## Uniform Services Employment and Reemployment Rights Act

Under the [Uniformed Services Employment and Reemployment Rights Act](http://www.userra.gov/statute.htm) (USERRA), our College is required to grant an unpaid military leave of absence to any employee who requests such leave in order to perform service in the uniformed services.  It is the policy of our College to comply with USERRA and all other state, federal, and local laws.  In case of any conflicts between this policy and federal, state, or local laws, such applicable laws shall control, subject to conflict of laws principles.

The uniformed services are the Army, Navy, Marine Corps, Air Force, Coast Guard, and the commissioned corps of the Public Health Service.  This includes the Reserve components of these services and the Army National Guard and Air National Guard.  Under another Federal law, enacted in 2002, Congress has extended reemployment rights under USERRA to persons who serve as Intermittent Disaster Response Appointees (IDRAs). IDRAs are temporary, intermittent employees of the U.S. Department of Health and Human Services.  They respond, often on very short notice, to emergencies involving infectious diseases or weapons of mass destruction, and they also engage in training for such dire contingencies.  They are protected by USERRA both for actual emergencies and for training.

USERRA broadly defines the term “service in the uniformed services,” as follows: The term “service in the uniformed services” means the performance of duty *on a voluntary or involuntary basis* in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty, and a period for which a person is absent from a position of employment for the purpose of performing funeral honors duty as authorized by section 12503 of title 10 or section 115 of title 32. 38 U.S.C. 4303(13) (emphasis supplied).

Some of our employees will perform inactive duty training in the National Guard or Reserve.  Such inactive duty training is normally but not always performed on weekends.  Those National Guard and Reserve members will also perform annual training and/or specialized training in their Reserve components.  National Guard and Reserve service is no longer limited to “one weekend per month and two weeks per year.”  Many National Guard and Reserve members now perform training that is much more frequent and lengthy.

**Pay and Use of Accruals**

The College is not required to pay an employee who is away from work performing service in the uniformed services.   Our College has added a benefit called “Transition Pay”. If an employee is called to full-time active duty in excess of 180 days, the employee will receive 4 weeks, or one month if salaried, pay at straight time. The amount is prorated is part-time status. Transition pay is awarded to help the employee and their family with expenses associated with the change from employment to active service. An employee is entitled (not required) to use and be paid for any vacation that the employee has accrued and not used prior to the period of service. We are not required to advance vacation days to an employee under these circumstances, but the employee is entitled to use any vacation days that he or she has already accrued. It would be unlawful for the College to require the employee to use accrued vacation days in this way.  An exception relates to managerial and executive employees who are *exempt from overtime rules* under the Fair Labor Standards Act (FLSA).  These employees work on a salaried rather than an hourly rate.  If such an employee works *part of the week* here at the College but misses another part of the week while performing uniformed service, we are not permitted to dock the employee for the hours not worked.  We are permitted to consider what the employee earns from the military, and to pay the difference.  If the employee is away from work for the entire week, we are not required to pay anything for that week.  This is an FLSA requirement, not a USERRA requirement. Absent accruals will do not accrue for any unpaid portion of the leave but the length of the leave will be included as though worked for purposes of the accrual rates that are based on length of service.

USERRA applies to employees in probationary, seasonal, or “temporary” positions.  There is no requirement that the employee have been employed for this College for any minimum period before the absence for uniformed service.

USERRA is not limited to the National Guard and Reserve.  An employee who leaves employment with this College for service in the regular military also can have rights under USERRA.  The law also protects an employee who takes a day or two off from work for the purpose of an examination to determine fitness to join any branch of the service.  After completion of such an examination, regardless of the outcome, the employee is entitled to reemployment under USERRA.

**Eligibility Criteria**

An employee who leaves employment at this College for service in the uniformed services will be entitled to reemployment, provided he or she meets the USERRA eligibility criteria:

1. The employee must have given us prior oral or written notice of the impending service.
2. The employee’s cumulative period or periods of service, relating to this College, shall not have exceeded five years.
3. The employee must have completed the period of service without having received a punitive or other than honorable discharge or having been dismissed or dropped from the rolls of the uniformed service.
4. The employee must have made a timely application for reemployment or have been timely in reporting back to work.

