



Institutional Handbook of Operating Procedures
Policy 03.06.03

Section: Human Resources Policies	Responsible Vice President: Vice President and Chief Human Resources Officer
Subject: Leave Administration	Responsible Entity: Human Resources

I. Title

Military Leave

II. Audience

The information in this document is for use by all UTMB employees.

III. Policy

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) protects and gives reemployment rights to University of Texas 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.

The University of Texas Medical Branch will grant military leave to employees who are called to active duty in accordance with the terms set forth below. Employees who are members of the state (i.e. Texas) military forces or a reserve component of the armed forces and who are ordered to duty by proper authority are entitled, when relieved from duty, to be restored to the position that they held when ordered to duty.

The University of Texas Medical Branch (UTMB), in compliance with applicable federal laws and regulations, strives to maintain an environment free from discrimination against individuals on the basis of race, color, national origin, sex, age religion, disability, sexual orientation, gender expression or identity, genetic information, or veteran status.

IV. Leave Entitlement

State employees are entitled to the following types of leave for military service:

- Authorized training or duty for members of the state military forces and members of any of the reserve components of the United States Armed Forces;
- Call to state military active duty by the Governor;
- National emergency active duty for members of a reserve branch of the United States Armed Forces.

V. Responsibilities

A. Employee Responsibilities

- The employee must notify his or her supervisor of the call to military service as soon as the information is known.
- The employee must provide the supervisor a copy of the orders authorizing such military service prior to taking military leave.

- The employee shall promptly and accurately record the use of leave.

B. Supervisor and Department Responsibilities

- Upon being informed that Military Leave will be required by an employee, the supervisor should immediately contact Human Resources - Leave Management with the information to ensure proper tracking.
Accurate records of military orders will be retained in the employee's institutional file in Human Resources-Employee Records.
- The department shall place the employee on extended military leave without pay when applicable.
- The department shall ensure the employee's time is accurately recorded while on military leave.
- If an employee is on military leave for one calendar month or more, accurate records of state service credit will also be maintained.
- If an employee is restored to employment, the department shall place the employee on active employment status.
- The department will work with Human Resources-Employee Relations to ensure that the reemployment process is facilitated and that the employee is returned to a position that meets the requirements of the USERRA.
- The department will also work with Human Resources-Benefits and Business Center to ensure that all benefits to which the employee is entitled are reinstated and will provide information to the employee regarding contributions they may make to the retirement plan in which they are enrolled.
- If the department has a reason to terminate the employee within twelve (12) months of their return to employment, reasons for the termination must be reviewed and approved by Human Resources-Employee Relations.

VI. Paid Annual Military Leave

- A benefit eligible UTMB employee who is called to active duty or authorized training as a member of the state military forces or any of the reserve components of the United States Armed Forces is entitled up to fifteen (15) business days of paid military leave from his or her respective duties without loss of time, efficiency rating or performance review rating, vacation time, or salary in a federal fiscal year (October 1 through September 30).
- The fifteen (15) days of military leave need not be consecutive. Members of the state military forces or members of reserve components of the United States Armed Forces who are ordered to duty on non-consecutive days are entitled to a total of fifteen (15) days.
- All annual military leave, other than a call to active duty in the state military forces by the Governor, is subject to a maximum of fifteen (15) days of leave per federal fiscal year.
- After exhausting the fifteen (15) business days of annual military leave, the employee may use available accruals (vacation or compensatory time) or be placed on leave without pay status (or a combination of the two) for the remainder of the military duty period.

VII. Military Leave During National Emergency: Call to Active Duty to Serve in a Reserve Branch

A leave of absence will be provided to an employee called to active duty during a national emergency by a reserve branch of the United States Armed Forces. During such leaves of absence, the employee will accrue state service credit by receiving at least one hour of state pay during each month of active military service. Note: The employee may use any combination of paid leave, including state compensatory leave, overtime leave, annual leave, military leave, or differential pay to qualify for state pay.

VIII. Call to State Military Emergency Leave by the Governor

An emergency leave of absence with full pay will be provided to an employee who is called by the Governor of Texas to active duty as a member of the state military forces because of a state emergency, without loss of paid military or annual leave. The employee is entitled to this leave with full pay. This time is not limited and does not count against the fifteen (15) days maximum military leave, nor is the employee required to use annual leave.

Only when the Governor calls a member of the state military forces to active duty for an emergency is the period of leave unlimited, paid, and without loss to annual or military leave. If a member of the state military forces is called to duty for training or duty authorized by a proper authority other than the Governor, the fifteen (15) day maximum of paid military leave per fiscal year applies.

IX. Call of State Military Forces Member to Federal Active Duty

State employees who are called to federal active duty as a member of the state military forces may not receive his/her state salary except if the following occur:

- using vacation, compensatory, or overtime leave; or,
- if the employee's military gross pay is less than the employee's state gross pay.

The combination of emergency leave and military pay may not exceed the employee's actual state gross pay.

X. Adjustment in Work Schedule for Members of the State Military Forces

The work schedule of any employee who is a member of the state military forces or the United States Armed Forces Reserve must be adjusted so that two of the employee's days off each month coincide with two (2) days of military duty to be performed by the employee, in order to facilitate participation in military duties by state employees.

XI. 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. Employees will not accrue vacation or sick leave during an unpaid leave of absence. However, the employee retains any accrued sick or vacation leave and will be credited with those leave balances upon return. Leave earned while in a state-paid status is credited to the employee's balance when the employee returns to active state employment.

