to employment, but only during the time period that begins upon the date of their reemployment and is equal to the shorter of (a) a period three times the length of the employee's period of active duty military service, or (b) five years.

The University will be liable to a retirement plan in which a Returning Employee participates for funding any obligation to provide benefits to the Returning Employee. The University will allocate the amount of The University's contribution to the plan for the Returning Employee in the same manner and to the same extent the allocation occurs for other employees during the Returning Employee's period of active duty military service. When the contribution to the retirement plan is contingent upon an employee's pay rate, The University will compute the payment to the plan at the rate the Returning Employee would have received during the relevant time period but for the employee's military service.

XII. Restoration to Employment

When honorably or generally discharged, separated, or released from active military service within five (5) years from the date of enlistment or call to active service, the former employee shall be restored to employment as outlined below:

The position the employee would have had if their continuous service with The University had not been interrupted by entering active military service, provided they are qualified for the position or can be qualified for the position with reasonable efforts. If the employee is not qualified for the position they would have had and cannot be qualified by reasonable efforts, the employee will be placed into the same position the employee held at the time they entered active military service, or

If the employee is not qualified to perform the duties of the position they would have had but for their military service by reason of disability sustained during military service but is able to perform other duties, the employee will be placed in a position for which the employee is qualified that most nearly approximates in status, pay and benefits the position they would have had but for their military service.

The employee must make written application for such restoration within ninety (90) days after discharge or release from active federal or state military service and must

attach to the application evidences of discharge, separation or release from such military service under general or honorable conditions.

Any employee who is restored to a position upon returning from military service is considered to have been on leave of absence during the federal or state military service, and shall not be discharged from such position without cause within one (1) year after such restoration.

XIII. **Web Resources**

- [USERRA: DOL](#)
- [Texas Government Code: Sec. 431.005. Leave of Absence for Public Officers and Employees](#)
- [Military Leave Issues and References under the State Auditor's Office](#)
- *Family and Medical Leave Act* ([Procedure 3-16](#))

XIV. **Delegation of Authority**

Authority is hereby delegated to the Vice President for Human Resources, or designee, to determine military leave eligibility and approve use of leave.

For Assistance: Questions regarding military leave should be directed to Human Resources, Employee Leave Services at 817-272-5554.

Sources: [Texas Government Code Sec. 661.904 and 9041. The Uniformed Services Employment and Reemployment Rights Acts \(USERRA\). Title 38 U.S.C., Sections 4301-4333;](#) Texas Government Code, Sections [413.005](#), [613.001-613.023](#), [658.008](#), [661.903-661.904](#)