

Procedure: 4.5.2p6. [III.U.6.f.]

Military Leave

[Revise and Re-Number]

Revised: January 12, 2016

Reviewed: January 12, 2016

Adopted: October 1, 2001



I. PURPOSE:

Pursuant to the provisions of the Uniformed Services Employment and Reemployment Rights Act (USERRA) as well as corresponding State Personnel Board Rules and state law, eligible TCSG employees ordered to perform military duties as defined in this procedure are eligible for paid and/or unpaid military leave to include going to and returning from such service.

II. RELATED AUTHORITY:

Employee Benefit Council Rules – Flexible Benefits Program
Employees' Retirement System of Georgia Plan Guidelines
O.C.G.A. §38-2-279 – Rights of Employees on Military Duty
O.C.G.A. §47-1-6 et.seq – Establishing Creditable Service by Veterans
State Health Benefit Plan Rules and Regulations
State Personnel Board Rule 19 – Military Leave
Teachers Retirement System of Georgia Plan Guidelines
U.S.C. Title 38, Chapter 43 – Uniformed Services Employment and Reemployment Rights Act (USERRA)

III. APPLICABILITY:

All work units and technical colleges associated with the Technical College System of Georgia

IV. DEFINITIONS:

Eligible (Covered) Employee: an individual appointed to a full- or part-time salaried position in a TCSG work unit and who is eligible for State of Georgia-sponsored benefits as provided in the TCSG procedure governing Categories of Employment. With the possible exception of re-employment rights, currently employed adjunct faculty as well as hourly-paid employees are also entitled to USERRA benefits.

Immediate Supervisor: a supervisor charged with the responsibility for developing, performance plans/expectations and who coaches, develops, and assesses the performance of subordinate employee(s).

Military Necessity: as defined by the Secretary of Defense, a mission, operation, exercise, or requirement that is classified or a pending or ongoing mission, operation, exercise or requirement that may be compromised or otherwise adversely affected by public knowledge.

Military Order: for purposes of this procedure, a written or oral communication which conveys instructions from a superior to a subordinate. A military order is considered valid when issued by competent military authority. A military member in receipt of official orders is obligated by federal law to execute them.

Military Service/Service in the Uniformed Services: as defined in USERRA, service in a uniformed service covers all categories of military training and service, whether performed on a voluntary or involuntary basis to include: active duty and active duty for training; initial active duty for training; inactive duty training; full-time (federal) National Guard duty; absence from employment for military-fitness examinations; absence from employment under orders to perform funeral honors duty; service as an intermittent disaster-response appointee upon activation of the National Disaster Medical System or as a participant in an authorized training program by such appointee; and, attendance at a U.S. military service academy.

Ordered Military Duty: pursuant to applicable provisions of State Personnel Board Rule 19, any military duty performed in the service of the United States or a State pursuant to orders issued by a federal or state authority, including, but not limited to, attendance at any service school(s) conducted by the Armed Forces of the United States as a volunteer member of the National Guard, Georgia State Defense Force, or any reserve force or reserve component of the Armed Forces of the United States.

Reviewing Manager: a manager charged with reviewing the performance plans and evaluations prepared by lower level supervisor(s) in his/her direct line of supervision.

TCSG Work Unit: the TCSG System Office, Quick Start Headquarters, Quick Start Regional Office or training center, or an associated technical college.

Uniformed Service: as defined in USERRA, uniformed services include the following: Army, Navy, Marine Corps, Air Force, or Coast Guard; Reserves (Army, Naval, Marine, Air Force or Coast Guard); Army or Air National Guard; Commissioned Corps of the Public Health Service; or, any other category of persons designated by the President in time of war or emergency.

