Military Leave and Veteran Reemployment under the Uniformed Services Employment and Reemployment Rights Act (USERRA)

Military Service: Eligible service includes voluntary or involuntary service in one of the military branches of the armed forces of the United States, including:

- Active duty
- Active duty for training
- Inactive duty training
- Full-time National Guard duty
- Absence from work for an examination to determine a person’s fitness for any of the above types of duty
- Funeral honors duty performed by National Guard or Reserve members
- Duty performed by intermittent employees of the National Disaster Medical System (NDMS), which is part of the Department of Health and Human Services, when activated for a public health emergency, and approved training to prepare for such service

Branches of the military service include:

- Army, Navy, Marine Corps, Air Force, Coast Guard
- Reserve service in Army, Navy, Marine Corp, Air Force or Coast Guard
- Army National Guard and Air National Guard
- The Commissioned Corps of the Public Health Service
- Any other designation issued by the President in time of national emergency or war

BENEFITS WHILE ON AN APPROVED MILITARY LEAVE

PAID TIME OFF:

Employees entering active duty in the Armed Forces of the United States for greater than a 30-day period may request the use of the total allocation of unused vacation time for their year of training from the Office of GME. The resident’s written request should be submitted with a letter of support from the Program Director.
Health Benefits

If your leave is a military leave covered under the requirements of USERRA, your group health plan coverage will terminate at the start of your leave subject, however, to your right to continue coverage for up to 24 months. If your military service is less than 31 days, and you elect to continue your coverage pursuant to USERRA, you will not be required to pay any more than the premium you would have paid if you had remained an active employee. If your military service is more than 31 days, you will be required to pay 102% of the full monthly cost (your share, your employer’s share, plus an administrative fee).

Advance Notice:

It is required that employees proved their employers with advance notice of military service, with some exceptions. Notice can be either written or oral. It may be provided by the employee or by an appropriate officer of the branch of the military in which the employee will be serving. However, no notice is required if:

- Military necessity prevents the giving of notice; or
- The giving of notice is otherwise impossible or unreasonable.

Duration of Service:

USERRA reemployment rights apply if the cumulative length of service that causes a person’s absences from a position does not exceed five years. Most types of service will be counted in the computation of the five-year period.

Exceptions – Eight categories of service are exempt from the five-year limitation. These include:

1. Service required beyond five years to complete an initial period of obligated service;
2. Service from which a person, through no fault of the person, is unable to obtain a release within the five-year limit;
3. Required training for Reservists and National Guard members – Section 4312 (c) (3);
4. Ordered to involuntary service, or retained on active duty during domestic emergency or national security related situations;
5. Ordered to service, or to remain on active duty (other than for training) because of a war or national emergency declared by the President or Congress;
6. Active duty (other than for training) by volunteers supporting “operational missions” for which Selected Reservists have been ordered to active duty without their consent – Section 4312 (c) (4) (C);
7. Service by members who are ordered to active duty in support of a “critical mission or requirement” of the uniformed services as determined by the Secretary involved – Section 4312 (c) (4) (D);
8. 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.
**Disqualifying Service:**

There are four circumstances when a person’s service disqualifies him or her from asserting USERRA rights.

1. Separation from the service with a dishonorable or bad conduct discharge;
2. Separation from the service under other than honorable conditions. Regulations for each military branch specify when separation from the service would be considered “other than honorable”;
3. Dismissal of a commissioned officer in certain situations involving a court martial or by order of the President in time of war (Section 1161 (a) of Title 10);
4. Dropping an individual from the rolls when the individual has been absent without authority for more than three months or is imprisoned by a civilian court; (Section 1161 (b) of Title 10).

**Reporting back to Work:**

To qualify for USERRA’s protections, a service member must be available to return to work within certain time limits. These time limits for returning to work depend (with the exception of fitness-for-service examinations) on the duration of a person’s military service.

The Program Director must notify the Office of GME that the employee has returned in writing no later than the first day of the employee’s return.

**Service of 1 to 30 Days:**

The person must report to his or her employer by the beginning of the first regularly scheduled work period that begins on the next calendar day following completion of service, after allowance for safe travel home from the military duty location and an 8-hour rest period. If, due to no fault of the employee, timely reporting back to work would be impossible or unreasonable, the employee must report back to work as soon as possible after the expiration of the 8-hour period.

**Fitness Exam:**

The time limit for reporting back to work for a person who is absent from work in order to take a fitness-for-service examination is the same as the one above for persons who are absent for 1 to 30 days. This period will apply regardless of the length of the person’s absence.

**Service of 31 to 180 Days:**

An application for reemployment must be submitted to the employer no later than 14 days after completion of a person’s service. If submission of a timely application is impossible or unreasonable through no fault of the person, the application must be submitted as soon as possible on the next day when submitting the application becomes possible.
Service of 180 or More Days:
An application for reemployment must be submitted to the employer no later than 90 days after completion of a person’s military service.

Disability Incurred or Aggravated:
The reporting or application deadlines are extended for up to two years for persons who are hospitalized or convalescing because of an injury or illness incurred or aggravated during the performance of military service.

The two-year period will be extended by the minimum time required to accommodate a circumstance beyond an individual’s control that would make reporting within the two-year period impossible or unreasonable.

Unexcused Delay:
A person’s reemployment rights are not automatically forfeited if the person fails to report to work or to apply for reemployment within the required time limits. In such cases, the person will be subject to the employer’s established rules governing unexcused absences.

Reinstatement Rights:
An employee who leaves their position to serve in the Armed Forces may be eligible to return to employment after honorable discharge or release from active duty.

At the end of the military leave the employee will be reinstated to their former position or a comparable position he/she would have attained by remaining continuously employed. Employees will be reinstated provided business circumstances have not changed to the point where it would be unreasonable to provide reinstatement. Careful attendance will be paid to individual board requirements. Certain boards may require the resident to return to a prior year of training if they have been absent for a lengthy period of time.

If the military leave is 30 days or less the employee must report to work on the first scheduled work day following completion of service and his/her return home from military service, including reasonable time for travel from place of service. The Program Director must notify the Office of GME that the employee has returned in writing no later than the first day of the employee’s return. The employee must attend a re-orientation session at the Office of GME and may be required to obtain an updated annual health assessment prior to resuming any resident activities. Also prior to the start of re-employment, a revised employment contract must be fully executed, indicating any required extension of training or change in PGY.

Once military leave has been completed (longer than 30 days) the employee must notify the Program Director and the Office of GME in writing of their intention to return to work. Employees must return within 14 days of the completion of their active deployment. Under certain circumstances this may be extended at the discretion of the Program Director, with approval of the Office of GME.