

Topic: Military Leave		
Policy #: 703	Version: 2.0	Effective Date: 02/01/14

Purpose:

This policy has been developed to provide general guidance on some of the current provisions of USERRA and Alabama law pertaining to leave of absence, compensation, health insurance, reinstatement, and pension benefits for employees requesting a military leave of absence.

Policy:

The University of Alabama will comply with the Uniform Services Employment and Reemployment Rights Act of 1994 (USERRA) and applicable Alabama laws pertaining to military leave. This policy supersedes previous policies/practices of the university related to military leave rights and benefits.

As the laws change, or as interpretations of the laws change, military leave benefits for University employees may change accordingly. No attempt is made in this policy to cover all possible situations and circumstances that may arise when an employee is ordered to active duty. Therefore, as military leave situations arise, employees should consult with their supervisor and/or Human Resources for current and complete details regarding their military leave rights as a University employee and should make sure the HR Service Center is contacted regarding any continuation of benefits issues.

Eligibility for Military Leave of Absence

In accordance with USERRA and Alabama law (Ala. Code § § 31-2-13, 31-12-2) University employees who perform service in the uniformed services (as defined by USERRA) are entitled to a military leave of absence from their university positions, subject to the limitations and restrictions set forth in federal and state laws and university policy. Upon receiving an assignment for military service, employees should promptly provide notice to their supervisors prior to going on military duty, unless precluded by military necessity. If an employee is required to use annual leave, sick leave or compensatory time as a result of being called to active service during the war on terrorism, that leave shall be restored.

Compensation for Military Leave

Except as provided below, eligible university employees who perform service in the uniformed services (as those terms are defined by USERRA) will be placed on unpaid military leave status for all days that they are engaged in such military service. Affected employees are not required to use accrued leave in lieu of paid or unpaid military leave; however, they may elect to use accrued annual leave or earned comp time at their discretion.

- a) Compensation for 168 working hours per calendar year for federal military leave.

University employees eligible for Military Leave of Absence who are active members of the Alabama National Guard or of any other reserve component of

the Armed Forces of the United States will receive, pursuant to Ala. Code § 31-2-13, up to 168 hours of paid military leave per calendar year for performance of federal military duty. This military service includes drills, annual training, or military schools. It is not necessary for employees who are still on military leave to return to work for the University in order to receive 168 hours of paid military leave for the calendar year subsequent to being placed on military leave. Once the 168 hours of paid military leave is exhausted, an employee may use other leave available, such as annual leave or earned comp time.

b) Compensation for 168 working hours at any one time called to active service by the Governor.

In addition to the 168 hours per calendar year mentioned in section a) above, if these particular employees are called into active service of the State of Alabama by the Governor (typically in times of natural disaster), they will receive, pursuant to Ala. Code § 31-2-13, an additional 168 hours of paid military leave at any one time while called by the Governor to duty in the active service of the state.

c) Salary differential for employees activated during war on terrorism.

If the military base pay of an employee called into active service for the war on terrorism is less than the salary he/she would have continued to receive if not called to active service, he/she may receive a salary differential that is equal to the difference between the lower active duty military base pay and the higher public salary. (Ala. Code § 31-12-5)

d) Merit increases for employees on military leave.

When an employee returns from military leave, the University will pay that employee at the rate he/she would have attained with reasonable certainty had he/she remained continuously employed during the period of service.

Health Insurance Benefits

Per USERRA, the University will at a minimum maintain health benefits and other benefits for the first 30 days of military leave as if the employee was actively employed. Employees on military leave of absence will be entitled to participate in any rights and benefits not based on seniority that are available to employees on non-military leaves of absence. Consequently, for the first 12 weeks of an approved unpaid military leave, upon request from the employee, the University will continue health benefits and other benefits as if the employee was actively employed. After the initial 12 weeks period, employees on military leave may continue their benefits, similar to COBRA, for a period up to 18 months. The employee must pay his or her portion of any benefit(s) premiums in order to keep the benefits active. If the employee does not return to work at the end of the military leave, the employee may be required to reimburse the University for the cost of the benefit premiums paid by the University for maintaining applicable coverage.

A university employee called into active service in any of the armed forces of the United States during the war on terrorism, which commenced in September 2001, and who receives a salary differential while he/she is serving on such active duty may elect to continue with his/her individual or family coverage under the University's health insurance plan for the duration of the time he or she receives the salary differential. Premiums for

family coverage shall be the amount in effect at the time for an active employee with family coverage.

Credit for Time Spent on Military Leave

Time spent on eligible military leave counts as time served on the job for any calculation, determination or other decision that is dependent upon length of employment.

Pension Benefits

Time spent on military leave (whether paid or unpaid) is not considered a break in employment for pension benefit purposes. Upon return to the University from military leave, if applicable, the employee must request to purchase retirement credit in the Teachers' Retirement System and pay whatever amount that employee would have contributed had he/she not been absent.

The returning service member who is eligible for reinstatement under USERRA has up to 3 times the length of military leave (up to a maximum of 5 years) to make the retirement contribution payments he or she would have made to establish retirement credit. USERRA does not permit double credit in two retirement systems for the same military leave. Therefore, the employee is not entitled to purchase credit in TRS if he/she receives credit in any other public retirement system, except federal social security system.

Reemployment Rights

USERRA places a 5-year limit (with some exceptions) on the cumulative length of time a person may voluntarily serve in the military and remain eligible for reemployment rights. The USERRA reinstatement rights do not extend, however, to employees who are employed for brief, non-recurrent periods with no reasonable expectation that employment will continue indefinitely. Under certain circumstances employees are eligible to be reinstated to their former position unless the University establishes that the circumstances have so changed as to make reemployment impossible or unreasonable. If on military leave for 90 days or less, eligible employees may be reinstated to their own position. If on military leave for over 90 days, eligible employees may be reinstated to their own position or a similar position of like seniority, status or pay. Upon return from military leave, employees must comply with the current provisions of the law in regards to notification of and time frame in which they must return to work. These limits are specified in 38 USC § 4312 and vary depending on the length of military service.

Employees who are UA Students

In compliance with provisions of the Higher Education Opportunity Act of 2008 applicable to readmission for service members, an employee who is also a student, who must withdraw from UA to fulfill a US military obligation, is entitled to be re-admitted upon return from military service, provided there is no dishonorable discharge or bad conduct discharge, and provided the cumulative length of the student's absences from UA due to military service does not exceed five years. Employees who are UA students and who are withdrawing from school for this purpose or seeking readmission should report to the Office of the Registrar (if undergraduate), the Graduate School Office (if graduate) or Law School Records Office (if law student). Alabama law (§31-12-3) likewise requires that such students be restored to their educational status without loss of academic credits earned, scholarships or grants awarded, or tuition and other fees paid prior to the commencement of the military duty.