V. ATTACHMENTS:

Attachment 4.5.2p5.a4. – Request to Continue Health Benefits During Leave of Absence Without Pay
Attachment 4.5.2p6.a - “Your Rights Under USERRA Notice”

VI. PROCEDURE:

A. Notice Requirements:

1. To maintain eligibility for USERRA re-employment rights and absent the exceptions referenced in Paragraph VI.A.2., a covered employee must (to the extent possible) provide written or verbal notification to his/her immediate supervisor, his/her reviewing manager, or other designated work unit official as soon as he/she is aware of upcoming military service that will result in an absence from work. This information should include, if known, the anticipated date of release from military service. Notice may also be provided by an officer of the appropriate uniformed services branch.
2. Advance notification is not required if military necessity precludes such notice or if notice is otherwise impossible or unreasonable. *NOTE: an employee will forfeit the protections of USERRA if he/she fails to provide notice and such notice would not have been impossible, unreasonable, or due to military necessity.*
3. An employee may also lose USERRA protections if he/she notifies the TCSG work unit he/she will not be at work but fails to indicate the absence is due to ordered military service and no such notice is provided by an officer of the appropriate uniformed services branch.
4. In instances in which verbal or written notification has been provided, the TCSG work unit should prepare a letter or memorandum to the employee authorizing his/her placement on military leave with

or without pay and place a copy of the document in the employee's official personnel file with military orders if/when they have been submitted.

B. Duration of Service:

1. To maintain eligibility for USERRA re-employment rights, an employee's cumulative length of absence for ordered military duty (to include the current leave, plus all past military leave while employed with the TCSG work unit) cannot generally exceed five (5) years. The five (5) year limit includes uniformed service leave taken before the effective date of USERRA's re-employment provisions (i.e., December 12, 1994).

2. Exceptions to the five (5) year limit outlined in Paragraph VI.B.1. are as follows:

a. service required beyond five (5) years to complete an initial period of obligated service;

b. service from which an employee/service member, through no fault of his/her own, is unable to obtain a release within the five (5) year limit;

NOTE: the five (5) year limit may be extended by up to two additional (2) years a member if hospitalized for or is convalescing from an illness or injury incurred in, or aggravated during, military service;

c. required training for Reservists and National Guard members;

d. ordered to involuntary service, or retained on active duty during a domestic emergency or in response to a national security-related matter;

e. ordered to service or to remain on active duty (other than for training) because of a war or national emergency declared by the President or Congress;

f. active duty (other than for training) by volunteers supporting "operational missions" for which selected reservists have been ordered to active duty without their consent;

g. service by members who are ordered to active duty in support of a "critical mission or requirement" of the uniformed services as determined by the Secretary of involved military branch; or,

h. federal service by members of the National Guard called into action by the President to suppress an insurrection, repel an invasion, or to execute the laws of the United States.

C. Pay Status on Military Leave:

1. A full-time salaried employee with a work commitment of forty (40) hours per week) who is ordered to perform military duties will be provided paid (military) leave for up to one-hundred forty-four (144) hours in a Federal fiscal year (i.e., October 1st through September 30th).

2. A part-time salaried employee with a work commitment of less than forty (40) hours per week who is ordered to perform military duty is eligible for prorated, paid military leave based on his/her regular work schedule.

3. For any absence by a full-time salaried employee which exceeds one-hundred forty-four (144) hours in a Federal fiscal year or any absence by a part-time, salaried employee in excess of his/her prorated amount of paid military leave in a Federal fiscal year, an employee may request to use accrued annual leave, personal leave or available compensatory time to remain in pay status or,

instead, may request to be placed on an authorized leave of absence without pay for the duration of his/her military duty (i.e., military leave without pay).

3. In the event the Governor declares an emergency and orders an employee to military service as a member of the Georgia National Guard, the employee performing such duty will be paid for up to an additional ninety-six (96) hours (i.e., up to a total of two hundred forty [240] hours of paid military leave) in a Federal fiscal year.

4. An hourly-paid employee or an adjunct faculty member who is ordered to perform military duties will be provided an authorized leave of absence without pay for all such service.

5. An employee who is absent from work because he/she is ordered to report for a pre-induction or other examination to determine physical or other fitness for service in the Armed Forces of the United States will be granted an authorized leave of absence without pay. A full- or part-time salaried employee may elect to use annual leave, personal leave or compensatory time to remain in pay status.