**Prior Notice**

We would prefer that the notice be in writing, but oral notice is sufficient under the statute.  We want employees to give us as much advance notice as possible, but we realize that circumstances arise where the employee does not receive notice from the service until the last minute.  No specific amount of advance notice is required, but the notice must be given before leaving the civilian job.  Advance notice is not required in those rare cases where advance notice is precluded by military necessity or otherwise impossible or unreasonable. The specific wording of the employee’s notice is of no consequence, so long as the employee conveys the information that he or she is leaving the job for the purpose of service.  The use of a word like “resign” does not defeat the employee’s right to reemployment, so long as the employee has informed us that military service is the reason for the resignation.

Our College recognizes that individuals serving in the National Guard and Reserve need time off from work sufficient to enable them to travel to the place of training and have a night of rest, before starting the training, so that they can perform the training in a safe and effective manner.

**Five Year Limit**

The five-year limit is measured from the date of commencement of the individual’s employment relationship with this College.  Uniformed service performed before the individual’s hire date is irrelevant for purposes of the individual’s USERRA rights for this College.  Reserve and National Guard training and involuntary call-ups do not count toward the individual’s five-year limit.  Some voluntary service is also excluded in computing the five-year limit.

**Release from Service under Honorable Discharge**

An individual does not have reemployment rights with this College if he or she has received a punitive (by court martial) or other-than-honorable discharge or if he or she has been “dropped from the rolls” of the uniformed service.

**Timely Application for Re-employment for Period of 1-30 Days of Service:**

After a period of less than 31 days of service, the employee is required to report for work at the start of the first full regularly scheduled work period on the first day after the completion of the period of service, the time reasonably required for safe transportation from the place of service to the individual’s residence, and a period of eight hours (for rest).

**Timely Application for Re-employment for Period of 31 Days of Service or More:**

If the period of service is greater than 30 days but less than 181 days, the individual is required to submit an application for reemployment within 14 days.  If the period of service is 181 days or more, the individual must submit an application for reemployment within 90 days.  No particular form is required for the application for reemployment, and our College will not try to deny reemployment based on quibbling with the wording.  If the individual communicates with us, within the 14 days or 90 days, and tells us that he or she is available to return to work after service, we will offer reemployment to the individual. If the employee submits a timely application and meets the other eligibility criteria, we will act promptly on that application.  We will not make the returning service member wait for a vacancy, and if training or retraining is needed we will offer it to the employee “on the clock.”  We will offer reemployment to the individual not later than the start of the second two-week pay period after the pay period when the individual submits the application for reemployment.

**Effect of Tardiness in Reporting Back to Work:** If the individual misses the relevant deadline by a day or two, he or she is entitled to reemployment, but he or she is subject to our usual policy regarding explanations or sanctions for absence from scheduled work.

**Continuous Accumulation of Longevity for Seniority Purposes**

A person who returns to employment with our College after service in the uniformed services, and who meets the eligibility criteria under USERRA, is entitled to continuous College longevity for the entire period of the military related absence.  This includes the period between leaving the job and the start of the service, the period of service, the period (up to 90 days) during which the individual waited to submit the application for reemployment, and the period between the application for reemployment and returning to work. Upon reemployment, employee is entitled to pay raises, promotions, and other benefits that they would have received, in accordance with seniority.

**Continuous Accumulation of Longevity for Pension Purposes**

A returning veteran who is reemployed by our College, and who meets the USERRA eligibility criteria, is entitled to be treated as if he/she had been continuously employed, for purposes of the defined benefit plan.  The returning veteran who meets the USERRA eligibility criteria will be given the opportunity to make up missed employee contributions to the defined contribution plan.  Such make-up contributions must be made within the period that begins on the date of reemployment and extends for three times the period of service, but not more than five years.  All such make-up payments shall be made on a pre-tax basis.  Employer and employee contributions to the defined contribution plan account will be based on what he/she *would have earned* from the College during the military-related absence.  What she earned from the military is irrelevant.  The determination will be based on the pre-service rate of compensation, plus any pay raises or promotions that are based on seniority or cost-of-living that the employee would have received during the military-related absence.

Some employees of this College are compensated in such a way that the amount that the employee *would have earned* during the military-related absence is not readily determinable after the fact.  In that situation, the amount that he/she would have earned will be computed based on his average rate of compensation during the last year of College service before the military-related interruption.  If he was employed for less than one year, the computation will be based on his average rate of compensation during his entire period of employment at this College.

**Job Status**

If the employee’s period of service was less than 91 days, he or she is entitled, upon reemployment, to the exact job that he or she would have attained if he or she had been continuously employed.  In most cases, that will be the same as the pre-service job.

If the period of service was 91 days or more, our College has the option to reemploy the returning veteran either in the position that he/she would have attained or, alternatively, in another position of like seniority, *status*, and rate of pay.  Offering the returning veteran reemployment in a position that is not of like status is not a sufficient compliance with USERRA.

