

## Military Leave

### Purpose

To provide eligible TRS employees with military leave for training, active service or other ordered duty as provided in this policy.

### Applies To

All TRS employees who are eligible as described below.

### General Statement

TRS provides employees with paid leave as detailed in this policy. If they meet the eligibility requirements, employees may also receive authorization to take unpaid leave, or leave without pay.

### Eligibility

Employees are eligible for military leave to accommodate:

- authorized training or duty for the state's military forces, members of any reserve branch of the U.S. Armed Forces, and members of a state or federally authorized urban search-and-rescue team;
- activation of the state's National Guard by the governor; or
- national emergency activation for members of a reserve branch of the U.S. armed forces.

### Paid Military Leave

An employee who is called to active duty or authorized training is entitled to a leave of absence of 15 workdays in a federal fiscal year (October 1 – September 30) without loss of pay or benefits. The 15 days do not have to be consecutive.

If a holiday occurs while an employee is on military leave, the employee receives holiday pay and the holiday pay is not counted against the 15 workdays.

Unused leave carries over to the next federal fiscal year, but the total amount must not exceed 45 workdays.

After exhausting the 15 workdays, the employee may use applicable accrued paid leave or be placed in a leave without pay status (or a combination of the two for the remainder of the active duty period).

In addition, to the 15 workdays for training or duty, employees who are members of the Texas Military who are called to active duty by the governor in response to a disaster may receive up to 7 days of paid leave per fiscal year.

## State Active Duty

If an employee is called to active duty as a member of the Texas Military Forces by the governor because of a state emergency, the employee:

- is entitled to receive unlimited leave with full salary (paid emergency leave)
- earns vacation and sick leave during that time (but is ineligible to use the earned leave until after returning to work); and
- does not have to use vacation or the 15 workdays of paid military leave.

## Federal Active Duty

If an employee is called to federal active military duty to provide assistance to civil authorities in a declared emergency or training for that purpose, the employee is entitled to:

- additional paid emergency leave of up to 22 workdays without loss of other military leave or vacation leave;
- an unpaid leave of absence after exhausting the 22 workdays of paid military leave;
- use any accrued vacation leave, compensatory time, or overtime leave to maintain benefits for themselves or their dependents while on military duty; and
- receive differential pay, if eligible.

## Differential Pay

An employee called to active duty during a national emergency may be entitled to differential pay.

Differential pay is emergency leave granted to an employee if the employee's military gross pay is less than the employee's state gross pay.

The combination of differential pay, and military pay may not exceed the employee's actual state gross pay. Military pay does not include money the employee receives:

- for service in a combat zone (hostile fire or imminent danger pay);
- as hardship pay; or
- family separation pay.

To receive differential pay, the employee must submit their Military Leave and Earnings Statement each month to the TRS Payroll Team to verify continued eligibility.

## Entitlements

Employees called to active duty with state military forces, a reserve branch of the U.S. armed forces, or a state or federally authorized urban search-and-rescue team are also entitled to:

- retain any accrued vacation and sick leave and be credited with these leave balances upon return to state employment;
- receive state service credit for the time spent on active duty in the military for the purpose of retirement, longevity pay, and vacation and sick leave entitlement; and
- return, when relieved from active duty, to the position held when they were ordered to duty or to return to another position of like-seniority, status, and pay.

## Option to Use Vacation or Compensatory Leave

An employee on military leave may elect, but cannot be required, to use any accrued vacation leave or earned compensatory leave in lieu of being placed on leave without pay.

## Work Schedule Adjustment

To facilitate participation in military duties, the manager of an employee who is a member of the state military forces or a reserve branch of the U.S. armed forces must adjust the employee's work schedule so that two of the employee's non-workdays per month coincide with two days of military duty.

## Notification and Process

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) requires service members to provide written or verbal notice to their employers for military duty unless giving notice is impossible, unreasonable, or precluded by military necessity.

When reasonable and not precluded by military necessity, employees should submit with the Special Leave Request form (TRS116) a copy of military orders ordering them to active duty or a written notification of their order to active duty. The written notification should include the reporting date and estimated ending date, if known.

## Benefits

An employee called to active duty must be provided with information on:

- health coverage for the employee and covered family members during their absence;
- all paid leave balances;
- paid leave entitlement for state military forces who are called to state active duty by the governor; and
- re-employment rights.

An employee who has been employed with the state for less than 60 days is not eligible for health coverage.

## Leave Without Pay

Employees called to active duty may be placed in a leave without pay status for a period not to exceed the period of active duty.

The 12-month limit placed on leave without pay does not apply to employees on active duty.

Employees who are on active duty with the state or federal military continue to accrue vacation and sick leave while on leave without pay.

## Re-employment Rights

As provided by the USERRA, an employee may have re-employment rights upon completion of the service if the employee:

- is not a temporary employee; and
- gives notice that they are resigning employment to enter directly into the uniformed services for a period of five years or less.

Uniformed services include the Army, Navy, Marine Corps, Air Force, Coast Guard, and Public Health Service Commissioned Corps, as well as the reserve components of each of these services. Federal training or service in the Army National Guard and Air National Guard are also covered under USERRA.

An employee who goes on leave of absence to enter active military service is entitled to be re-employed:

- by TRS;
- in the same department and office in which the employee was employed at the time they were inducted, enlisted, or ordered to active military service; and
- in the same position held or in a position of similar seniority, status, and pay.
- This provision applies if the veteran:
  - is physically and mentally qualified to perform the required duty;
  - was honorably discharged within five years of beginning military service; and
  - contacts OE within the established time limits for reporting back to work following discharge.

**EXCEPTION:** Under USERRA, TRS does not have to re-employ a veteran if TRS' circumstances have significantly changed so that re-employment would be impossible, unreasonable, or present an undue hardship. For example, an employee's position is eliminated by a reduction-in-force while the employee is on the leave of absence.

An employee who is restored to a position upon returning from military service is considered to have been on leave of absence during their federal or state military service.

## Time Limits

The time limits for returning to work under USERRA depend upon the duration of the employee's military service. The employee must submit a written request for reemployment to OE and provide evidence of discharge/release from service under honorable conditions. The applicable time limits are as follows:

If service was for...	then employee must...
less than 31 days	report to work by the beginning of the first regularly scheduled workday that falls eight hours after the end of the calendar day on which the period of service was completed. If, through no fault of the employee, reporting is not possible, the employee must report as soon as possible after the expiration of the eight-hour period.
31 to 180 days	submit a written request to OE no later than 14 days after the completion of the period of service. If, through no fault of the employee, submitting the request is not possible, the employee must submit the request as soon as possible.
181 days	submit a written request to OE no later than 90 days after the completion of the period of service.

The deadlines for returning to work or contacting OE are extended for up to two years for those employees who are hospitalized or convalescing because of a disability incurred or aggravated during the period of military service.

## Dismissal Following Re-employment

A re-employed veteran may not be dismissed from their position without cause for:

- one year after the date of re-employment if the employee served 181 days or more; or
- six months after the date of re-employment if the employee served 31 to 180 days.

*This policy does not constitute a contract, a promise or guarantee of employment, or a guarantee of access to TRS premises or information resources, as applicable, and may be modified, superseded, or eliminated by TRS without notice to the employee.*