An employee who remains on active duty after exhausting his or her fifteen (15) days of annual entitlement may use accrued vacation leave to the extent available, earned compensatory time, or be placed on a leave without pay, or any combination for the remainder of the active duty period to maintain benefits for the employee or the employee's dependent(s).

Before the employee leaves for military service, UTMB shall review with the employee any issues relating to maintaining state health insurance coverage during the military duty, including what the employee needs to do to maintain state health insurance coverage, how such coverage is affected by paid or unpaid leave, and how to pay any premium required for the insurance coverage.

If an employee's military gross pay is less than the employee's state gross pay, UTMB shall grant sufficient emergency leave as differential pay to a state employee on unpaid military leave.

XII. Right to Continuation of Benefits During Military Service.

When an employee has a period of military service for one calendar month or more, he/she may elect to continue health insurance coverage for him or herself and his or her dependents. If the employee is on

leave without pay for an entire calendar month, he/she must pay the entire premium and will not be eligible for premium sharing provided by the state and the University.

If the employee elects coverage, he/she may continue in a leave of absence status for twelve (12) months and continue to pay premiums during that time. If the period of military service exceeds a twelve-month period of leave of absence, the employee will be given the opportunity to continue benefits under the Consolidated Omnibus Budget Reconciliation Act (COBRA). If an employee returns after a break-in-service, he/she will be given credit for months of state service equivalent to the months of unpaid military leave, as required by law. During a period of military leave without pay, individuals will not earn vacation, sick leave, or holiday pay, but they will continue to earn state service credit for the months they are on leave. When they return to work, they will be eligible for reinstatement of any balances of accrued vacation and sick leave they had before going on military leave.

XIII. 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 employee shall be promptly restored to employment as outlined below:

- The position the employee would have had if their continuous service with UTMB had not been interrupted by entering active military service, provided they are qualified for the position or can be qualified for the position. 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
- UTMB will make reasonable efforts to accommodate persons with a disability incurred during or aggravated by military service. 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.

Individuals who are covered by the USERRA must meet the following conditions for reemployment:

- Must have been employed by the University of Texas System. The position that was held must have been of a recurrent nature with reasonable expectation of continuation for a significant period of time.
- Must have given written or verbal notice to their supervisor prior to leaving the job for military training or service except when precluded by military necessity.
- Must not have exceeded the five-year cumulative limit on period of military service.
- Must have been released from service under conditions other than dishonorable.
- Must report back to their supervisor or previous department in a timely manner or submit an application for reemployment, within time limits established by law. These time limits are based on the length of military service.

XIV. Entitlement of Returning Military Service Member

There are four (4) basic entitlements provided the individual meets the criteria set forth above.

- The employee should be promptly reinstated within a matter of days, but this will depend on the length of the absence.
- Accrued seniority, as if the employee had been continuously employed. This would include credit for state service for longevity pay and vacation accrual rate, any legislated across-the-board increase that may have been implemented in their absence, and credit towards the

Teacher’s Retirement Service (TRS) if enrolled in the program. The returning employee must be allowed to make up any missed contributions to TRS or the Optional Retirement Program (ORP) over a period equal to three times the period of military leave to a maximum of five years. Deposits of the University’s contributions toward TRS or the Optional Retirement Program (ORP) will be mad upon reemployment.

- Training or retraining and other necessary accommodations particularly in cases of long periods of absence or service connected disability.
- Special protection against discharge for the twelve-month period following reemployment.

XV. Requirements for Reemployment in the Same or Similar Position

For periods of military service of less than 91 days, USERRA requires that the employee is entitled to the job he or she would have attained if they had not been called for military service, provided the individual is or can become qualified for that job. If the individual is unable to become qualified for a new job after a reasonable effort by the employer, the person is entitled to the job he or she left. Reasonable efforts are actions, including training, that do not cause an undue hardship to the University.

For periods of service of 91 days or more, the University may reemploy the individual in the position that they would have attained, or the position they had, or in a position of “like seniority, status and pay” that the individual is qualified to perform.

XVI. Obligations of Employees Following Military Services

For periods of military service of up to 30 consecutive days, the individual must report back to work for the first full regularly scheduled work period on the first full calendar day following the completion of the period of service and safe transportation home, plus an eight- hour period for rest. If reporting back to work within this deadline is impossible or unreasonable through no fault of the employee, he or she must report back to work as soon as possible after the expiration of the eight-hour period.

After a period of military service of 31 to 180 days, the individual must submit a written or verbal application for reemployment with the employer not later than 14 days after the completion of the period of service. If submitting an application within fourteen days is impossible or unreasonable through no fault of the employee, he or she must submit it as soon as possible thereafter.

After a period of military service of 181 days or more, the individual must submit an application for reemployment not later than 90 days after completion of the period of service. These deadlines to report to work or apply for reemployment can be extended for up to two years to accommodate a period during which a person was hospitalized for or convalescing from an injury or illness resulting from or aggravated by a period of military service. The individual will be required to provide documentation about any delay in reporting for reemployment within the specified time periods.

XVII. Relevant Federal and State Statutes

- Texas Gov’t Code §431.111, State Militia
- Texas Gov’t Code §613.001-613.006, Reemployment Following Military Service
- Texas Government Code §658.008, Hours of Labor, Members of National Guard or Reserve
- Texas Government Code §661.903-661.904, Leave – National Guard Emergency
- The Uniformed Services Employment and Reemployment Rights Acts
- Title 38 U.S.C., Sections 4301-4333

XVIII. Dates Approved or Amended

<i>Originated: 05/29/2019</i>	
<i>Reviewed with Changes</i>	<i>Reviewed without Changes</i>

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XIX. Contact Information

Human Resources Employee Relations
409 772-8696