

System-wide Policy: HR0370 - Military Leave	
Version: 7	Effective Date: 08/08/2024

SECTION 1. Policy Statement

I. **Nondiscrimination**

- A. A federal law, the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), prohibits discrimination against an applicant or employee on the basis of the applicant's or employee's past, current, or future military service. 38 U.S. Code § 4311.
- B. The prohibition against discrimination applies to all areas of employment, including, without limitation, hiring, promotion, reemployment, termination, and benefits.

II. **Eligibility**

- A. The University's regular employees (as defined by HR0105—Employment Status) who are members of any reserve component of the Armed Forces of the United States, or of the Tennessee National Guard, or the U.S. Air Force Auxiliary Civil Air Patrol are covered by this policy. Employees serving as FEMA reservists are also eligible, as are any categories of service providers to whom USERRA is extended by federal action.
- B. Eligible employees are entitled to a leave of absence from their University duties for all periods of military service during which they are engaged in the performance of military duty or when engaged in military training in service of the State of Tennessee or the United States.

III. **Registration for the Selective Service System**

- A. Employees required to appear at an off-campus location to register with the Selective Service System will be granted up to two hours off with pay if those employees cannot register outside of normal working hours.

IV. **Military Leave with Full Pay**

- A. Regular employees of the University who receive orders to report for training or active duty in the armed services of the State of Tennessee or the United States are entitled to military leave with pay for up to 160 hours (not to exceed 20 working days) per calendar year. Employees regularly scheduled to work a shift greater than 8 hours may receive additional administrative leave equivalent to 20 days of military leave consistent with their work schedule. The University will pay the employee's regular rate of pay.
- B. University closings do not count toward the 160 hours of paid military leave.
- C. During the 160 hours, the employee will continue to earn regular pay, service credit, and applicable annual and sick leave accruals. All other rights and benefits to which the employee is otherwise entitled continue.

V. **Military Leave with Partial Pay**

- A. If the governor of the State of Tennessee, or the president of the United States, activates the national guard or reserves, employees will receive partial pay for the duration of their service on active duty. The partial pay will begin after the employee has exhausted their 160 hours of paid time.
- B. Partial pay is the difference between the employee's regular University and full-time military salaries.
- C. There is no time limit for partial pay, provided that the employee must be on active duty for the National Guard or reserves to receive military leave with partial pay.
- D. Affected employees will remain state employees while on active duty for the purposes of:

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1. Accruing sick leave;
2. Accruing annual leave;
3. Accruing longevity credit;
4. Receiving longevity pay, when applicable;
5. Accruing creditable time toward retirement.

E. See the governor of the State of Tennessee's [executive orders](#) for more information.

VI. Unpaid Military Leave of Absence; Use of Accrued Paid Leave

- A. The University will provide a leave of absence to regular University employees who have exhausted their military leave with pay.
- B. The University will allow affected employees to use accrued annual leave.
- C. Employees called to training or active duty may use up to 5 days of accrued sick leave in lieu of annual leave for purposes of not having to take leave without pay when called for training. T.C.A. § 8-33-109.
- D. Employees may use sick leave in excess of 5 days if the employee provides proof that the employee was sick while attending training or serving on active duty.
- E. Employees will continue to accrue creditable service for the purpose of calculating longevity pay when applicable.

VII. Reemployment Rights

- A. Generally, federal law allows employees to perform service in the uniformed services for a cumulative period of up to 5 years and retain reemployment rights. 20 C.F.R. 1002.99 - 1002.103.
- B. Employees leaving for military service must give their employer advance notice of the intent to leave the employment position for uniformed service unless providing such notice is prevented by military necessity or is otherwise impossible or unreasonable under all the circumstances. The notice may be either verbal or written, may be informal, and does not need to follow any particular format. 20 C.F.R. 1002.85 - 1002.86.
- C. Employees must give the University advanced notice of their military service unless such notice:
 1. is precluded by military necessity or
 2. would be unreasonable or impossible to provide.
- D. The University cannot require an employee to state whether they plan to return to the University after their military service ends. Further, an employee who indicates intent not to seek reemployment following military service but does not formally resign is entitled to reemployment. 20 C.F.R. 1002.88.
- E. The employee must report to work or apply for reemployment on a timely basis, as follows:
 1. Employees with military service of 30 days or less or absences for the purpose of an examination to determine fitness for service must report to the University no later than the beginning of the first regularly scheduled work day following completion of service and 8 hours after a period sufficient to allow safe transportation of the employee from the place of service to the employee's residence.
 2. Employees with military service of more than 30 days but not more than 180 days must submit an application for reemployment no later than 14 days following completion of service (or within the next calendar day that application becomes possible when application within that period is impossible or unreasonable through no fault of the employee).

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3. Employees with more than 180 days of military service must submit an application for reemployment no later than 90 days following completion of service.

- F. An injured or ill employee who has returned from uniformed service must comply with the notification procedures determined by the length of service after the time period required for the person's recovery. The recovery period may not exceed two years unless circumstances beyond the person's control make the notification within the two years impossible or unreasonable. 20 C.F.R. 1002.116.
- G. An employee who fails to report or apply for reemployment within the timeframes described above does not automatically forfeit entitlement to reemployment but will be subject to the University's policy regarding unauthorized absence from work. 20 C.F.R. 1002.117.

