



## POLICY

**Title:** Military Leave

### Policy Statement

The University of Vermont is committed to protecting the job rights of employees absent on military leave. In accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"), (38 U.S.C. 4301-4334), the University does not deny initial employment, reemployment, retention in employment, promotion, or any benefit of employment to an individual on the basis of his or her membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services. The University also prohibits retaliation against any prospective or current employee who exercises their rights under applicable law or this policy. Individuals who believe that they have been subjected to discrimination or retaliation in violation of this policy should contact the Office of Affirmative Action and Equal Opportunity.

### Reason for the Policy

To ensure that the University's personnel practices are supportive of employees who serve in the U.S. armed forces and are in compliance with the Uniformed Services Employment and Reemployment Rights Act (USERRA).

### Applicability of the Policy

This policy applies to all University of Vermont employees. Represented employees should consult their respective collective bargaining agreements for any other guidelines that may apply.

### Definitions

**Employee:** any person employed by the University.

**Health plan:** an insurance policy, insurance contract, medical or hospital service agreement, membership or subscription contract, or other arrangement under which health services for individuals are provided or the expenses of such services are paid.

**Notice:** when the employee is required to give advance notice of service, means any written or verbal notification of an obligation or intention to perform service in the uniformed services provided to an employer by the employee who will perform such service, or by the uniformed service in which the service is to be performed.

Service in the uniformed services ("military service"): the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority. Service in the uniformed services includes active duty, active and inactive duty for training, National Guard duty under Federal statute, and a period for which a person is absent from a position of employment for an examination to determine the fitness of the person to perform such duty. The term also includes a period for which a person is absent from employment to perform funeral honors duty as authorized by law (10 U.S.C. 12503 or 32 U.S.C. 115). The Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Pub. L. 107-188, provides that service as an intermittent disaster-response appointee upon activation of the National Disaster Medical System (NDMS) or as a participant in an authorized training program is deemed "service in the uniformed services." 42 U.S.C. 300hh-11(e)(3). The term also includes service in an organized unit of the Vermont National Guard or the National Guard of another state as required by Vermont Law, 491 V.S.A. § 491 et. seq.

Uniformed services: the Armed Forces; the Army National Guard and the 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 national emergency. For purposes of USERRA coverage only, service as an intermittent disaster response appointee of the NDMS when federally activated or attending authorized training in support of their Federal mission is deemed "service in the uniformed services," although such appointee is not a member of the "uniformed services" as defined by USERRA. Uniformed services shall also include an organized unit of the Vermont National Guard or the National Guard of another state as required by Vermont Law, 491 V.S.A. § 491 et. Seq

## Procedures

Unless military necessity prevents it, or it is otherwise impossible or unreasonable to do so, an employee should provide their immediate supervisor with notice of the need for military leave as far in advance as is reasonable under the circumstances. Written notice is preferred, but not required under the law or this policy. Employees on military leave may, at their option, use any or all accrued vacation time, personal leave, comp time, and/or cultural holidays during their absence.

### Benefits During and After Military Service

The first ten days of military leave that occur within the calendar year (January 1 – December 31) will be paid by the University at the employee's current rate of pay. After that employees may elect to use any accumulated vacation, comp time, or personal leave balances to cover all or a portion of their military leave, or may take an unpaid leave.

If an employee elects to use accrued leave balances to cover all or part of their military leave, then all benefits (health, dental, retirement, etc.) continue under the same terms and conditions applicable to active employees during the period of paid leave. When an employee takes unpaid leave for military service, they may elect to continue health, dental, long-term disability, life, and any other insurance coverage for them and their covered dependents under the same terms and conditions applicable to active employees for a period not to exceed six months from the date the leave of absence for military service began.

After the employee's use of accrued leave ends, or after the initial six month continuation of benefits during an unpaid leave for military service described above (whichever occurs later), the employee and covered dependents can continue health and dental insurance for up to an additional 24 months at 102% of the

overall (both employer and employee) premium rate. However, if coverage is terminated at the employee's option, the University may not impose a waiting period for benefit reinstatement upon return to employment.

Employees on unpaid military leave do not accrue vacation, personal, or sick leave.

Employees participating in the UVM Retirement Plan may make up for contributions missed during a leave of absence for long-term military service upon return to work. Employees should contact a Benefits Advisor in Human Resource Services within 30 calendar days of their return to work for information on this process. University matching contributions for the period of long-term military service will be made to the employee's plan account when the employee makes up their contributions as described in the next paragraph.

Missed Employee contributions must be made after reemployment and before the earlier of: 1) five years, or 2) three times the length of the period of military service. Certain contribution limits may apply. The missed contributions can be made on a pre-tax or post-tax basis. The requirements for making missed contributions are in accordance with controlling law.

#### Duration of Military Leave

In general, employees may perform service in the uniformed services for a cumulative period of up to five (5) years and retain reemployment rights with the University. The five-year period includes only the time the employee spends actually performing service in the uniformed services. USERRA provides some exceptions to this five-year limit, and in such cases, the University will comply with USERRA.