D. Employment Status:

1. Time spent on military leave will not be considered a break-in-service for employment purposes

2. An employee on military leave is eligible for all rights and benefits provided by state and federal law.

E. State Health Benefits Coverage:

1. While on military leave with pay, an eligible employee's monthly premiums for health insurance will continue to be deducted from his/her pay. An eligible employee on military leave without pay may elect to continue or discontinue health insurance benefits.

2. An eligible employee desiring to continue his/her State Health Benefit Plan (SHBP) coverage while on military leave without pay should complete Attachment 4.5.2p5.a4. (Request to Continue Health Insurance During Leave of Absence Without Pay Form). The form will be retained in his/her medical file. Pursuant to the Rules of the SHBP, an active employee can elect to continue SHBP coverage within thirty-one (31) calendar days after beginning an unpaid leave of absence.

3. Health insurance coverage may be continued for a period of twenty-four (24) months after the absence begins or for the period of service (plus the time allowed to apply for re-employment), whichever is shorter.

4. An employee on an unpaid leave of absence due to his/her military service and who is otherwise eligible to participate in the SHBP will pay the same premium amount as when actively working in addition to any processing fee established by the State Board of the Department of Community Health. Pursuant to applicable USERRA provisions, the total cost of such coverage may not exceed one hundred two (102) percent of the full premium.

5. Premium payments for employees of the System Office, Quick Start headquarters or a Quick Start Regional Office or training center who are on a military leave without pay shall be made directly to the System Office each month. A technical college employee shall pay his/her monthly SHBP premium directly to his/her technical college. Pursuant to SHBP Rules, an employee who fails to submit a premium payment in a timely manner will lose coverage. The System office or technical college must notify the SHBP/ADP of an employee's loss of eligibility.

F. Flexible Benefits Coverage:

1. An employee on an unpaid leave of absence due to his/her military service and who is otherwise eligible to participate in the Flexible Benefits Program may continue all insurance options in which he/she is enrolled by paying the required after-tax premiums. The employee will be billed directly by Georgia Breeze/ADP for all insurance options premiums. If an employee does not receive information from Georgia Breeze/ADP he/she or a representative (if the employee is unavailable) should contact Georgia Breeze/ADP directly to make these arrangements.
2. Some flexible benefit options do not provide coverage for claims resulting from involvement in armed conflict of war. An employee called to active military duty and whose service may result in his/her participation in an armed conflict should discuss the continuation of his/her benefits while on military leave with his/her benefits coordinator.
3. An employee is eligible to continue Group Term Life Insurance coverage under the Flexible Benefits Program while on military leave without pay.

G. Retirement Benefits:

1. While on military leave with pay, an eligible employee's contributions to the Employee's Retirement System of Georgia (ERS) or the Teachers Retirement System of Georgia (TRS) will continue to be deducted from his/her pay.
2. A qualified veteran returning (to employment) after a period of military service in a non-pay status and who desires to establish creditable service for this period of time must notify for the Board of Trustees of ERS or TRS, in writing. TRS or ERS will then calculate the amount of the member's contribution which the employee would have paid if he/she had been an active member of the retirement system during the period of qualified military service.
3. To establish creditable service, the employee must repay the calculated amount of his/her member contribution within a period up to the three (3) times the length of his/her qualified military service or five (5) years, whichever period is shorter. The time period for repayment is computed from the date the returning veteran/employee resumes employment in a TCSG work unit.
4. A qualified returning veteran shall be eligible to establish creditable service for not more than five (5) years provided, however, that the five (5) year period may (pursuant to the provisions of O.C.G.A. §47-1-61) be extended by any period of mandatory service imposed by a uniformed service.
5. Pursuant to ERS Plan Guidelines, if an employee is called to active duty in the National Guard or Reserves, he/she may make his/her contributions during his/her active duty period. The employee must provide ERS with a copy of his military orders as soon as he/she receives them.
6. Pursuant to ERS Plan Guidelines and as referenced in the TCSG Procedure governing Authorized and Contingent Leaves of Absence Without Pay, an ERS member possessing one (1) or more years of creditable service in the Old or New Plan may maintain group term life insurance coverage while on an approved leave of absence without pay (e.g., military leave without pay).

