Military Leave With Pay

Statement

The Uniformed Services Employment and Reemployment Rights Acts (USERRA) protects employees who serve in the military from discrimination in employment and provides employees with certain benefits and reemployment rights when they return from military duty. The law covers all categories of military training and service, including duty performed on a voluntary or involuntary basis, in time of peace or war.

Eastern Kentucky University complies with all requirements of the USERRA guidelines. All employees of EKU who are members of the national guard or of any reserve component of the armed forces of the United States, or of the reserve corps of the United States Public Health Service, shall be entitled to leave of absence from their respective duties without loss of time, pay, regular leave, impairment of efficiency rating, or of any other rights or benefits to which they are entitled, while performing uniformed services.

Entities Affected

All employees of EKU who are members of the National Guard or of any reserve component of the armed forces of the United States, or of the reserve corps of the United States Public Health Service, their supervisors and units.

Background

Not applicable.

Procedures

- Requests for Military Leave should be coordinated through Human Resources
- The employee must notify the University in advance of impending military service. The employee’s notice can be written or verbal and should include approximate beginning and concluding dates or his
or her training. There is no prescribed time by which an employee must give notice, but the regulations state that an employee should provide notice as far in advance as is reasonable under the circumstances.

- The act prohibits employers from discriminating against any employee or perspective employee because of past, present, or future application for, or membership in, a uniformed service.

- USERRA requires that upon returning from service, members of the armed services and its reserve components must be reinstated to their private civil jobs without loss of seniority or benefits and without any break in service for pension purposes.

- **Reinstatement:** The service member must return to work, or apply for reemployment in a timely manner after the conclusion of military service.

  - **Service of less than 31 days.** (Or any length of absence for the examination to determine fitness to perform military service); the employee must report back to work not later than the beginning of the first full regularly – scheduled work period on the first full calendar day following the completion of the military service, and the expiration of eight hours after an period allowing for safe transportation from the place of military service to the employee’s residence.

  - **Service for more than 30 but less than 181 days:** the employee must submit an application for reemployment (written or oral) not later than 14 days after completing service. If this is impossible or unreasonable through no fault of the employee, the employee must submit the application no later than the next full calendar day after it becomes possible to do so.

  - **Service for more than 180 days:** The employee must submit an application for reemployment (written or oral) no later than 90 days after completing service.

  - The University is not required to reemploy a returning service member if the employment circumstances have so changed as to make reemployment impossible or unreasonable. Reemployment is not required if the position was for a brief, non-recurrent period and there was no reasonable expectation that the employment would continue indefinitely, or for a significant period.

  - The employee should be returned to a position that he/she would have attained with reasonable certainty but for the interruption due to military service.

  - **Termination:** Individuals who serve more than 180 days cannot be discharged without cause for 12 months after reemployment. Those who serve for 31 to 180 days cannot be discharged without cause for 6 months after re-employment. Individuals who serve for 30 days or less have no protected period.

  - **Disability:** The University has special responsibility toward disabled employees. If the service-connected disability is not an impediment to the service member’s qualifications, the employee has the same rights as any other returning service member. If the disability limits the employee’s ability to perform the job, the employer will make reasonable efforts to accommodate the disability. If, despite efforts to provide an effective accommodation, the employee cannot become qualified for the position, the employee must be reemployed in a position of equivalent seniority, status and pay that the employee is qualified to perform or could reasonably become qualified to perform. If no such position exists; the employee must be placed in a job that is similar in terms of seniority, status, and pay consistent with the employee’s circumstances. The University is not required to reemploy the returning service member if he or she cannot qualify for a position after reasonable efforts by the University.

- **Benefits while on military service**
o **Wages:** Employees shall be paid their salaries or compensation for a period, or periods, not exceeding 15 calendar days (10 working days if the employee’s position is based upon a five day work week) in any one year.

o **Health Insurance:**
  - Employee may elect to continue their health plan coverage while in the military. If the employee already has coverage, the plan must permit the employee (and dependents) to elect to continue the coverage for a period that is the shorter of the following two periods. The 24 month period beginning on the date on which the employee’s absence begins, or the period beginning on the date on which the employee’s absence begins, and ending on the date on which the employee fails to return to the job or apply for reemployment.
  - The amount the employee must pay for continuing health care coverage varies according to how long the employee is absent: If the employee performs military service of fewer than 31 days, the employee pays their existing premium for coverage. If the employee serves for 31 days or longer, he or she will be required to pay up to 102 percent of the full premium (the University’s share plus the employee’s share) for coverage. In either case, they payment obligation begins on the first day of the continuation of coverage.
  - If health plan converge was terminated during military service, coverage must be reinstated when the employee returns to work, if requested by the employee.

o **Retirement Plan:** USERRA provides federal guidelines for continued participation in pension plans while in military service. Detailed information can be obtained by contacting KTRS or KERS directly.

o **Vacations:**
  - Vacations are protected and the employee cannot be forced to use vacation for military training summer encampment.
  - Employees returning from military service are permitted to use any vacation that had accrued before the beginning of their military service.
  - Military service is counted when determining eligibility for vacation accruals based upon seniority.
  - The employee does not accrue vacation while on leave.

o **Retirement:**
  - See the summary plan descriptions for Kentucky Teachers Retirement System (KTRS) and Kentucky Employee Retirement Systems (KERS) for governing regulations.

o **FMLA:** Active duty time counts toward eligibility to take time off from work under the Family and Medical Leave Act (FMLA).

Kentucky law prohibits employers from discriminating against an individual because of membership in the Kentucky National Guard or Kentucky active militia.

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**Definitions**

**Service**

In the uniformed services “service” includes active duty; active and inactive duty for training; initial active duty for training; full-time National Guard duty; examination to determine fitness for duty; funeral honors duty by National Guard or Reserve members; and certain duties performed by National Disaster Medical system employees.
Responsibilities

**Employee**
- Must notify the University in advance of impending military service.
- Must return to work in accordance to the terms of this policy.

**Human Resources**
- Responsible for administering this policy

Violations

Violations of this policy will be handled in accordance with University procedures.

Interpreting Authority

Director of Human Resources

Statutory or Regulatory References

The Uniformed Services Employment and Reemployment Rights Act


Relevant Links

N/A

Adoption Review and Approval

This policy was initially approved on January 1, 1981 by the EKU President. It was revised and approved by the EKU Board of Regents on July 30, 1987 and August 1, 2002 as part of the staff handbook approval. It was revised by Human Resources in April 2006.