

SUBJECT: Military Leave	NUMBER: 60.000.25
DIVISION: Human Resource Services Division	EFFECTIVE DATE: 12/07/07

APPROVED: Signature on file with Human Resource Services Division

POLICY STATEMENT: This policy specifically addresses the circumstances under which military leave with or without pay shall be granted to State employees.

AUTHORITY: ORS 399.065, 399.075, 399.230 – 399.235, 408.210, ORS 408.240 through 408.290

APPLICABILITY: All Employees

ATTACHMENTS: The Uniformed Services Employment and Reemployment Act, Notice of Rights

DEFINITIONS: See HRSD State Policy 10.000.01, Definitions; and OAR 105-010-0000

POLICY:

(1) This policy specifically addresses the circumstances under which military leave with or without pay shall be granted to State employees.

(a) Federal Annual Active Duty for Training Leave with Pay under ORS 408.290 -

(A) When an employee is called to annual active duty for training or active duty in lieu of training, an employee shall be granted military training leave with pay for a period not exceeding 15 calendar days or 11 work days in any federal training year if the employee:

- (i) has been employed with the State of Oregon or its counties, municipalities or other political subdivisions for 6 months or more immediately preceding application for military leave;
- (ii) is a member of any National Guard, National Guard Reserve or of any reserve component of the Armed Forces of the United States or of the United States Public Health Service; and
- (iii) has provided advance written or verbal notice of the absence, except in instances involving “military necessity” or where the giving of notice is otherwise impossible or unreasonable.

(B) To receive pay for the annual active duty for training, the employee must provide, before, during or after the leave, and at the agency’s request, confirming documentation which indicates the call-up was for annual active duty for training or active duty in lieu of annual training. The agency shall request confirming documentation (military orders, training/drill schedule or other official documents) for the absence.

(C) Federal training year for the purpose of this policy is the federal fiscal year (October 1 through September 30).

(D) If the employee is called to active duty for a period longer than 15 calendar days, the employee may be paid for the first 11 work days only if such time is served for the purpose of discharging an obligation of annual active duty for training as described in section (1)(a)(A).

(E) If the employee has been on military active duty for training leave for 15 days or less, the employee shall return to work at the beginning of the first regularly scheduled work period following completion of service, after allowance for safe travel home and an 8-hour rest period.

(b) Federal/State Military Leave Without Pay –

(A) Military Leaves of Absence

(i) An employee shall be entitled to military leave without pay for military duty when an employee is a member of the organized militia of Oregon, or a member of an organized militia of another state, and is called into active service. An agency shall grant an employee a leave of absence for military duty **that continues through the applicable decompression time**. Military duty means training and involuntary or voluntary service performed by an inductee, enlistee or reservist or any entrant into a temporary component of the Uniform Services of the United States, and authorized time spent reporting for and returning from such training or service, or, if a rejection occurs, from the place reported to. **Decompression time means the applicable period of time after military service during which the employee is entitled to request reemployment under USERRA. See (1)(b)(B)(ii)(I);**

(ii) Leave shall be granted in accordance with ORS 408.240, 399.065, and 399.075 and 399.230. The employee shall provide verbal or written notice of military service to the agency. The agency shall request confirming documentation (military orders, or other official documents) for the absence. The employee may provide the documents prior to, during, or upon completion of the military training leave. In instances involving “military necessity” or where the giving of notice is otherwise impossible or unreasonable, the employee will be relieved of this obligation.

(iii) An employee may only be paid during active military leave **or applicable decompression time** if: (1) the employee elects to be paid for accrued vacation leave, personal leave and compensatory time; (2) the employee is an FLSA exempt employee who works any part of a workweek while on temporary military leave (defined as up to 3 months); or (3) the employee receives supplemental income through the Military Donated Leave Program, HRSD State Policy 60.020.05. If the employee is a member of the Oregon organized militia and is called to active state duty under ORS 399.065 and 399.075, the employee shall be paid in accordance with that statute. Otherwise, military leave **and applicable decompression time** is without pay. (For pay during Federal Active Duty Training Leave see Section (1)(a)(A).)

(I) Accrued leave does not have to be exhausted before leave without pay is granted for military leave **or subsequent decompression time**.

(II) While the employee is on military leave without pay, he/she will not accrue vacation, sick or personal business leave but shall receive full credit for time spent on military leave **and subsequent decompression time**.

