

Frequently Asked Questions Concerning Military Leave

The following are frequently asked questions concerning the University of Utah's responsibilities to reemploy and provide benefits to employees who are absent from employment as a result of service in the Uniformed Services (as defined by the Uniformed Services Employment and Reemployment Rights Act ["USERRA"]).

Information regarding continuation of University benefits for employees on military leave of absence can be found www.hr.utah.edu/forms/lib/MilitaryLOA.pdf.

EMPLOYEE RIGHTS & RESPONSIBILITIES

I. Eligibility for Reemployment and Benefit Rights:

1. What must an employee do in order to be eligible for reemployment and benefit rights?

- (a) The employee or his/her commanding officer must give advance written or verbal notice of active duty to the University, unless notice is precluded by military necessity or giving of notice is otherwise impossible or unreasonable.
- (b) The maximum cumulative length of active duty while with the University may not exceed five (5) years except under certain limited circumstances.
- (c) The employee must be honorably discharged from active duty. (See Question 5 under Section II, *Return from Active Service*).
- (d) The employee who is discharged from active duty must report back to work in a timely manner. (See Question #1 under Section II, *Return from Active Service*)

2. What are valid military orders?

Valid military orders are written or verbal orders issued by military authority. A military member receiving these orders is obligated by federal statute to execute them.

3. When and how must an employee notify the University that he/she has been called to active duty?

Once the employee receives military orders, he/she must provide advance written or verbal notice to his/her department as soon as possible. When advance notice is not possible because of military necessity, the department must be notified as soon as possible. The University asks that employees complete a Request for Military Leave Form, directing use of vacation and personal preference leave accruals.

4. What is not included in the five-year cumulative maximum for active service?

There are eight categories exempt from the five-year limitation, including inactive duty (drills), and annual training. For a complete list of exceptions, see 38 U.S.C. Section 4312(c).

II. Return from Active Service:

1. When must the employee return back to work?

If the length of service is **30 days or less**, the employee must report to work no later than the beginning of the first full regularly scheduled work period on the first full calendar day following the completion of the period of service and the expiration of eight hours after a period allowing for the safe transportation of the employee from the place of service to the employee's residence.

If the length of service is *more than 30 days and less than 181 days*, the employee has **14 days** after the completion of the period of service to submit an application for reemployment with the University.

If the length of service is *181 days or more*, the employee must submit an application for reemployment **within 90 days** after the completion of the period of service.

2. What if the employee was injured or incurred or aggravated a disability during active duty and is unable to report back to work?

Reporting and application deadlines are extended for up to two years (the minimum time required to accommodate circumstances beyond the employee's control) for employees who are hospitalized or convalescing because of a disability incurred or aggravated during the period of military service

3. What if the employee has an accident, is delayed by lack of military transportation, or is otherwise unable to report to work in a timely manner?

If the reason for the delay is related to military duties, the employee should report back to work as soon as possible.

4. What if the employee fails to report back to work in the time required and was not delayed or injured during active duty?

The employee is subject to the personnel policies and practices that the University would normally apply to employees with unexcused absences. (See University Policy 2-8.) .

5. Is the employee still eligible for reemployment and benefits if he/she received a dishonorable or bad conduct discharge?

No. The employee loses his/her rights to reemployment and benefits.

6. Does an employee have reinstatement rights following voluntary military service?

Yes. There is no longer any differentiation between voluntary and involuntary orders under USERRA, so long as the employee meets the basic eligibility requirements.

UNIVERSITY'S RIGHTS & RESPONSIBILITIES

I. REEMPLOYMENT:

1. When may the University require an employee to provide official, written military orders?

If the period of military service is for 31 days or more, the University has the right to request written documentation supporting the employee's military orders. This documentation may also be used to verify the employee's basic eligibility for reemployment.

2. May the University require an employee to apply for military leave of absence or otherwise require advance official documentation for approval of military leave of absence?

No. The University may not require documentation or written notification prior to military duty and may not refuse military leave of absence so long as the employee has not exceeded the 5-year cumulative total. However, for administrative purposes, the University asks that employees complete a Request for Military Leave Form, directing use of vacation and personal preference leave accruals. This form may be completed by the employee's department in the employee's absence.

3. May an employee be required to find someone to cover his/her work period when military duty interrupts his/her work schedule?

No. The employee must only notify the department that he/she has been called to active service.

4. What position is an employee returned to after military leave of absence?

Except with respect to employees who incurred a disability or whose disability was aggravated by military service, the position into which an employee is reinstated is determined by priority, based on the length of military service, as follows:

If the employee returns *within 90 days*, the department must promptly reemploy the employee:

- (a) In the position the employee would have held had he/she remained continuously employed, so long as the employee is qualified for the position or can become qualified for the position; or
- (b) If the employee is not qualified to perform the duties of the position referred to in (a) above after reasonable efforts by the department to qualify the employee, the department should reemploy the employee in the position of employment in which the employee was employed on the date of the commencement of the military service; or
- (c) If the employee cannot become qualified for either position described above after reasonable efforts by the department, the employee is to be reemployed in a position that is the nearest approximation to the positions described above (in that order) which the employee is able to perform, with full seniority.

If the length of service is *91 days or more*, the department must promptly reemploy the employee:

- (a) In the position the employee would have held had he/she remained continuously employed, or a position of like seniority, status and pay, so long as the employee is qualified for the position or can become qualified for the position.
- (b) If the employee is not qualified and cannot become qualified for such a position after reasonable efforts have been made by the department, the department should reemploy the employee in the position of employment in which the employee was employed on the date of the commencement of the military service or a position of like seniority, status and pay for which the employee is qualified.
- (c) If the employee cannot become qualified for either of the two positions outlined above, the department must reemploy the employee in any other position of lesser status and pay, but that most nearly approximates the above positions (in that order) that the employee is qualified to perform with full seniority.

