

## 31.03.06 Military Leave and Service

Revised [March 8, 2016](#)

Next Scheduled Review: March 8, 2021

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### Regulation Statement

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The Texas A&M University System (system) provides military leave to eligible employees in accordance with state and federal law.

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### Reason for Regulation

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This regulation establishes uniform military leave and service procedures and is required by System Policy *31.03, Leaves of Absence*.

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### Definitions

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Click to view [Definitions](#).

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### Procedures and Responsibilities

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#### 1. ADMINISTRATIVE

1.1 The federal Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) protects the job rights of individuals who voluntarily or involuntarily leave employment positions to undertake military service in the uniformed services and prohibits employer discrimination based on military service or obligation.

1.1.1 The system will not deny hiring, retention in employment, promotion or other advantage of employment to any person because of any obligation as a member of the uniformed services.

1.1.2 An employee must give advance oral or written notice to the employee's supervisor of any impending service unless notice cannot be given because of military necessity or notice is impractical. This notice may be given by an appropriate military officer. The member may request that the employee provide a copy of the military orders upon receipt.

- 1.1.3 An employee who, before leaving for state or federal military service, provides written notice of intent not to seek reemployment is not eligible for the rights and benefits described herein, except the right to be restored to employment. However, the member must ensure the employee is aware of the rights and benefits he or she is forfeiting.

## 2. STATE MILITARY EMERGENCY LEAVE

An employee who is a member of the Texas State Guard or National Guard called to state active duty by the Governor because of an emergency is entitled to emergency leave with pay. This leave will not count against the employee's 15 workdays of military training or duty leave per federal fiscal year (see Section 3.1). A member of the guard called to state active duty is entitled to the same benefits, rights and reemployment protections that apply to individuals performing service in the uniformed services who are called to active duty.

## 3. STATE AND FEDERAL MILITARY TRAINING AND FEDERAL DUTY

- 3.1 An employee, including a graduate assistant or student worker, who is a member of the state military forces, a reserve component of the U.S. Armed Forces, or a member of a state or federally authorized Urban Search and Rescue team is entitled to a paid leave of absence when engaged in training or duty ordered or authorized by proper authority. Each employee may receive up to 15 business workdays each federal fiscal year (October 1 - September 30). The days need not be consecutive. Each employee is entitled to carry forward from one fiscal year to the next, the net balance of unused accumulated leave under this section that does not exceed 45 workdays.

### 3.2 Funeral Honors Duty

- 3.2.1 USERRA's definition of "service in the uniformed services" includes a period for the purpose of performing authorized funeral honors duty under 10 U.S.C. 12503 (members of the Reserve ordered to perform funeral honors duty) or 32 U.S.C. 115 (Member of Air or Army National Guard ordered to perform honors duty).

- 3.2.2 Funeral honors duty performed by persons who are not members of the uniformed services, such as members of veteran's service organizations, is not "service in the uniformed services."

- 3.3 After exhausting the 15 days of paid leave and any unused accumulated leave as provided in Section 3.1, any employee called to service in the uniformed services, except one in a temporary position, will be granted an unpaid military leave of absence for up to five cumulative years or a longer period if required by law. An employee may choose to use vacation or compensatory time in place of unpaid leave.
- 3.4 When activated to military service during a national emergency to serve in a reserve component of the U.S. Armed Forces under U.S. Code, Title 10 or Title 32, an employee who was eligible to accrue vacation and/or had a compensatory time balance immediately before going on military leave may choose to use accrued vacation and

state and federal compensatory time all at once or incrementally while on unpaid military leave to maintain benefits for the employee or the employee's dependents.

- 3.5 When activated to military service during a national emergency to serve in a reserve component of the U.S. Armed Forces under U.S. Code, Title 10 or Title 32, an employee who would otherwise be on unpaid military leave and whose military pay is less than his or her state gross pay, will be granted emergency leave to make up the difference between military pay and state gross pay. The combination of emergency leave and military pay may not exceed the employee's actual state gross pay. For this purpose, military pay does not include any allowances the employee receives for service in a combat zone, hardship duty, or family separation. To determine initial and ongoing eligibility for the emergency leave pay differential, the member should request the employee's Military Leave and Earnings Statement each month. Emergency leave should not be granted for normal military training or attendance at military schools per the State Auditor's Office Military Pay Differential Guidelines.

