

**Policy Title: Military Leave**

**Policy Number: BU-PP 409**

**Date Issued: January 15, 2007**

**Responsible Executive: Vice President for Human Resources**

**Date Last Revised: June 1, 2020**

**Responsible Office: Human Resources**

## **Military Leave BU-PP 409**

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### **Policy Statement**

Military Leave establishes uniform guidelines for providing federally regulated time off for eligible employees.

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### **Reason for the Policy**

To ensure that eligible employees who serve, or attempt to serve, in the uniformed services are provided rights with respect to re-employment, health plan coverage, and retirement income plan benefits with Baylor University in accordance with federal law and regulations.

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### **Individuals/Entities Affected by this Policy**

Eligible employees who serve in a military capacity of active duty, active duty training, initial active duty from training, inactive duty training, full-time National Guard duty, and the period of time absent from work for the purpose of an exam to determine fitness to perform any such duty.

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### **Exclusions**

NONE

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### **Related Documents and Forms**

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#### **University Policies and Documents**

[400 Non-Compensated Leaves of Absence](#)

[408 Family and Medical Leave Act \(FMLA\)](#)

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**Other Documents**

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[Federal Uniformed Services Employment and Reemployment Rights Act of 1994 \(USERRA\)](#)

Federal Veterans' Reemployment Rights statute

US Department of Labor Employee Rights and Responsibilities under the FMLA

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**Forms and Tools**

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[Leave of Absence Request](#)

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**Definitions**

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These definitions apply to terms as they are used in this policy.

<b>Eligible Employee</b>	Any employee (regular full-time, regular part-time staff or faculty) 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
<b>Uniformed Services</b>	the Armed Forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard Duty, the commissioned corps of the Public Health Service, System members of the National Urban Search and Rescue Response System during a period of appointment into Federal service under section 327 of the <a href="#">Robert T. Stafford Disaster Relief and Emergency Assistance Act</a> , and any other category of persons designated by the President in time of war or national emergency
<b>Reemployment</b>	Reemployment rights extend to persons who have been absent from employment because of "service in the uniformed services." Jobs classified by Baylor as brief, non-recurrent period with no reasonable expectation of continuing indefinitely or for a significant period do not qualify for reemployment protection. Reemployment rights do not extend to certain statutorily defined situations that make reemployment impossible or unreasonable or in the case where such reemployment would impose an undue hardship on the employer.
<b>Advanced Notice of Service</b>	USERRA requires that service members provide advance written or oral notice to employers for all military service. However, no advance notice is required if it is precluded by military necessity or if it would be impossible or unreasonable to give.
<b>Total Absence</b>	USERRA establishes a five-year cumulative total of military service with a single employer, with certain exceptions allowed for situations such as call-ups during emergencies, reserve drills, and annually scheduled active duty for training. USERRA also allows an employee to complete an initial period of active duty that exceeds

	five years. Employers are required to provide to persons entitled to the rights and benefits under USERRA a notice of the rights, benefits, and obligations of such persons and such employers under USERRA.
<b>Timely Reporting</b>	To qualify for USERRA's protections, a service member must be available to return to work within certain time limits, depending on duration of a person's military service

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## Contacts

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Subject	Contact	Telephone	Office email/web site
<b>Military Leave &amp; Absence Tracking</b>	Human Resources	254-710-2000	<a href="mailto:askHR@baylor.edu">askHR@baylor.edu</a> <a href="http://www.baylor.edu/hr">www.baylor.edu/hr</a>
<b>Benefit Cost &amp; Compensation</b>	Payroll Office	254-710-2217	<a href="mailto:Payroll_Office@baylor.edu">Payroll_Office@baylor.edu</a> <a href="http://www.baylor.edu/payroll">www.baylor.edu/payroll</a>

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## Responsibilities

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<b>Employee</b>	Notifies supervisor of military orders or intent to serve in uniformed services, including dates of leave and return to work/reemployment in compliance with federal law
<b>Supervisor</b>	Collaborates with HR to provide absence information and return to work/reemployment status
<b>Human Resources</b>	Collaborates with employee and supervisor to ensure rights and benefits are maintained in compliance with federal law, including reemployment

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## Principles

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Baylor University prohibits unlawful discrimination against persons who serve or attempt to serve in the uniformed services, provides certain reemployment rights, provides certain rights with respect to health plan coverage, and provides certain rights with respect to retirement income plan benefits.

The protections of this policy are terminated if the applicant or employee is separated from uniformed service with an other-than-honorable discharge or by being dropped from the rolls.