VIII. Reinstatement

- A. Employees returning from military leave who meet the criteria for reinstatement are entitled to be placed in certain positions as described below according to the following order of priority:
 - 1. Employees whose service period is 90 days or less must be reemployed in the position they would have held had their employment not been interrupted by service.
 - 2. An employee whose service period is more than 90 days must be reemployed in the position they would have held had their employment not been interrupted by service or in a position of like seniority, status, and pay for which the employee is qualified.
- B. The University will make a reasonable effort to qualify a returning employee who is not qualified or is no longer qualified for the positions listed above; however, the University is not required to place an individual in a position for which they are not qualified, if doing so would impose undue hardship on the University.
- C. An employee returning with a service-related disability that renders the employee unqualified for their former position must be employed in a position of equivalent seniority, status, and pay which the employee is qualified to perform (or which the University can qualify to perform with reasonable efforts) or, if such equivalent position does not exist, in the nearest approximation to such position in terms of seniority, status, and pay.
- D. When a position as described above does not exist, the returning employee must be employed in any other available position of lesser status and pay, which the employee is qualified to perform, with full seniority.
- E. A reemployed employee whose period of service is more than 30 days but not more than 180 days may not be discharged (except for cause) within 180 days of reemployment; an employee whose service is more than 180 days may not be discharged (except for cause) within one year following reemployment.

IX. Continuation of Benefits

- A. A returning employee is entitled to the same seniority and other rights and benefits they would have had if the employee had remained continuously employed.
- B. The employee is required to pay any benefit costs which other employees normally pay on leave.
- C. An employee may, while in the service, elect to continue University health plan coverage for a period of 18 months or, where the employee's leave is less than 18 months, until the day after the Date on which the employee fails to apply for or return to university employment as required by USERRA.

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- D. An employee in the service for 30 days or less is required to pay only the employee’s portion of the insurance premium.
- E. An employee in the service for more than 30 days must pay both the employee and employer share of the premium.
- F. If coverage is terminated at the employee’s option, a waiting period for reinstatement upon return to employment may not be imposed.
- G. For retirement purposes, a returning employee is considered as not having incurred a break in service.
- H. Following the employee’s return to University employment, the University must make the retirement plan contributions which would have been made in the absence of a break in service not to exceed five years.
- I. Employer and employee contributions are based on the rate of pay the employee would have received had he remained continuously employed.
- J. Reemployment rights may be waived by an employee, but such waiver may be relied on by the University only if the waiver is in writing and clearly states that the employee is aware of the rights guaranteed by USERRA that are being surrendered.

SECTION 2. Reason for the Policy

This policy provides the rights and obligations of the University and its employees when a University employee is called to training or active duty for one of the uniformed services.

SECTION 3. Scope and Application

This policy applies to all University employees.

SECTION 4. Procedures

The University has not issued systemwide procedures for this policy.

SECTION 5. Definitions

N/A

SECTION 6. Penalties/Disciplinary Action for Non-Compliance

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Violations of this policy could result in adverse human resources actions, up to and including termination. Further, state law makes it a Class E felony if any person refuses to employ any person for the sole reason that the person is a member of the national guard. Likewise, it is a Class E felony if a University employee terminates a person because of their membership in the national guard or for absence of employment while attending any prescribed drill.

SECTION 7. Responsible Official & Additional Contacts

Responsible Official and Contacts may have responsibilities that include monitoring compliance with the policy, accuracy of policy subject matter, organizing policy training, and updating the policy.

[Knoxville]

Subject Matter	Office Name	Telephone Number	Email/Web Address
Policy Clarification and Interpretation	Human Resources	(865) 974-6642	hr@utk.edu Home

[Chattanooga]

Subject Matter	Office Name	Telephone Number	Email/Web Address
Policy Clarification and Interpretation	Human Resources	(423) 425-4221	utchumanresources@utc.edu Human Resources University of Tennessee at Chattanooga (utc.edu)

[Southern]

Subject Matter	Office Name	Telephone Number	Email/Web Address

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Policy Clarification and Interpretation	Human Resources	(931-424-7379)	jhlubb@utsouthern.edu
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[Martin]

Subject Matter	Office Name	Telephone Number	Email/Web Address
Policy Clarification and Interpretation	Human Resources	(731) 881-7850	Mwashin24@tum.edu Human Resources UT Martin

[System Administration]

Subject Matter	Office Name	Telephone Number	Email/Web Address
Policy Clarification and Interpretation	Human Resources	(865) 974-8170	sytemhr@tennessee.edu Human Resources

[UTHSC]

Subject Matter	Office Name	Telephone Number	Email/Web Address
Policy Clarification and Interpretation	Human Resources	(901) 448-5600	hr@uthsc.edu Human Resources UTHSC

SECTION 8. Policy History

List the history of any prior revisions of the policy or whether this policy replaces an existing policy. The forma below is merely a guide.

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Revision 3: XX/XX/XXXX

Revision 2: XX/XX/XXXX

Revision 1: XX/XX/XXXX