### 3.6 Leave and Compensatory Time

3.6.1 An employee granted military leave will retain vacation and sick leave accrued as of the beginning of the leave. An employee eligible for leave accrual immediately before going on military leave will continue to accrue state service credit for purposes of longevity pay, vacation leave and sick leave for any month of military leave in which he or she receives any amount of state pay or while on unpaid military leave due to active duty during a national emergency to serve in a reserve component of the U.S. Armed Forces under the U.S. Code, Title 10 or Title 32. Leave earned while on such an unpaid leave of absence will be credited to the employee's balance when the employee returns to active state employment.

3.6.2 The member must provide a statement showing the number of workdays of paid leave to which an employee is entitled each fiscal year under this regulation and, if applicable, the number of workdays of paid leave to which an employee is entitled to carry forward each fiscal year under this regulation. On request of an employee entitled to use state compensatory time under this regulation, the member shall provide a statement that contains the number of workdays the employee claimed under this regulation during the current fiscal year and the net balance of all unused accumulated leave earned under this regulation. The supervisor must accommodate the employee's request to use state compensatory time before it expires.

### 3.7 Benefits

3.7.1 An employee on military leave or a former employee governed by Section 5 is entitled to the same benefits as employees on other types of leave. An employee may elect to make retirement program contributions for the period of military service after his or her return to work.

3.7.2 An employee who was eligible for the state insurance contribution immediately before going on military leave will receive the state insurance contribution for

any month of military leave in which he or she receives any amount of state pay.

- 3.7.3 The member's human resources office, or other designated office, will review system benefits with an employee before he or she leaves for military service. The review will cover what the employee needs to do to maintain the system benefits in which he or she is currently enrolled, how the coverage is affected by paid or unpaid leave, and how the employee can pay any premium required to maintain coverage.

### 3.8 Restoration and Reemployment Rights

- 3.8.1 In most cases, an employee will, as applicable, be restored to active employment or reemployed after military leave and no break in service will occur if the employee applies for restoration or reemployment no later than 90 calendar days of discharge. Under federal law, the period to apply or report to work varies based on the time spent on military duty.
- 3.8.2 To qualify for restoration to employment or reemployment, the employee must be absent from work no more than five years and must provide evidence of discharge or release under honorable conditions. In most cases, an employee returning from military leave should be restored or reemployed in the same position or a position with similar seniority, pay and status that he or she would have attained if employment had been continuous. The employee must be physically and mentally qualified to perform the duties of that position.
- 3.8.3 An employee who is restored or reemployed after returning from military leave may not be discharged from his or her position without cause (cause includes a reduction in force) within one year after returning to work.

## 4. SCHEDULING TRAINING

- 4.1 The work schedule of an employee who is a member of the National Guard or a reserve component of the U.S. Armed Forces will be adjusted so that two of the employee's non-workdays each month coincide with two days of military duty for the employee.
- 4.2 An employee who has a budgeted appointment of less than 12 months is expected to fulfill the training requirements during the period the employee is not scheduled to work. If the training cannot be arranged during that time, the employee must include a statement explaining the circumstances with the leave request.

## 5. ENTERING ACTIVE FEDERAL MILITARY SERVICE

- 5.1 If an employee enters active federal military service (not through the reserves or guard), his or her employment will be terminated. Refer to Section 3.8 regarding reemployment rights.
- 5.2 An individual entering active federal military service is eligible for the rights and benefits described in Section 3.7.1, but is not eligible for other rights and benefits extended to a

member of state military forces or a reserve component of the U. S. Armed Forces called to active duty.

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## **Related Statutes, Policies, or Requirements**

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[The Uniformed Services Employment and Reemployment Rights Act](#)

[20 C.F.R. Pt 1002, Regulations Under the Uniformed Services Employment and Reemployment Rights Act of 1994](#)

[State Auditor's Office Military Pay Differential Guidelines](#)

[10 U.S. Code, Armed Forces](#)

[32 U.S. Code, National Guard](#)

[38 U.S. Code, Ch. 43, Employment and Reemployment Rights of Members of the Uniformed Services](#)

[Tex. Gov't Code Ch. 431, State Militia](#)

[Texas Gov't Code § 437.202, Leave of Absence for Public Officers and Employees](#)

[Tex. Gov't Code Ch. 657, Veteran's Employment Preferences](#)

[Tex. Gov't Code § 659.023, Compensatory Time Policy](#)

[Tex. Gov't Code § 661.903, National Guard Emergency](#)

[Tex. Gov't Code § 661.904, Military Leave During National Emergency](#)

[Tex. Gov't Code § 661.9041, Differential Pay](#)

[System Regulation 31.01.04, Longevity and Hazardous Duty Pay](#)

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## **Member Rule Requirements**

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A rule is not required to supplement this regulation.

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## **Contact Office**

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System Offices Human Resources  
(979) 458-6169