5. What if the employee incurred or aggravated a disability during active duty and applies for reemployment with the University department?

If an accommodation is needed due to a disability, the employee or the department should (prior to providing accommodation) consult with the University's Office of Equal Opportunity at (801) 581-8365 to discuss reasonable accommodations.

6. Will an employee who held a temporary position prior to active duty be reemployed in this position?

If the position was a temporary position that held no expectation of continuing indefinitely or for a significant period of time, the employee is not guaranteed reemployment.

7. When is the University not required to reemploy an individual returning from active duty?

The University is not required to reemploy the employee in the following events:

- (a) Circumstances for the University have changed so much that reemployment would be impossible or unreasonable.
- (b) The reemployment of the disabled employee or an employee who is not qualified for the position (even after reasonable efforts have been made) will cause undue hardship to the University.
- (c) The position that the employee held prior to active duty was a temporary position that had no reasonable expectation of continuing indefinitely or for a significant period of time.

8. What rights does the University have in discharging an employee who is reemployed after returning from active duty?

For an employee whose length of active duty was for *more than 180 days*, the University may not discharge the employee without cause within one year after reemployment.

If the length of military service was for *more than 30 days and less than 181 days*, the University may not discharge the employee without cause within 180 days after reemployment.

II. BENEFITS

An employee must meet the eligibility requirements listed in Section 1 *Eligibility for Reemployment and Benefit Rights* outlined under Employee's Rights and Responsibilities in order to be eligible for benefit rights.

A. Rights

1. Is an employee eligible for pay while on military leave?

No. The employee, however, has the choice to use any accrued vacation or personal preference leave pay while he/she is on active duty. The University *may not require* the employee to use accrued paid leave time while the employee is on active duty. If the employee chooses to use accrued paid leave time, the leave must be taken at the employee's regular FTE and work schedule.

2. Does the employee accrue vacation and other leave pay while on active duty?

If the employee is using paid leave time, he/she will continue to accrue paid leave time. If the employee exhausted all paid leave or chose not to use accrued paid leave, he/she will be on an unpaid leave and will not continue to accrue vacation or other paid leave time or receive holiday pay.

3. Can the employee choose to use accrued vacation and personal preference time periodically over time in order to continue accruing additional vacation and sick leave and receive holiday pay?

No. If an employee chooses to use accrued vacation and personal preference time, it must be used at the employee's regular schedule.

4. Will the employee receive the same seniority, status, pay and benefits when he/she returns to work from active duty?

Yes. The department will provide the same seniority, status, pay and benefits upon

reemployment of the individual that the employee would have had if the employee had remained continuously employed. The department will treat the employee as if he/she had taken a leave of absence from work. The employee on military leave will receive the same benefit options an employee on non-military leave would receive. Some benefit plans and policies require that the employee reenroll within 30 days of his/her return to work date.

5. When may these rights (seniority, rights and benefits) be terminated?

The University can terminate these rights when the employee notifies the University of his/her intention not to return to work or fails to return to work in the allowed time period after being discharged from active duty.

B. Health Care Coverage

1. May an employee continue personal and dependent health coverage while on military leave?

Yes. If the employee's military leave of absence is 30 days or less, the employee will continue coverage as if actively at work. An employee on military leave of 31 days or more may elect to continue health coverage for up to 24 months or until the day after the employee fails to report to work, whichever occurs first. The employee will be required to pay the full cost of coverage (including the amount usually paid by the employee's department), plus 2%.

2. Must the employee wait for the next open enrollment to sign up for coverage if coverage was terminated because of military service?

No. If the employee chooses to drop coverage during a military leave of absence, coverage may be reinstated the day the employee returns to work. The employee must request reenrollment within 3 months of the date the employee returns to work. No waiting period or pre-existing condition limitation will be imposed on the employee.

C. Retirement Benefits

1. Is the period for which the employee is absent from work due to military service considered a break in service?

No, as long as the employee meets the eligibility requirements for reemployment and benefits. (See Section I *Eligibility for Reemployment and Benefits* under Employee Rights and Responsibilities.)

2. Is the period for which the employee is on military leave counted toward retirement benefits?

Yes. As long as the employee meets the eligibility requirements for reemployment and benefits and is reemployed, the employee's absence from work due to military leave must be counted as service for eligibility, vesting and accrual of benefits.

3. Is the University obligated to make contributions on behalf of the employee upon his/her reemployment?

Yes. Upon the employee's return to work, the department that employed the employee immediately prior to the military leave will be required to make all employer contributions that it would have made to the employee's retirement account had the employee been continuously employed. Contributions will be calculated on compensation the employee would have earned during the period of military service at the rate of pay the employee would have received but for the military absence.

4. May an employee contribute to his/her supplemental retirement account while he/she is on active duty?

If the employee is using paid leave time, contributions may continue as though the employee were actively at work. If the employee is on unpaid leave, no contributions may be made, since the employee is not receiving pay through the University. The employee may choose to make up the missed contributions upon reemployment following active service.

5. What are the rules regarding contributions to a supplemental retirement account for an employee who missed making contributions and is reemployed after active duty?

If the employee was making employee contributions to the 403(b) or 457(b) plans prior to active duty, the employee may make up missed contributions over three times the period of military service but no longer than five years.

6. Can an employee reenroll in other benefits upon reemployment?

Yes. Some benefit plans require that the employee reenroll within 30 days of the date he/she returns to work. The employee should contact the Benefits Department at 581-7447 immediately after returning to work.