#### Reemployment

Employees reemployed following military leave will receive seniority and other benefits determined by seniority that they had at the beginning of the military leave, plus any additional seniority and benefits they would have attained, with reasonable certainty, had they remained continuously employed. An employee's time spent on active military duty will be counted toward their eligibility for FMLA leave once they return to their job at the University.

Upon completing service in the uniformed services, employees must notify the University of their intent to return to their former position by either reporting to work or submitting a timely application for reemployment. Whether the employee is required to report to work or submit a timely application for reemployment depends upon the length of service, as follows:

(a) *Period of service less than 31 days or for a period of any length for the purpose of a fitness examination.*

If the period of military service was less than 31 days, or the employee was absent from a position of employment for a period of any length for the purpose of an examination to determine his or her fitness to perform service, the employee must report back to the University no later than the beginning of the first full regularly-scheduled work period on the first full calendar day following the completion of the period of service, and the expiration of eight hours after a period allowing for safe transportation from the place of that service to the employee's residence. For example, if the employee completes a period of service and travel home, arriving at ten o'clock in the evening, they cannot be required to report to the University until the beginning of the next full regularly-scheduled work period that begins at least eight hours after arriving home, i.e., no earlier than six o'clock the next morning. If it is impossible or unreasonable for the employee to report within such time period through no fault of their own, they must report to the University as soon as possible after the expiration of the eight-hour period.

(b) *Period of service more than 30 days but less than 181 days.*

If the employee's military service was for more than 30 days but less than 181 days, they must submit an application for reemployment (written or verbal) with the University not later than 14 days after completing service. If it is impossible or unreasonable for the employee to apply within 14 days through no fault of their own, they must submit the application not later than the next full calendar day after it becomes possible to do so.

(c) *Period of service more than 180 days.*

If the employee's period of military service was for more than 180 days, they must submit an application for reemployment (written or verbal) no later than 90 days after completing service.

When an employ is required to apply for reemployment, they may apply orally or in writing, and should indicate that they are a former employee returning from service in the uniformed services and that they seek reemployment with the University. The employee is permitted, but not required, to identify a particular reemployment position in which they are interested. Absent unusual circumstances, reemployment must occur within two weeks of the employee's application for reemployment.

When the employee returns to University employment, they will be reinstated with credit for previous University service and the period of military service. In addition, the employee's pay will be set at the rate they would have received if their employment had been continuous. An employee's time spent on active military duty will be counted toward their eligibility for FMLA leave once they return to their job at the University.

*Termination of Reemployment Rights*

Reemployment rights terminate if the employee is:

- (a) Separated from uniformed service with a dishonorable or bad conduct discharge;
- (b) Separated from uniformed service under other than honorable conditions, as characterized by regulations of the uniformed service;
- (c) A commissioned officer dismissed as permitted under 10 U.S.C. 1161(a) by sentence of a general court-martial; in commutation of a sentence of a general court-martial; or, in time of war, by order of the President; or,
- (d) A commissioned officer dropped from the rolls under 10 U.S.C. 1161(b) due to absence without authority for at least three months; separation by reason of a sentence to confinement adjudged by a court-martial; or, a sentence to confinement in a Federal or State penitentiary or correctional institution.

## Contacts

<b>Questions concerning the daily operational interpretation of this policy should be directed to the following (in accordance with the policy elaboration and procedures):</b>	
<b>Title(s)/Department(s):</b>	<b>Contact Information:</b>
Chief Human Resources Officer	(802) 656-3368
Director of Labor and Employment Services	(802) 656-3150
HRS information	<a href="mailto:HRSinfo@uvm.edu">HRSinfo@uvm.edu</a>

## Forms/Flowcharts/Diagrams

- None

## Related Documents/Policies

- [Department of Labor Employee Guide to Military Family Leave](#)
- [LCOM Faculty Handbook](#)
- [Staff Handbook: Leaves and Time Off](#)
- [Teamsters Collective Bargaining Agreement](#)
- [UA Collective Bargaining Agreement \(full-time faculty\)](#)
- [UA Collective Bargaining Agreement \(part-time faculty\)](#)
- [UE Collective Bargaining Agreement](#)

## Regulatory References/Citations

- None

## Training/Education

Training will be provided on an as-needed basis as determined by the Approval Authority or the Responsible Official.

## About this Policy

<b>Responsible Official:</b>	Vice President for Finance and Administration	<b>Approval Authority:</b>	President
<b>Policy Number:</b>	V. 4.27.3	<b>Effective Date:</b>	June 30, 2020
<b>Revision History:</b>	<ul style="list-style-type: none"><li>• V. 4.2.1.1 originally approved February 7, 2007</li><li>• V. 4.2.1.2/7.6.2 approved August 8, 2012</li><li>• Responsible official officially changed from the Vice President for Human Resources, Diversity and Multicultural Affairs to the Vice President for Finance and Treasurer on May 1, 2020</li></ul>		