

03.608 Military Leave (Extended) / Reinstatement of Veterans.

1. Military Leave (Extended) - (Reinstatement of Veterans). Any regular System employee who leaves a position to enter active military service because of induction (draft) or enlistment, or who is ordered to active duty as a member of the Texas National Guard, State Guard, or as a member of any of the reserve components of the Armed forces of the United States, shall be considered to be on extended military leave of absence without pay, and upon honorable discharge within five years from the date of enlistment or call to active service shall be reinstated to the former employment under the following provisions:
 - a. The employee must make written application for reinstatement after discharge, separation or release from military service.
 1. If the period of military service was more than 30 days but less than 181 days, the employee must apply for reemployment not later than 14 days after military service is completed, or the next full calendar day when such application becomes possible.
 2. If the period of military service was greater than 180 days, the employee must apply for reemployment not later than 90 days after service is completed.

Evidence of honorable discharge, separation or release must be attached to the written application. If it is impossible or unreasonable for the employee to apply for reinstatement within the prescribed period through no fault of the service member, he or she is allowed to report as soon as possible following the period, but will be subject to established policy and general practices of the System pertaining to explanations and discipline with respect to absence from scheduled work.

Upon compliance with the provision stated above, the employee shall be reinstated to the same position or to a position of like seniority, status, and pay, if qualified physically and mentally to perform the essential functions of the position, with or without accommodation. An employee who has a disability incurred or aggravated during service must receive priority treatment in securing his/her previous position, if still qualified.

- b. If the employee is not qualified to perform the essential functions of the former position because of a service-connected disability, he/she shall be restored to a position

which most nearly approximates the former position in seniority, pay, and status.

c. 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.
4. Service under an involuntary order to, or to be retained on, active duty during domestic emergency or national security related situations.
5. Service under an order to, or to remain on, active duty (other than for training) during 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.
7. Service by volunteers who are ordered to active duty in support of a “critical mission or requirement” in times other than war or national emergency and when no involuntary call-up is in effect.
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.

2. Use of Administrative (Emergency) Leave During Military Activation for Homeland Security/Emergency Leave Differential for Military Leave (Extended). As encouraged by the Governor of Texas’ letter of November 21, 2001, effective December 1, 2001, state employees called to active duty in reserve or National Guard units in support of the Homeland Security mission under US Code Title 10 or Title 32 and whose military pay total entitlement is less than their gross state

pay may qualify for a benefit consisting of administrative (emergency) leave covering the differential between their state pay and their military pay. Approval of such leave is subject to the following conditions:

- a. The System shall not be under a documented financial exigency at the time of the employee's call-up for military leave. The President shall determine and declare any financial exigency.
 - b. Normal military training or attendance at military schools will not be granted administrative (emergency) leave.
 - c. Employees shall give advance written or verbal notice of military service activation unless such notice is precluded by military necessity.
 - d. Only regular non-probationary retirement-eligible employees are eligible; employees in probationary status and temporary employees are not eligible.
 - e. Employees under disciplinary action at the time of their military call up are not eligible. If a disciplinary action is pending at the time of call-up, the employee would receive the administrative (emergency) leave supplement until such time as the System determines that disciplinary action is warranted.
 - f. If applicable, the administrative (emergency) leave differential may be paid to the employee while they are on active duty not to exceed a period of 6 months total during a single military activation.
 - g. The amount of differential pay required, if applicable, shall be verified each month by receipt of the employee's Military Leave and Earnings Statement (LES) as calculated against the employee's total gross state compensation for a comparable time period. The dollar amount of the differential will be calculated to a percentage of the employee's FTE to derive the number of hours of Administrative (Emergency) Leave granted to the employee.
 - h. All administrative (emergency) leave granted under this provision shall be documented in the employee's time records with administrative approvals.
 - i. The System shall determine the maximum financial resources that can be dedicated to this program. If the cap is exceeded by eligible candidates, the System shall prorate the amount of administrative (emergency) leave granted to those eligible for the benefit.
3. Benefits Administration. The administration of employee benefits during a military leave of absence shall be as follows:

- a. Employees may either freeze accrued vacation leave until they return, or expend it. Accrued sick leave shall be frozen until the employee returns to work. If a staff member does not return to work, he shall be paid for all frozen vacation leave as of the last day of duty. Such lump sum payment will be paid at the rate of pay as of the last day of duty.
- b. Credit for vacation or sick leave entitlement is not accumulated during a leave of absence without pay. If the employee has any fraction of paid employment in a month, he will be credited with sick leave and vacation entitlement for that month.
- c. An employee's time in an extended military leave of absence without pay is creditable toward "total State employment" for the purpose of earning vacation leave, and is also creditable to seniority and longevity, but the employee does not accrue vacation or sick leave while on active duty and not in the employ of the State.
- d. An employee's time in an extended military leave of absence shall count toward satisfying the employee's probationary period unless the employee was hired as a trainee. If the employee was hired as a trainee, then the returning employee can be required to finish the training period.
- e. No pay is given for holidays which occur during the period of leave of absence without pay.
- f. The employee's retirement program will remain intact with benefits suspended until he/she returns to work.
- g. Employees called to active duty may continue all insurance coverage except disability, which is suspended, for up to 12 continuous months under the rules of the Uniform Group Insurance program administered by the Employees Retirement System. While on leave without pay status during the initial 12 months employees are not eligible for the state contribution and must pay the full premium for coverage. If premiums are not paid all coverage must be canceled.

If military service continues beyond 12 months, the employee is eligible to continue health and dental coverage for himself and/or dependents for up to 18 months under the provisions of COBRA provided coverage has not been canceled for non-payment of premiums.

Employees who return to work from Military status may, effective the date they return to work, reinstate all reduced or canceled coverages that were in effect immediately prior to going on Military leave provided the employee returns to work within 90 days of being discharged from active duty and completes enrollment forms within 30 days from the date the employee returns to work. No new period of preexisting conditions exclusion for health or disability coverage would apply. However, if the period of preexisting conditions exclusion was not completed by the date coverages were canceled, the remainder of the preexisting conditions exclusion period would apply.

Employees who reinstate coverage in the dental indemnity plan will get credit for the amount of time they were enrolled in the plan prior to their Military status.

4. General.

- a. An employee's right to reinstatement under this policy and applicable laws cannot be revoked or forfeited, regardless of whether they terminate their employment with the System.
- b. An individual on leave without pay may be replaced with a temporary employee during his/her absence.
- c. Extended military leave of absence must be requested in advance, unless giving of such notice is precluded by military necessity or is otherwise impossible or unreasonable. The employee's military orders must be attached to the Application for Approval of Leave/Overtime Form UPO-15, which must be submitted to the Chancellor for approval.*
- d. An employee who returns from an extended military leave of absence without pay is entitled to any across-the-board or mandatory raises that have been granted to employees in similar positions during the absence.

REFERENCES:

Chapter 613, Texas Government Code.

Attorney General Opinion No. H-941, February 9, 1977.

Rules and Regulations of the Uniform Group Insurance Program administered by the Employee Retirement System of Texas.

P.L. 103-353, “Uniformed Services Employment and Reemployment Rights Act of 1994.”

Appropriations Bill, Article IX, Section 8.