(III) An FLSA exempt employee who works any part of a work week while on temporary military leave (defined as up to 3 months), shall receive a full week’s salary for that particular week. However, the agency will only pay the difference between the amount received from the employee’s military pay and the state salary due for that particular week. During such week, the employee shall receive full credit toward accrual of sick and vacation leave hours and will be paid for any holiday occurring during the week.

- (iv) An employee who entered or re-entered active military leave on or after January 01, 2006 shall receive up to 24-months of employer-paid health plan coverage to begin the date the employee's active health plan coverage ends.
- (v) An employee who entered or re-entered active military leave prior to January 01, 2006 shall have his/her employer-paid health plan coverage extended from 12 to 24 months if on January 01, 2006:
 - (I) The employee was still on active military leave **or applicable decompression time**; *and*
 - (II) The employee had not exhausted his/her initial 12-month entitlement to employer-paid health plan coverage.
 The employee's employer-paid health plan coverage would begin the date the employee's active health plan coverage ends.
- (vi) Upon exhausting the employer-paid health plan coverage, the employee may elect to continue his/her health plan coverage at his/her own expense. For more information on this process, contact the agency/department payroll office.
- (vii) An employee who entered or re-entered active military leave prior to January 01, 2006, does not have entitlement to more than 12-months of employer-paid health plan coverage if prior to January 01, 2006:
 - (I) The employee's military leave **and applicable decompression time** ended;
 - (II) The employee exhausted his/her initial 12-month employer-paid health plan coverage;
 - (III) The employee elected to continue his/her own health plan coverage at his/her own expense; or
 - (IV) The employee declined to continue his/her health plan coverage, at his/her own expense, after exhausting his/her initial 12-months of employer-paid health plan coverage.

(B) Reemployment Rights

- (i) State Active Duty - For employees who are members of the Oregon militia and are called into active service of the state by the Governor under ORS 399.065 and 399.075 and for employees who are members of the organized militia of another state and are called into active service of the state by the Governor of the respective state.
 - (I) To be eligible for reemployment an employee shall report back to work within seven calendar days from the last day of state active duty.
 - (II) Upon meeting the requirement for reemployment, the employee shall be restored to the employee's position or an equivalent position without loss of seniority or other benefits.
- (ii) Federal Active Duty - other than Federal Annual Active Duty for Training under 408.290-
 - (I) To be eligible for reemployment an employee shall:
 - (a) have performed military duty as defined above in Section (1)(b)(A)(i); and
 - (b) have given proper advance notice of the military duty, unless no notice is required; and
 - (c) have performed military duty that did not exceed five years. Exceptions to the five-year requirement shall be made if the service is necessary to complete an initial period of obligated service, or the employee cannot return because the period of additional duty was imposed by

law or resulted from inability of the employee to obtain a release relieving the employee from active duty and the inability to obtain the release was through no fault of the employee; and

- (d) have separated from the service with an honorable discharge; and
 - (e) **return or make** application for reemployment **within the applicable decompression time following release from military duty. The time lines are as follows:**
 - (aa) **Service of 1 to 30 days: the employee shall return to work by the beginning of the first regularly scheduled work period that begins on the next calendar day following completion of military duty, after allowance for safe travel from the military duty location and an eight-hour rest period; or if returning at that time is impossible or unreasonable through no fault of the employee, then the employee shall return to work as soon as possible after the end of the eight-hour rest period;**
 - (bb) **Service 31 to 180 days: the employee shall make application for reinstatement no later than 14 days after completion of military duty; or if making application for reinstatement within 14 days is impossible or unreasonable through no fault of the employee, then the employee shall make application on the next calendar day on which it is possible to do so;**
 - (cc) **Service of 181 or more days: the employee shall make application for reinstatement no later than 90 days after completion of military duty.**
 - (f) either verbally or in writing within 90 days after the employee is relieved from military duty, unless the employee was hospitalized or convalescing due to military duty and the hospitalization/convalescence continued after discharge. An employee then has up to two years to make application for reemployment. This will be extended to accommodate a circumstance beyond an individual's control that would make applying for reemployment within the two-year period impossible or unreasonable. Application for reemployment means that the returning service member communicates to the agency that he or she is a former employee returning from military duty.
- (II) Upon meeting the requirements for reemployment, the agency shall restore the employee to his or her former position without loss of seniority, status or other benefits as if the employee had remained continuously employed. If the employee is not qualified to perform the duties of such position by reason of military duty, but is qualified to perform the duties of any other position within the agency, equal to or lower than the employee's current position, the employee shall be restored to such other position. The other position will provide the employee with like seniority, status and pay, or the nearest approximation thereof, consistent with the circumstances in the case.
- (III) For an employee reemployed after military leave, his/her vacation accrual rate, salary eligibility date, and service credits shall be treated as though the employee had remained continuously employed. An employee who has not completed trial service at the time military leave begins may under certain circumstances be required to complete the trial service upon return from military leave. Contact HRSD, HR Management and Consultation for information.
- (IV) For the purpose of calculating an employee's eligibility for Family and Medical Leave (under the Federal Family Medical Leave Act and Oregon Family Leave Act), months and hours that the employee would have worked, but for his or her military service, should be combined with the months employed and the hours actually worked to meet the eligibility requirements.
- (V) Immediately upon reemployment of an employee from military leave **or decompression time**, the agency **shall** contact HRSD to determine eligibility for retroactive retirement benefits.

