



Policy 4.75 Military

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Responsible Official: VP for Human Resources

Administering Division/Department: Leaves of Absence

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Overview

Emory provides military leave to employees in accordance with the Uniformed Services Employment and Re-employment Rights Act of 1994 (USERRA) **and Georgia law**. USERRA provides guidelines for employees who elect military leave and for the prompt reemployment of employees who left employment to perform military training or service in one of the Uniformed Services and who have completed such service under honorable conditions.

The Uniformed Services include the Armed Forces, the Army National Guard, and Air National Guard when engaged in active duty for training, inactive duty training or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or emergency.

A person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a Uniformed Service shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service or obligation.

Policy Details

REQUESTING LEAVE

Employees who enter the Uniformed Services are entitled to military leave of absence without pay for a period not to exceed a cumulative total five years not to include those periods of service exempted by federal law (USERRA Regulations, 20 CFR & 1002.103).

The employee is required to provide notification to the department as soon as reasonably possible of the need for military leave. In addition, the employee should complete a Leave of Absence Request Form. If available, a copy of the appropriate military orders or other supporting documentation for situations that do not warrant military orders should be attached to the Leave of Absence Request Form. When written orders are not provided in advance of leave, the department may request the orders upon return from leave.

DEPARTMENT DOCUMENTATION

All Human Resources Action Forms (HRAFs) should be submitted to Human Resources at the time of the military leave along with all supporting documentation placing the employee on military leave. This documentation should include the Leave of Absence Request Form, the military orders/supporting documentation when available, and a letter to the employee confirming the reason and dates of the leave.

USE OF LEAVE BALANCES

In accordance with federal law, employees are not required to use vacation leave for military leave. However, employees may elect to use their vacation leave. Employees electing to use accrued, unused vacation leave during a military leave must request in writing to use unused **vacation** leave balances. Otherwise, the employee will take leave without pay for the entire leave period.

To the extent that **military leave** is taken as paid leave, employees on military leave will continue to accrue vacation and sick leave during **the paid portion of the leave**. Employees do not accrue sick or vacation leave while on unpaid leave.

All periods of military leave without pay will be counted as credited service for all benefits that are based on length of service, including service awards.

REEMPLOYMENT RIGHTS: GENERAL REQUIREMENTS

Employees who are absent from work for the reason of serving in the Uniformed Services, or for the purpose of an examination to determine fitness to perform service in the Uniformed Services, whether voluntarily or involuntarily, are entitled to reemployment rights and other benefits if (1) the periods of absence from Emory attributable to service in the Uniformed Services do not exceed a cumulative total of 5 years not to include those periods of service expressly exempted from this 5-year limitation by federal law (USERRA Regulations, 20 CFR & 1002.103); (2) the employee is discharged under conditions that do not constitute other than honorable discharge; and (3) the employee reports for or applies for reemployment according to the following time limits (based on the length of the current military service from which the employee is returning):

Unless applicable law provides otherwise, employees whose period of Uniformed Service is less than 31 days must report to work on the first regularly scheduled workday following 8 hours of rest time upon returning from the place of duty. Employees whose period of Uniformed Service was from 31 days to 180 days must submit an application for reemployment no later than 14 days after the completion of service. Employees whose period of Uniformed Service was more than 180 days must submit an application for reemployment no later than 90 days after completion of service.

Employees who, at the time of release from military service, are hospitalized for or recuperating from an illness or injury incurred or aggravated during the Uniformed Service must report for reemployment (if the period of military service was less than 31 days) or apply for reemployment (if the period of military service was 31 days or more) at the end of the period necessary for recovery from the illness or injury, provided the recovery period does not exceed two years.

Documentation must be provided to establish timeliness of application, and to ensure that all eligibility requirements for reemployment are met. Failure to provide documentation cannot be used as a basis to deny reemployment if the requested information is not readily available through no fault of the employee.

In some instances, Georgia law may provide more generous time periods for seeking reemployment than the time periods established by USERRA that are not set forth above. To the extent Georgia law provides a longer time period for seeking reemployment than USERRA provides in a particular situation, the more generous provisions of Georgia law will be applied.

Emory is not required to reemploy an employee if the employment from which he/she leaves to serve in the Uniformed Services is for a brief, non-recurrent period and there is not a reasonable expectation that such employment will continue indefinitely or for a significant period.

Emory is also not required to re-employ an employee returning from military leave if circumstances have changed so that reemployment would be impossible or unreasonable

DETERMINING POSITION UPON REEMPLOYMENT

- An employee whose period of Uniformed Service was less than 91 days must be reemployed, promptly, in a position that he/she would have attained with reasonable certainty if continuously employed (the "escalator position"). If not qualified for that position (after reasonable attempts to qualify the employee) the employee must be reemployed in the position he/she left, and if the employee is not qualified for the pre-service position (after reasonable attempts to qualify the employee), the employee must be reemployed in any other position that is the nearest approximation first to the escalator position and then to the pre-service position, provided the employee qualified for the position (or can become qualified for the position through reasonable efforts by Emory).
- For an employee whose period of Uniformed Service was 91 days or more, the requirement is the same, however, a position of like seniority, status and pay may be offered in lieu of the escalator position or the pre-service position.

REEMPLOYING A DISABLED VETERAN

An employee who has a disability incurred in, or aggravated during military service, and who (after reasonable efforts by the department to accommodate the disability) is not qualified due to the disability to be employed in the escalator position s/he would have attained but for the Uniformed Services must promptly be reemployed in any other position that is equivalent in seniority, status and pay to the escalator position. If the employee is not qualified for an equivalent position due to the disability, the employee must promptly be reemployed in the nearest approximation to such a position in terms of seniority, status and pay, consistent with the circumstances of the person's case.

DISMISSING THE EMPLOYEE

Employees returning from military leave may not be dismissed, except for cause, within these time limits:

- Within the first year of reemployment, if the period of service was more than 180 days, or
- Within the first 6 months of reemployment, if the period of service was between 30 and 180 days.

BENEFITS

Health, Dental, Life & Flexible Spending Accounts

An employee and his/her dependents are eligible to continue participation in the health and dental plan and medical flexible spending account while the employee is on military leave by paying the employee's monthly contribution. The maximum period of coverage shall be the lesser of:

- The **24**-month period beginning the date the employee's leave of absence begins; or
- The day after the date on which the person fails to return to (or apply for) a position of employment as described in the applicable provision of the Uniformed Services Employment and Reemployment Rights Act of 1994. If the employee cancels his/her health and dental coverage while on leave, upon reemployment, the employee must notify Emory within 31 days of returning to work of his or her reenrollment in the health and dental plans in which he or she was enrolled prior to the leave.

Emory will continue to provide Basic Term Life Insurance coverage during the military leave until such time as any legal obligation to restore the employee to employment expires. The employee and dependents may continue enrollment in the supplemental life, dependent(s) or personal accident insurance by paying the monthly premium(s).

Disability Insurance

Eligibility for participation in the Short-Term and Long-Term Disability plans and the optional COLA coverage terminates at the beginning of the **unpaid** leave.

Retirement Plan

An employee's service in the military must be counted in determining his/her vested interest and accrued benefits in the Retirement Plan only to the extent required to do so under the law. (USERRA Regulations, 20 CFR & 1002.259, 260, 261, 262)

Courtesy Scholarship

Courtesy Scholarship for dependents may continue during a military leave.

Related Links

- Current Version of This Policy: <http://policies.emory.edu/4.75>

Revision History

Emory University policies are subject to change at any time. If you are reading this policy in paper or PDF format, you are strongly encouraged to visit policies.emory.edu to ensure that you are relying on the current version.