H. Re-employment Rights:

1. Timeliness of Reporting and Reapplying

- a. to be eligible for re-employment under USERRA, a uniformed service member must notify his/her TCSG work unit of his/her intent to return to duty by: returning to work; providing oral or written

notification of his/her intent to return to work; or, by submitting an application for re-employment in a timely manner.

b. the time period during which a returning service member must report to work varies depending upon the duration of his/her military leave as follows:

1. service of less than thirty-one (31) days: the service member must report no later than the beginning of the first full regularly scheduled work day starting at least eight (8) hours after the employee has been safely transported home, or as soon as possible after the eight (8) hour period if reporting by that time is impossible or unreasonable through no fault of the employee. *NOTE: employees must be given a reasonable amount of time to arrive back at this/her residence, to rest, and to travel to the place of employment;*

2. fitness examinations: the provisions of Paragraph VI.F.1.a.1. also apply to an employee absent from work for any length of time for one or more fitness for duty examination(s);

3. service of more than thirty (30) days but less than one hundred eighty-one (181) days: the service member must apply for re-employment no later than fourteen (14) days after completing his/her period of uniformed service. If this is not possible or reasonable through no fault of the employee, the service member must apply for re-employment on the next calendar day when submission becomes possible;

4. service of more than one hundred eighty (180) days: the service member is required to submit an application for re-employment no later than ninety (90) days after completion of the uniformed service; and,

5. injured or Ill Employees: if a service member is hospitalized or convalescing from an injury or illness that occurred or was aggravated while he/she was on military leave, he/she is required to submit an application for re-employment at the end of the recovery period; however, this period may not exceed two (2) years from the date of the completion of the uniformed service. *NOTE: the two (2) year period will be extended by the minimum time required to accommodate a circumstance beyond an individual's control that would make reporting within the two (2) year period impossible or unreasonable.*

2. Required Documentation

a. if a service member is returning from military leave in excess of thirty (30) days, the TCSG work unit may request documentation demonstrating that:

1. the application for re-employment is timely;
2. the uniformed service has not exceeded the five (5) year limit; and,
3. the uniformed service has ended under honorable circumstances.

NOTE: disqualifying service for USERRA re-employment rights include: separation from military service with a dishonorable or bad conduct discharge; under other than honorable conditions; the dismissal of a commissioned officer under such circumstances as a court martial or by order of the President in time of war; or, when a service member has been absent without authority for more than three (3) months or is imprisoned by a civilian court.

b. a service member's failure to provide a TCSG work unit with the required documentation cannot be a basis for denying re-employment if the documentation does not exist or is not readily available at the time of the request. Instead, the work unit is required to promptly re-employ the service member.

c. If the circumstances of Paragraph VI.F.2.b. are present, the TCSG work unit may require the submission of proper documentation before treating the service member as if he/she did not have a break-in-service for retirement purposes. Additionally, if documentation later becomes available that reflects that the employee does not meet the criteria for re-employment, he/she may be separated from employment pursuant to the provisions of the TCSG Procedure governing Positive Discipline or, if applicable, the TCSG Procedure governing Adverse Employment Actions.

3. Other Qualifying Conditions:

a. in addition to the documentation requirements of Paragraph VI.F.2., an employee's reinstatement to his/her former position requires that he/she must be able to perform the essential functions of the position with or without reasonable accommodation(s).

b. If the employee is no longer able to perform the essential functions because of disability sustained during military service, the employee must be considered for another position in the work unit for which he/she is qualified unless circumstances have changed as to make it impossible or unreasonable to do so (e.g., a previously conducted reduction-in-force which would have impacted the service member).

