

EXTENDED MILITARY LEAVE QUESTIONS AND ANSWERS

General

1. *Who is covered by extended military leave?*

All members of the Armed Forces, the Army National Guard and the Air National Guard, including reservists, when engaged in active-duty service of any length or active-duty training in excess of 180 days. This includes full-time National Guard members when serving in active Federal military 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.

2. *Does the University's extended military leave policy apply to employees who voluntarily enlist?*

Yes, extended military leave applies to employees who voluntarily enlist. The courts do not distinguish between voluntary or involuntary military service. All military service is deemed "ordered" service.

3. *Is there a limit to the amount of extended military leave the University must grant?*

Generally, there is a five-year limit on the amount of military leave an employee can use and still retain reemployment rights.

Notice

4. *Is prior notice required for extended military leave?*

Yes, an employee must provide advance notice to the department head or his or her designee unless notice is impossible, unreasonable, or precluded by military necessity. Advance notice may be provided either orally or in writing.

5. *Under what circumstances would the giving of notice be considered to be "precluded by military necessity?"*

A classified recall would be an example of a situation in which giving prior notice would be precluded by military necessity. If an employee's military commander directs him or her to report for active duty and not to disclose the fact that the employee is being recalled, then prior notice would not be required under those circumstances. The Secretary of Defense is authorized to make a determination of military necessity.

¹Extended military leave as defined and used in these questions and answers also applies to academic personnel.

6. *When may the University require an employee to provide documentation of military service?*

The University has the right to request that an employee provide documentation of military service for an absence of more than 30 days.

7. *What are valid military orders?*

All written or verbal orders are considered valid orders.

8. *What if an employee cannot provide satisfactory documentation for military service in excess of 30 days?*

Reemployment cannot be denied on the basis that documentation is not readily available or does not exist. The University may contact the military unit to attempt to obtain satisfactory documentation.

Pay and Benefits

9. *Is an employee entitled to his or her regular University pay during an extended military leave of absence?*

Employees who are granted extended military leave are entitled to their regular University pay for the first 30 calendar days in a fiscal year, provided that the employee has completed 12 months of continuous University service immediately prior to the granting of the leave and provided that the aggregate of payments for all types of military leave, except emergency national guard duty, do not exceed 30 calendar days in any fiscal year. All prior full-time military service must be included in the calculation of the University service requirement.

For employees eligible for supplemental military pay due to active military duty in connection with the national state of emergency declared in the aftermath of the September 11, 2001 attacks, supplemental pay (equal to the difference between University pay and military pay and allowances) will be provided until the end of the employee's active military commitment, until the conclusion of the employee's University appointment, or until June 30, 2012, whichever comes first. Benefits under the Policy on Supplement to Military Pay are subject to a two-year lifetime limit.

10. *How is the 30 days' pay calculated for part-time employees?*

A part-time employee who is eligible for pay shall receive such pay in proportion to the average percent of full-time worked during the 3 months immediately preceding the leave.

11. *Can an employee use accrued vacation or compensatory time off during the unpaid portions of extended military leave?*

Yes, an employee may use accrued vacation and/or compensatory time off during the unpaid portions of extended military leave.

12. *Does an employee who is granted an extended military leave of absence continue to earn UCRP service credit during his or her military service?*

Yes, an employee continues to earn UCRP service credit for the time spent in uniformed service and for a period following such service, provided that the employee returns to work or notifies the University of his or her intent to do so in accordance with guidelines described in the University's "Military Leave Benefits Checklist" which may be downloaded from http://atyourservice.ucop.edu/employees/benefits_changes/leaves_of_absence.html

13. *What other UC-sponsored benefits is a reservist or enlistee entitled to during an extended military leave?*

Medical, dental, vision, and life insurance coverage may continue for up to the first six months of extended military leave.

For employees eligible for supplemental military pay and benefits, or benefits only under the Policy on Supplement to Military Pay, University contributions for medical, dental, and vision coverage will be provided until the end of the employee's active military commitment, until the conclusion of the employee's University appointment, or until June 30, 2012, whichever comes first. Benefits under the Policy on Supplement to Military Pay are subject to a two-year lifetime limit.

14. *Can an employee have dual medical coverage under TRICARE and the University's health plan?*

An employee may elect dual coverage under TRICARE and the University's medical plan. Should an employee elect dual coverage, the military coverage would be considered the primary coverage for the employee and the University coverage would be considered primary for the employee's dependents. University benefit coverage during a military leave is described in the University's Military Leave Benefits Checklist.

15. *What happens to an employee's sick leave balance when granted an extended military leave of absence?*

The employee's sick leave balance is reinstated provided that the employee returns to work within six months after termination of active service.