Other aspects of status include hours of work (Most employees prefer to work during the day, not at night.).  If we offer the returning veteran reemployment in an alternative job, we must ensure that the alternative job is equivalent in all respects to the job that he or she would have attained if continuously employed. If we offer the returning veteran reemployment in an alternative position, it must be a position for which the employee is qualified.  Putting an employee in a position for which he or she is not qualified would not be a sufficient compliance with USERRA.

**Training/Retraining**

If an employee returns to work after a long period of military service, he or she may find that many things have changed in the interim.  There may have been technological developments and changes in ways of doing business. The returning veteran is entitled to the training or retraining that he or she would have received if continuously employed.

**Special Protection Against Discharge, Except for Cause**

The returning veteran who meets the USERRA eligibility criteria may not be discharged, except for cause, within one year after reemployment, if the veteran’s period of service was 181 days or more.  If the period of service was 31-180 days, the period of special protection is 180 days.  If the employee is discharged during the special protection period, our College has a heavy burden of proof, to show that the employee was discharged *for cause*. This special protection provision applies even if the employee was in an at-will or probationary status before leaving for service.  The special protection provision is intended to protect the veteran from a bad faith or *pro forma* reinstatement.

**Entitlement of Returning Disabled Veterans**

Some of our employees who have been called to serve will return with temporary or permanent physical limitations, resulting from service-connected injuries or illnesses.  In such a situation, we are required to make *reasonable accommodations* in equipment, scheduling, etc. in order to enable the employee to perform the duties of his or her escalated reinstatement position (the position that he or she would have attained if continuously employed).  Of course, some disabilities cannot be accommodated.  If the employee cannot be reinstated in the escalated reinstatement position, he or she is entitled to reinstatement in some other position, the duties of which he or she can perform despite the limitations.  The employee is entitled to the position that comes as close as possible (in terms of seniority, status, and pay) to the position to which he or she would be entitled but for the disability.

**Reinstatement of Health Insurance Coverage**

An employee returning from service, and who meets the USERRA eligibility criteria, is entitled to *immediate reinstatement* of our College health insurance coverage upon reemployment.  This applies to coverage for the employee and for family members who would have been covered if the employee had been continuously employed.  This includes children born or adopted during the employee’s military-related absence from work.  There must be no waiting period, and no exclusion of “pre-existing conditions” except for conditions that the U.S. Department of Veterans Affairs has determined to be service-connected.

**Entitlements During Service**

An employee who is away from work performing service in the uniformed services is entitled to *non-seniority benefits*, during the military-related absence, if and to the extent that the College offers such benefits to employees on some other form of leave, like jury leave or maternity/paternity leave.  Since the College has more than one form of non-military leave, the comparison must be to the most generous form of leave that we provide, whether that leave be paid or unpaid.

**Continuation of Health, Dental and Life Insurance during Service**

An employee who notifies us that he or she will be away from work performing service is entitled to elect continued health, dental and life insurance coverage, through our College, *during* the military-related absence from work.  If the period of service (as called for in the individual’s military orders) is for less than 6 months, the College will charge, as with other types of leaves, *only the employee share* of the cost of the coverage.  If the period of service is greater than 6 months, the College is permitted to charge up to 102% of the entire premium.  We are required to make this continuing coverage available to the employee who is away from work for service until the first of the following occurs:

* + 1. The employee returns to work after service.
    2. The employee allows the deadline for an application for reemployment to pass without having made such an application.
    3. Eighteen (18) months have passed since the employee left his or her civilian job for service.

The right to reinstated coverage after service is not contingent on continuing coverage during service.  Most of our employees who leave for service of more than 30 days will not elect continued coverage during service, because during their service they are entitled to use the military health care system for themselves and their families.

**Retirement Plan during Service Leave**

Retirement contributions are based on worked time and will not be applied for the unpaid portion of the leave. Specific “catch-up” rules may be applied.

**Long-Term Disability Insurance during Service Leave**

For participants granted military leave, the long-term disability coverage ceases at the end of the last day worked at the College.

**Protection against Discrimination**

Section 4311(a) of USERRA provides as follows:

A person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service shall not be denied initial employment, re-employment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation. It would be unlawful for our College to deny an individual initial employment, or to deny an existing employee any benefit, or to fire an employee, because of the person’s membership in a uniformed service, obligation to perform future service, etc.  It is our policy to obey this law.  We will not consider military status or service when making hiring, promotion, or firing decisions.

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