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## Unlawful Discrimination

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Non-discrimination: An applicant or employee 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, reemployment, retention in employment, promotion, or any benefit of employment on the basis of that membership, application for membership, performance of service, application for service, or obligation.

No Retaliation: An Baylor employee may not discriminate in employment against or take any adverse employment action against any person because such person, in accordance with USERRA or this policy, has taken an action to enforce a protection afforded any person, has testified or otherwise made a statement in or in connection with any proceeding, has assisted or otherwise participated in an investigation, or has exercised a right provided for in this chapter. The prohibition in this subsection shall apply with respect to a person regardless of whether that person has performed service in the uniformed services.

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## Service in a Uniformed Service

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Service in a uniformed service means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority. It includes active duty, active duty for training, initial active duty from training, inactive duty training, full-time National Guard duty, and 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, a period for which a System member of the National Urban Search and Rescue Response System is absent from a position of employment due to an appointment into Federal service under section 327 of the [Robert T. Stafford Disaster Relief and Emergency Assistance Act](#), and a period for which a person is absent from employment for the purpose of performing funeral honors duty as authorized by [section 12503 of title 10](#) or [section 115 of title 32](#).

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## Reemployment

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Any person who is absent from a position of employment with Baylor to serve in the uniformed services shall be entitled to be reinstated to the same position or to a position of similar seniority, status and pay as the former position if **all** of the following conditions are met:

- a. *Advance notice of service in the uniformed services.* The person (or an appropriate officer of the uniformed service in which such service is performed) has given advance written or verbal notice of such service to Baylor, unless such notice is impossible, unreasonable, or precluded by military necessity.
- b. *Total absence less than five years.* The cumulative length of the absence and of all previous absences from a position of employment with Baylor to serve in the

uniformed services does not exceed five years (not including certain service defined by law).

- c. *Timely reporting or application to Baylor after completion of service in accordance with Attachment A.* Except as otherwise provided, the person must report to, or submit an application for reemployment, to Baylor within either of
  - Less than 31 days
  - More than 30 days but less than 181 days
  - More than 180 days.
- d. *“Honorable conditions” separation.* The person must have been separated from the uniformed service under “honorable conditions”
- e. Be physically and mentally qualified to perform the essential functions of his/her position at the University with or without reasonable accommodation.

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### **Circumstances with No Reemployment Rights**

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Baylor is not required to reemploy a person even if all the following conditions are met:

- a. *Changed circumstances.* Baylor’s circumstances have changed so much to make reemployment impossible or unreasonable.
- b. *Undue hardship.* Reemployment would cause Baylor undue hardship (only in the case of service-connected disability or lack of qualifications for any position).
- c. *Temporary employment.* The employment from which the person leaves to serve in the uniformed services is for a brief, nonrecurring period and there is not reasonable expectation that such employment will continue indefinitely or for a significant time.
- d. *Failure to give notice.* The person fails to give Baylor the required notice and Baylor’s leave of absence policy permits termination of employment with Baylor.

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### **Priority if Entitled to Reemployment Rights**

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If a person is otherwise entitled to reemployment in accordance with this policy, Baylor shall promptly reemploy the person in a position of employment in accordance with the following order of priority:

- a. *Period of service less than 91 days.*
  - i. In the position the person would have held but for the absence of service, the duties of which the person is qualified to perform or
  - ii. In the position in which the person was employed at the commencement of service, if with reasonable effort by Baylor the person cannot become qualified for the position in i. above.
- b. *Period of service greater than 90 days.*
  - i. In the position the person would have held but for the absence for service, or a position of like seniority, status and pay, the duties of which the person is qualified to perform, or
  - ii. In the position in which the person was employed at the commencement of service, if with reasonable effort by Baylor the person cannot become qualified for the position in i. above.
- c. *Disability.* In the event that the person has a disability incurred in, or aggravated during, such service, and that person does not qualify for any of the positions as set forth in a or b above, as appropriate for period of service, then

- i. In any other position which is equivalent in seniority, status, and pay, the duties of which the person is qualified to perform or would become qualified to perform with reasonable effort by Baylor, or
  - ii. If not reemployed under i. above, then in a position which is the nearest approximation to such position in terms of seniority, status, and pay consistent with circumstances of such person's case.
- d. *All cases other than disability.* If the person is not qualified or cannot become qualified in accordance with any provision other than disability, then in any other position of lesser status and pay which such person is qualified to perform, with full seniority.
- e. *Two or more persons entitled to reemployment in accordance with this policy to same position.*
  - i. If two or more persons are entitled to reemployment under this policy to the same position and more than one has reported for such reemployment, the person who left the position first shall have the prior right to reemployment in that position.
  - ii. If a person entitled to reemployment is not reemployed to a position because of this paragraph e, then that person shall be entitled to be reemployed in accordance with the provisions of a, b, or c in another position that provides a similar status and pay, consistent with the circumstances of such person's case, with full seniority.