16. *Is an employee eligible for terminal vacation pay when granted an extended military leave of absence?*

Employees granted extended military leaves of absence are entitled to vacation pay for all unused vacation accrued through the last day on pay status. In addition, vacation credits may remain on the books at the request of an employee to the extent permitted by the applicable collective bargaining agreement or, in the case of non-represented employees, to the extent permitted by local procedures.

17. *Is extended military leave counted as qualifying service for the purpose of determining vacation accrual rates?*

Periods of extended military leave are counted as qualifying service for the purpose of determining vacation accrual rates, provided that the employee returns to pay status at the conclusion of the extended military leave.

Reinstatement

18. *Are employees who have been granted an extended military leave guaranteed the same job that the employee held prior to the leave?*

Basically, yes. Federal and State laws require employers to reemploy returning reservists and enlistees first to any promotional position the employee might have attained if not absent or second to the same position the employee left. Only if these positions are not available may the University consider a position of like seniority, status and pay. If the employee became disabled while in the service and can no longer perform the duties of the former position, the University must offer him or her a reasonable accommodation for the previous position or offer the employee the most similar position for which he or she is qualified. If for any reason it appears that a reservist or enlistee will not be reinstated as described above, Human Resources and Academic Personnel Offices should contact the Office of the General Counsel prior to a final decision and prior to notifying the employee.

19. *Is the University obligated to reemploy a returning reservist or enlistee whose former position no longer exists, as for example, when contract funds have been expended or a position has been abolished?*

Generally, yes. The University must appoint the returning reservist or enlistee to a similar position of equal pay and status, provided that such a position exists and that the reservist is qualified to fill it.

20. *Can reinstatement be denied to employees who held seasonal or part-time positions? To reservists or enlistees who held limited or floater appointments?*

The University is not required to reemploy an individual if the University's circumstances have so changed as to make such reemployment impossible or unreasonable; if such reemployment would impose an undue hardship on the University; or if the employment which the individual leaves to serve in the uniformed services is for a brief, nonrecurring period and there is no reasonable expectation that such employment will continue indefinitely or for a significant period. The University may deny reinstatement to a seasonal or part-time employee only if one of the above listed reasons applies.

With regard to limited and floater appointments, if the employee's position is still open when the reservist applies for reinstatement, he or she must be reinstated. If the position has concluded, in most cases the returning reservist would not be entitled to reinstatement. It is possible, however, that there may be circumstances in which the reservist would be entitled to reemployment in either the same position or a position of like seniority, status, and pay. For example, this could occur if a supervisor had given the employee a reasonable expectation that such employment would continue indefinitely or for a significant period. If there is a question of any kind in relation to the reinstatement of reservists who held limited or floater appointments, Human Resources and Academic Personnel Offices should consult with the Office of the General Counsel prior to a final decision and prior to notifying the employee.

21. *If an employee was promoted just prior to the call-up, or promised a salary increase, is the reservist or enlistee entitled to the promotion and/or salary increase when he or she returns?*

Yes, the reservist or enlistee would be entitled to a job in line with the promised promotion or raise. In fact, a reemployed reservist/enlistee is entitled to length of service credit for the period of military service and promotions and cost of living salary adjustments which would have occurred during the employee's military absence, whether or not such changes were promised prior to the leave.

22. *How long must the University hold open a job for an employee who has been granted extended military leave?*

Extended military leave must be granted for up to five years, but can be extended beyond that period for valid exceptions under USERRA. If there is a question about an extension, Human Resources and Academic Personnel Offices should consult with the Office of the General Counsel.

23. *Is a rehired reservist or enlistee protected from termination without just cause?*

In most instances, yes. In time of war or national emergency, all reinstated reservists and enlistees, other than those who have not yet completed their probationary periods, are protected from termination without just cause for a period of one year. For service of any type under competent authority, reinstated reservists or enlistees, including those who are still serving their probationary periods, are protected from termination without just cause for six months if they have been in service for 30 to 180 days or protected for one year if they have been in service for more than 180 days.

24. *If the crisis that generated the call-up ends and the reservist decides to continue in active duty, does the University have an obligation to rehire the reservist?*

Yes, as long as the reservist returns within five years, or longer if exceptions under USERRA exist after the commencement of the active duty.

25. *Can the University require reservists/enlistees to return to work immediately after they are released from duty?*

No. After a military conflict, reservists and enlistees may take as much as six months of unpaid leave from the date of release from service or hospitalization before returning to work. The right to reemployment following hospitalization applies if the individual is hospitalized for no more than one year after discharge from military service

26. *What if a returning employee is no longer qualified to perform his or her job because the employee's job has changed during his or her absence (e.g., new equipment or methods are being used)?*

The University is required by USERRA to make reasonable efforts to qualify returning reservists for reemployment in a promotional job or the same job.

27. *Is University employment prior to an extended military leave included in the calculation of seniority pursuant to the applicable layoff personnel policy and collective bargaining provisions?*

Yes. USERRA provides that a reemployed reservist or enlistee must be treated as not having incurred a break in service.