

# Managing Military Members

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## Frequently Asked Questions

This FAQ is intended to answer questions regarding military leave for current employees who engage in voluntary or involuntary military-related activities (“servicemembers”) in the uniformed service (“service”). The Uniformed Services Employment and Reemployment Rights Act (“USERRA”) provides the national framework for rights and protections for servicemembers when they are required to perform service, and it restricts what employers can do when servicemembers are called to active duty, voluntarily join the military, or are activated into the National Guard or Reserves.

### Servicemembers

#### Q: Is the University subject to USERRA?

**A:** Yes, the University is subject to USERRA. All branches of the military are covered, including National Guard and Reserve servicemembers; voluntary and involuntary service; peacetime and wartime service; active duty and reserve duty components; and fitness-for-duty examinations.

#### Q: Does “service” include training?

**A:** Yes, service includes training that the servicemember engages in, whether it is voluntary or involuntary.

#### Q: Is prior notice required?

**A:** Yes, prior notice is required. Notice can be oral or in writing, and in most cases should be provided as far in advance as possible. Notice may be provided by the servicemember or by a responsible officer from the servicemember’s unit. There is an exception to the prior notice requirement: “military necessity” precludes notice (e.g., deployment is classified) or where giving notice would be otherwise unreasonable.

#### Q: Can the University request documentation to support the need for military service?

**A:** Yes, upon the employer’s request for documentation, the servicemember must present documentation following service of more than 30 days.

#### Q: Is there a limit on how much time away from the job a servicemember may take?

**A:** The period of military service cannot exceed five (5) years of service, and the limit is cumulative. However, some types of service are exempt from the five-year accumulated total, such as required training, involuntary service, or support of a war or contingency. The five-year cumulative total also does not include periods of absence from employment prior to or after performance of service.

#### Q: Does the University have to hold the servicemember’s job open while on military leave?

**A:** It depends upon the length of military service and the needs of the individual department. However, regardless of the length of absence due to military service, upon completion of the period of service and notification of the return to work, the servicemember **MUST** be reinstated in a comparable position on the same shift, in the same location and title as the servicemember held prior to military service.

If the period of service is 30 days or less, the servicemember should generally return to work the next workday/shift following completion of service, with time added for safe travel and rest (typically eight hours), and should be reinstated immediately. If service is for more than 30 days, but less than 180 days, the servicemember should generally return to work within 14 days after completion of service. If service exceeds 180 days, the service member should generally return to work within 90 days following completion of service.

**Q:** If the servicemember is unable to return within the applicable time period as indicated above, can the return date be extended?

**A:** Yes, return deadlines can be extended for up to two years for recovery from illness or injury incurred or aggravated during the period of service. The return deadline may also be extended if the servicemember can show that it was impossible or unreasonable, through no fault of the servicemember, to report to work.

**Q:** USERRA uses the phrase “apply for reemployment” in reference to a servicemember returning to work upon completion of military service. Does the servicemember have to reapply for the job they held prior to military service?

**A:** The phrase “apply for reemployment” simply means the servicemember must notify their employer that their military service is complete and provide an anticipated return to work date. This notification does not have to be in writing or through a formal process. Notification can be as simple as a phone call or an email from the employee informing the supervisor that their military service is complete or will be completed on a future date, and the anticipated return to work date.

**Q:** What if the servicemember fails to notify the University that military service is completed, and does not return to work within the applicable USERRA time frame?

**A:** A servicemember who fails to comply with the USERRA’s timeliness requirements does not lose all USERRA protections. However, the University may treat the employee’s late reporting as an unauthorized absence. Departments should consult with Labor Relations in such situations.

The following link is provided for general information concerning USERRA:

<http://www.dol.gov/vets/programs/userra/>

## **Military Family Leave Provisions**

The Family Medical Leave Act (“FMLA”) provides two leave entitlements for military families (“military family leave provisions”): “qualifying exigency leave” and “military caregiver leave.” FMLA-eligible employees may take leave under these provisions to attend to familial obligations and/or to take time away from work for a family member(s) who is a “covered military member.” UC Policy 2.210, Absence From Work, provides information regarding determining eligibility under these provisions, as well as administration of these leaves. This policy can be found at: <http://policy.ucop.edu/doc/4010406/PPSM-2-210>

In addition, frequently asked questions concerning FMLA eligibility can be found at:

[http://hr.ucr.edu/docs/ucop\\_fml\\_faq\\_feb112010.pdf](http://hr.ucr.edu/docs/ucop_fml_faq_feb112010.pdf)

## **General Information**

In addition to the above referenced policies and guidelines, supervisors should review the applicable collective bargaining agreement. Information concerning military family leave provisions can generally be located in articles pertaining to leave provisions. Some agreements contain specific articles entitled “Military Leave;” others contain a generalized section entitled “Other Leaves” which include a statement such as: “Other leaves, including but not limited to, leave for service to government agencies...may be granted with or without pay at the University’s sole discretion or if required by applicable law.” Military leave and military family leave are required by law.

Please contact Labor Relations at (951) 827-3641 with any questions or to discuss specific situations.