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## **Rights, Benefits and Obligations after Reemployment or during Absence**

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- a. *Seniority based.* A person who is reemployed in accordance with this policy is entitled to the seniority that the person had on the date of the commencement of service plus the additional seniority and rights and benefits that such person would have attained if the person had remained continuously employed.
- b. *Non-seniority based.* A person who is absent from a position of employment to serve in the uniformed services shall be:
  - i. Deemed to be on furlough or leave of absence while performing such service, and
  - ii. Entitled to such other rights and benefits not determined by seniority as are generally provided to employees having similar seniority, status, and pay who are on furlough or leave of absence under policies in effect at the time of commencement of such service.
- c. *Conditions on non-seniority based rights.*
  - i. A person who is absent from a position of employment by reason of service in the uniformed services and knowingly provides written notice of intent not to return to a position of employment after service in the uniformed services is not entitled to rights and benefits under b. See also Reemployment rights above.
  - ii. Such person may be required to pay the full cost of any funded benefit continued under this provision to the extent other employees on furlough or leave of absence are required to pay.
- d. *Temporary limitation on employment at will.* A person who is reemployed in accordance with this policy shall not be discharged from such employment except for cause:
  - i. Within one year after the date of such reemployment, if the period of service was more than 180 days, or

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- ii. Within 180 days after the date of such reemployment, if the period of service was more than 30 days but less than 181 days.
- e. *Use of accrued benefits.* Any person whose employment with Baylor is interrupted by a period of service in the uniformed services shall be permitted, upon request of that person, to use during the period of service any paid military / emergency responder leave or vacation time accrued by the person before the commencement of such service.

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## **Medical/Dental Plans**

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In accordance with USERRA, an employee with coverage under a health plan in connection with the employee's position of employment with Baylor may elect to continue such coverage if such employee is absent from such position by reason of service in the uniformed services.

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## **Conditions on Continued Coverage Under Such Election**

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- a. *Maximum period of coverage.* The maximum period of coverage of the employee and dependents shall be the less of:
  - i. The 18 month period beginning on the date on which the employee's absence begins, or
  - ii. The day after the date on which the person has failed to timely apply for or return to a position of employment in accordance with the requirements for reemployment rights.
- b. *Payment of premium.* An employee who elects to continue coverage may be required to pay not more than 102 percent of the full premium of the plan, unless the employee performs service in the uniformed service for less than 31 days in which case the employee may not be required to pay more than the employee's share.
- c. *Exclusion or waiting period imposed upon reinstatement.* If coverage has been terminated by reason of service in a uniformed service, an exclusion or waiting period may not be imposed upon reinstatement upon reemployment, in accordance with this policy if such exclusion or waiting period would not have been imposed if coverage had terminated for reasons other than service in the uniformed services.

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## **Retirement Income Plan**

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In accordance with USERRA, a person reemployed in accordance with this policy shall be treated as not having incurred a break in service with Baylor by reason of such person's period or periods of service. Upon reemployment in accordance with this policy, each period of service served by a person shall be deemed to constitute service with Baylor for the purpose of:

- a. Determining the nonforfeitability of the person's accrued benefits, and
- b. Determining the accrual of benefits under the plan.

## Attachment A

**1. If period of service is less than 31 days or if absence is for fitness examinations to determine fitness to perform service in the uniformed services,** persons seeking reemployment must personally report to Baylor:

1. not later than the beginning of the first full regularly scheduled work period on the first full calendar day following completion of the period of service and the expiration of eight hours after the period allowing for the safe transportation of the person from the place of that service to the person's residence; or
2. as soon as possible thereafter if reporting as required in a. is impossible or unreasonable.

**2. If period of service is more than 30 days but less than 181 days,** persons seeking reemployment must submit an application to Baylor:

1. not later than 14 days after the completion of the period of service; or
2. if submitting such application within such period is impossible or unreasonable through no fault of the person, the next first full calendar day when submission of such application becomes practicable.

**3. If period of service is greater than 180 days,** persons seeking reemployment must submit an application to Baylor not later than 90 days after the completion of the period of service.

**4. Hospitalization.** If the person is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service in the uniformed service, such reporting (absence less than 31 days or for fitness examinations) or submitting of an application shall be at the end of the period that is necessary to recover from the illness or injury, such period not to exceed two years plus the minimum time required to accommodate circumstances beyond the person's control.