(iii) Upon reemployment, the agency shall request the employee to provide documentation showing that:

(I) the employee's application for reemployment is timely;

(II) the employee has not exceeded the five-year service limitation or documentation of an exception under Federal or State Law; and

(III) The employee's separation from **military duty** was **other than a dishonorable or bad conduct discharge or under other an honorable condition.**

(B)Protection from Discrimination/Retaliation/Discharge

(i) An employee shall not be discriminated or retaliated against based upon a service obligation, military status or the taking of military leave.

(ii) A reemployed employee shall not be discharged without cause within one year of such reemployment.

(1) **Performance Measures:** Document paid leave for annual active duty for training under ORS 408.290 and Section (1)(a).

Performance Standard: 100%

FOR USE BY PRIVATE SECTOR AND STATE GOVERNMENT EMPLOYERS



YOUR RIGHTS UNDER USERRA THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

USERRA protects the job rights of individuals who voluntarily or involuntarily leave employment positions to undertake military service or certain types of service in the National Disaster Medical System. USERRA also prohibits employers from discriminating against past and present members of the uniformed services, and applicants to the uniformed services.

REEMPLOYMENT RIGHTS

You have the right to be reemployed in your civilian job if you leave that job to perform service in the uniformed service and:

- ★ you ensure that your employer receives advance written or verbal notice of your service;
- ★ you have five years or less of cumulative service in the uniformed services while with that particular employer;
- ★ you return to work or apply for reemployment in a timely manner after conclusion of service; and
- ★ you have not been separated from service with a disqualifying discharge or under other than honorable conditions.

If you are eligible to be reemployed, you must be restored to the job and benefits you would have attained if you had not been absent due to military service or, in some cases, a comparable job.

RIGHT TO BE FREE FROM DISCRIMINATION AND RETALIATION

If you:

- ★ are a past or present member of the uniformed service;
- ★ have applied for membership in the uniformed service; or
- ★ are obligated to serve in the uniformed service;

then an employer may not deny you:

- ★ initial employment;
- ★ reemployment;
- ★ retention in employment;
- ★ promotion; or
- ★ any benefit of employment

because of this status.

In addition, an employer may not retaliate against anyone assisting in the enforcement of USERRA rights, including testifying or making a statement in connection with a proceeding under USERRA, even if that person has no service connection.

The rights listed here may vary depending on the circumstances. This notice was prepared by VETS, and may be viewed on the internet at this address: <http://www.dol.gov/vets/programs/userra/poster.htm>. Federal law requires employers to notify employees of their rights under USERRA, and employers may meet this requirement by displaying this notice where they customarily place notices for employees.

HEALTH INSURANCE PROTECTION

- ★ If you leave your job to perform military service, you have the right to elect to continue your existing employer-based health plan coverage for you and your dependents for up to 24 months while in the military.
- ★ Even if you don't elect to continue coverage during your military service, you have the right to be reinstated in your employer's health plan when you are reemployed, generally without any waiting periods or exclusions (e.g., pre-existing condition exclusions) except for service-connected illnesses or injuries.

ENFORCEMENT

- ★ The U.S. Department of Labor, Veterans Employment and Training Service (VETS) is authorized to investigate and resolve complaints of USERRA violations.
- ★ For assistance in filing a complaint, or for any other information on USERRA, contact VETS at **1-866-4-USA-DOL** or visit its **website at <http://www.dol.gov/vets>**. An interactive online USERRA Advisor can be viewed at <http://www.dol.gov/elaws/userra.htm>.
- ★ If you file a complaint with VETS and VETS is unable to resolve it, you may request that your case be referred to the Department of Justice for representation.
- ★ You may also bypass the VETS process and bring a civil action against an employer for violations of USERRA.



U.S. Department of Justice



U.S. Department of Labor
1-866-487-2365



1-800-336-4590

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