UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA)
FREQUENTLY ASKED QUESTIONS

**General Questions:**
Is there a particular person I can contact regarding questions on the military leave policy?
Where can I find information on military leave for my employee?
How do I enter a leave of absence transaction in PeopleSoft for an employee on military leave? Do I have to enter anything in the system?
How do I put the employee back into the PeopleSoft system?

**Reemployment Questions:**
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We had a former employee who waived all rights under USERRA. Do I still have to rehire him should he reapply at the Health Science Center?
I hired someone to fill a vacancy left by an employee who was activated in the military. What do I do with this person when my employee returns from leave?

**Pay Questions:**
If the military pay is less than the HSC employee’s pay, do we need to make up the difference?
Where can I find a reference regarding military differential pay?
How do we determine the military pay of one of our employees?

**Benefits Questions:**
Does the employee accrue vacation and sick leave while on active duty?
Can employees continue health coverage for themselves and dependents while on military leave?
Does the employee have to wait for the next open enrollment to sign up for coverage if the coverage was terminated because of military service?
Is the leave of absence for military service considered a break in service?
Does the employee’s military leave count toward retirement benefits?
What are the rules regarding contributions to a retirement plan for an employee who missed making contributions and is re-employed after active duty?
**General Questions:**
Is there a particular person I can contact regarding questions on the military leave policy?  
**Answer:** Contact Ninette Roberson, PHR, at 567-0355 or Brett Morris, Assistant Vice President of Human Resources, at 567-2590

Where can I find information on military leave for my employee?  
**Answer:** We have a Uniformed Services Employment and Reemployment Rights Act (USERRA) toolkit on our HR webpage at www.uthscsa.edu/hr. We have guidelines for departments as well as employees on this site.

How do I enter a leave of absence transaction in PeopleSoft for an employee on military leave?  Do I have to enter anything in the system?  
**Answer:** If employees are using their paid 15 days of military leave, no entry needs to be made. If the employee is on extended unpaid military leave (with or without differential pay), you must enter a Leave of Absence (LOA/MIL) action in PeopleSoft.  
First, insert a row on the funding panel for the first day of the extended military leave, and save the panel. Follow that by inserting another row on the work location panel for LOA action/MIL reason code, and save the panel.

How do I put the employee back into the PeopleSoft system?  
**Answer:** If the employee is currently on LOA/MIL, insert a row on the funding panel for the first day back for the employee and save the panel. Follow that by inserting a row on the work location panel for a Return from Leave action reason and save the panel as well. If the employee terminated and now has returned, please fund the position that the employee will occupy, and contact Bea Stouffer at 567-3021. She will rehire him/her for you.

**Reemployment Questions:**
Is the employee guaranteed his/her job upon release from active duty?  
**Answer:** Yes, USERRA requires employers to allow up to five years of leave to a member of the military who is on active duty, performs that duty satisfactorily, and requests their job back within the time limits provided by the law.

What position is an employee returned to after military leave of absence?  
**Answer:** If the length of service is less than 91 days, the University must re-employ the employees in the same job they would have had if they had remained continuously employed so long as the employee is qualified for the job. If the length of service is more than 90 days, the University should reinstate the employee in the position he/she would have held but for the active service so long as the position is available and the employee is qualified for the position. If the position is not available, you must provide a position with similar seniority, status, and pay for which the employee is qualified.
What if the employee incurred a disability during active duty and applies for reemployment with the University:

**Answer:** The University must reemploy the employee in the position he/she would have held but for the active service, and make reasonable efforts to accommodate the employee’s disability.

Will an employee who held a temporary position prior to active duty be reemployed in that position?

**Answer:** If the position was temporary in nature prior to the leave of absence, and held no expectation of continuing indefinitely or for a significant period of time, the employee is not guaranteed reemployment.

What rights does the University have in discharging an employee who is reemployed after returning from active duty?

**Answer:** The University may not discharge an employee without cause. Follow the following chart as protections from discharge are governed by length of military service:

<table>
<thead>
<tr>
<th>Length of Military Service</th>
<th>USERRA Protection from Termination</th>
</tr>
</thead>
<tbody>
<tr>
<td>More than 181 days</td>
<td>1 year</td>
</tr>
<tr>
<td>From 31 to 180 days</td>
<td>180 days</td>
</tr>
<tr>
<td>30 days of less</td>
<td>No length of time provision</td>
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</tbody>
</table>

We had a former employee who waived all rights under USERRA. Do I still have to rehire him should he reapply at the Health Science Center?

**Answer:** Yes. Even if employees said they waived their rights under USERRA, you must rehire them when they reapply. A former employee cannot waive their rights under USERRA.

I hired someone to fill a vacancy left by an employee who was activated in the military. What do I do with this person when my employee returns from leave?

**Answer:** You can either terminate the replacement person or allow them to find another position on campus.

**Pay Questions:**
If the military pay is less than the HSC employee’s pay, do we need to make up the difference?

**Answer:** Yes. The law requires that the employee should not suffer for the military activation. As a component of the UT System, we have a policy which details differential pay (which is the difference between the two rates of pay when our salary is higher). The employee will be paid through Accounting on an Additional Services form.

Where can I find a reference regarding military differential pay?
**Answer:** In addition to our Handbook of Operating Procedures, it is referenced in the Texas Human Resources Management Statutes Inventory, 2006-07 Biennium, page 57. It is derived from the *Texas Government Code*, section 661.9041.

How do we determine the military pay of one of our employees?

**Answer:** You should request a copy of the employee’s Military Leave and Earnings Statement (LES) and look at the total entitlement of the military pay received by them. Information on the LES is available at: [www.dfas.mil/money/milpay/les_djms.pdf](http://www.dfas.mil/money/milpay/les_djms.pdf) (see field 20 Total Entitlement). The request for copies of the employee’s LES should be made each month that the employee is on LOA. The employee’s military pay may change during the period of active duty because of a promotion or change in entitlements, increasing their pay, and stopping the need for state differential pay.

**Benefits Questions:**

Does the employee accrue vacation and sick leave while on active duty?

**Answer:** No, the employee does not accrue any paid leave while on unpaid leave of absence.

Can employees continue health coverage for themselves and dependents while on military leave?

**Answer:** Yes. The military provides health coverage for military activated persons. The employee may choose to continue coverage for dependents for up to 24 months providing premiums are paid (NOTE: the coverage is not eligible for premium sharing).

Does the employee have to wait for the next open enrollment to sign up for coverage if the coverage was terminated because of military service?

**Answer:** No, all insurance coverage is reinstated immediately upon re-employment with no waiting period.

Is the leave of absence for military service considered a break in service?

**Answer:** As long as the employee meets the re-employment eligibility requirements, military time is not considered a break in service. See the HR website, [www.uthscsa.edu/hr](http://www.uthscsa.edu/hr) for USERRA guidelines regarding reemployment.

Does the employee’s military leave count toward retirement benefits?

**Answer:** Yes. As long as the employee meets the eligibility requirements for reemployment and benefits and is reemployed, the employee’s absence from work due to military leave must be counted as service for eligibility, vesting, and accrual of benefits.

What are the rules regarding contributions to a retirement plan for an employee who missed making contributions and is re-employed after active duty?
Answer: Upon reemployment, the employee is given three times the period of military leave of absence to make up any missed contributions not to exceed five years.