

The following is an overview of Texas State employees' rights, responsibilities, and benefits when taking military leave.

Overview

The Uniformed Services Employment and Reemployment Rights Act (USERRA) is a federal law that bars discrimination on the basis of military service and provides reemployment rights to veterans and other members of the military services.

Following leave for military service, an employee must be permitted to return to work in either the same position or a position of similar seniority, status, and pay.

The military service can be either voluntary or involuntary and includes both training and active duty service.

Restoration rights are provided for a period of up to five cumulative years of military service.

Required Notice

The employee must provide advance notice, either oral or written. However, no advance notice is required if it is precluded by military necessity or if it would be impossible or unreasonable to give. Texas State employees must provide a copy of the military orders and submit an Application for Leave Approval form to his or her supervisor.

Leave and Benefits Issues

Texas State employees who are members of the State's military forces (i.e., Texas National Guard), any of the reserve branches of the U.S. Armed Forces, or a state or federally authorized urban search and rescue team are entitled to 15 workdays of paid leave each federal fiscal year (October 1 – September 30) without loss of pay or benefits to accommodate authorized training or duty.

The 15 days of paid leave are business days (not calendar days) and do not need to be consecutive. In addition, if the employee does not use the 15 days of military leave in a federal fiscal year, the employee is entitled to carry forward the net balance from one fiscal year to the next up to a maximum of 45 workdays.

Texas State is required to adjust the work schedule of an employee who is a member of the Texas National Guard or a reserve branch of the U.S. Armed Forces so that two of the employee's days off each month coincide with two days of military duty.

An employee called to active duty during a national emergency to serve in a reserve component of the U.S. Armed Forces under Title 10 or Title 32 of the United States

Code is entitled to an unpaid leave of absence. The employee may choose to use all or some portion of paid leave (i.e., vacation, FLSA overtime, or state compensatory time) before he or she chooses to go on leave without pay while on military leave.

An employee called to state active duty as a member of the state military forces by the governor because of an emergency is entitled to receive paid emergency leave. This leave is unlimited and does not count against the employee's military or vacation leave balances.

An 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 leave for up to 22 workdays. This leave does not count against the employee's military leave or vacation leave balances.

Employees called to active duty during a national emergency to serve in a reserve component of the U.S. Armed Forces under Title 10 or Title 32 of the United States Code are entitled to state service for longevity pay purposes, vacation leave accruals, and sick leave accruals while on an unpaid leave of absence. This leave will be accrued but not posted until the employee returns to state employment. In addition, the employee retains his or her leave balances unless the employee chooses to use any accrued vacation leave, state compensatory time, or FLSA overtime to maintain benefits for the employee or the employee's dependents while on military duty.

An employee on military leave without pay may continue group insurance benefits for up to 30 months by paying the total premiums each month, including the portion normally paid by Texas State. If coverage is canceled, the employee has 30 days after returning to work to make changes or reinstate coverage.

Military Pay Differential

Texas State employees called to active duty in support of a national emergency or Homeland Security mission under Title 10 or Title 32 of the United States Code and whose military pay is less than their gross Texas State pay are eligible for differential pay. Service members involved in routine military training or who are attending military schools are not entitled to this differential pay.

To determine eligibility, the employee must provide Human Resources a copy of their Military Leave and Earnings Statement each month to calculate the differential pay. Texas State will pay the difference between military pay and gross Texas State pay. However, the calculation of military pay excludes combat zone, hardship duty, and family separation pay.

Replacement Employees

A department may hire a temporary replacement employee while an employee is on military leave. The replacement is a limited term appointment and the offer letter from the hiring manager must clearly state the terms and conditions of the appointment and

that the position will end upon return of the employee on military leave. Upon return of the employee from military leave, the replacement worker's employment with the university will cease unless alternative arrangements have been made to retain both employees. When temporarily filling the position while the employee is out, the normal employment policy provisions apply as outlined in [UPPS 04.04.03, Staff Employment](#).

Reinstatement

An employee who returns from military service will be reinstated to the same position or to a position of similar seniority, status and pay as the former position. Time limits for returning to work depend upon the duration of a person's military service as described below. In all cases, employees are urged to contact their managers as soon as possible to advise them of their desire to return to work.

In order to be reinstated to their former position, an employee returning from military leave must be:

- discharged, separated or released from active military service under honorable conditions not later than the fifth anniversary of the date of induction, enlistment or call to active military services; and
- physically and mentally qualified to perform the duties of his/her position at the university.

Time Limits for Reinstatement:

- Employees with military service of less than 31 calendar days must return to work by the first regularly-scheduled work day after the end of military service, after allowing an eight-hour rest period after the employee has returned to his/her residence. If this is impossible or unreasonable through no fault of the employee, the return must be as soon as possible.
- Employees with military service of more than 30 and less than 181 calendar days should apply for reemployment to their supervisor no later than 14 calendar days after completing their service. If this is impossible or unreasonable through no fault of the employee, the request must be made by the next first full calendar day after it becomes possible to reapply.
- Employees with military service of more than 180 calendar days should apply for reemployment to their supervisor no later than 90 calendar days after completing their service.
- Regardless of the duration of the military service, these reporting or application deadlines are extended for up to two years for employees who

are hospitalized for, or convalescing from, an injury or illness incurred in or aggravated during uniformed military service.

If, owing to a disability sustained during military service, an employee is unable to perform his or her former duties but able to perform the duties of a position of like or nearest possible seniority, status and pay, the employee will be reinstated to that similar position.

A veteran whose employment has been restored may not be dismissed without cause within one year of reinstatement.

Military Family Leave Entitlements

The Family and Medical Leave Act (FMLA) allows eligible employees to take up to 12 weeks of job-protected leave in the applicable 12-month period for any “qualifying exigency” arising out of the active duty or call to active duty status of a spouse, son, daughter, or parent.

The FMLA also allows eligible employees to take up to 26 weeks of job-protected leave in a single 12-month period to care for a covered service member with a serious injury or illness.

For additional details on FMLA, refer to [UPPS 04.04.30 University Leave Policy, Section 7.0](#).

FAQs

Employer Support of the Guard and Reserve (ESGR), a Department of Defense program, has provided answers to some commonly asked questions concerning deployment and leave for military service: <http://www.esgr.mil/USERRA/Frequently-Asked-Questions.aspx>.

For additional questions, please contact Human Resources at 512.245.2557 or <http://www.hr.txstate.edu/about/info.html>.