4. Re-employment Position:

a. upon timely notice following satisfactory completion of military duty, a service member will be returned in the position that he/she would have attained with reasonable certainty if not for an absence due to military service.

b. under USERRA's "escalator principle" a returning service member must also be provided a position as well as pay, benefits and seniority at the precise step (escalator) he/she would have occupied/held if his/her employment had been continuous and he/she had never left for military service.

c. USERRA regulations are not designed to place a returning service member in a better position than he/she would have held had he/she been continuously employed. A TCSG work unit is not required to treat a returning service member differently from continuously employed "employees" in the same "seniority rank". The escalator principle may, therefore, cause a returning employee to be re-employed in a lower level position, subject to a reduction-in-force, or separated.

d. if the military leave was for ninety (90) calendar days or less, the service member must be returned to same position/job held or would have held if the military duty had not occurred to include seniority status and have his/her pay adjusted for any promotions or other salary adjustments or benefits he/she would have earned had he/she not been on military leave.

e. if the military leave was for ninety-one (91) calendar days or more, a returning service member must be qualified for re-employment and placed in the "escalator position" or the same/comparable position/job the employee held if the military duty had not occurred with similar seniority, pay, and benefits. The TCSG work unit's responsibilities for qualifying the service member for this or any other position are the same as if he/she was absent for less than ninety-one (91) calendar days.

f. before a TCSG work unit determines whether a returning service member is qualified to perform the essential functions of the job/position to which he/she is entitled, the work unit is required to provide refresher training to the employee along with any other training that he/she would have received had he/she remained on the job.

g. if a service member is not qualified to perform the essential functions of the position after additional training, he/she must be re-employed in any other position that is the nearest approximation first to

the escalator position and then to the pre-service position for which he/she is qualified to hold and which is available.

h. if a service member is not able to perform the duties of his/her job with reasonable accommodation due to a disability sustained or aggravated during military service, the employee shall be employed in another position/job in the TCSG work unit for which he/she is able to perform the essential functions with or without reasonable accommodation(s).

5. Re-employment Exceptions:

a. a TCSG work unit is required to reemploy a returning service member in all cases except:

1. if work unit circumstances have changed so drastically as to make it impossible or unreasonable to reemploy the service member (e.g., a reduction-in-force which would have included the service member to include the closing of an academic program, work unit, or satellite campus);

2. if the service member is no longer qualified for re-employment despite reasonable efforts to requalify the individual and re-employment would impose an undue hardship; or,

3. if the position the service member held as an active employee before military service was for a brief, non-recurrent period and there was no reasonable expectation that employment would have continued indefinitely for a significant period.

b. any challenge to a TCSG work unit's decision not to re-employ a returning service member is an affirmative one and the work unit bears the responsibility of proving them by a preponderance of the evidence.

NOTE: if (after completion of required training) an employee is still not qualified to perform the essential functions of the position, the work unit is not required to re-employ/retain the employee in the position.

I. For Cause Protection:

1. Under USERRA, a re-employed service member may not be separated without cause for a period of:

a. one (1) year after the date of reemployment if the individual's period of military service was for one hundred eighty-one (181) or more days; or,

b. for one hundred eighty (180) days after the date of reemployment if the individual's period of military service was for thirty-one (31) to one hundred eighty (180) days.

2. Cause for discharge may be based on behavior/conduct issues or the application of any other legitimate, non-discriminatory reason.

J. Workforce Replacements:

1. It is permissible for a TCSG work unit to fill the position of an employee on military leave; however, the replacement employee must be informed during the selection process that he/she will be assuming this role on a temporary basis and that upon the return of the military service member, he/she may be reassigned or separated. This information should also be included in the conditional offer of employment provided to replacement employee.

K. Employee Notice of USERRA Benefits

Pursuant to applicable provisions of Uniformed Services Employment and Reemployment Rights Act, all TCSG work units are required to provide individuals entitled to the rights and benefits under USERRA with notice of their rights, benefits, and obligations. This can be accomplished by posting the notice "Your Rights Under USERRA" (Attachment 4.5.2p6.a.) in the same location as other employee notices and other employment related posters are customarily placed.

VII. RECORD RETENTION:

All employment related documents collected pursuant to this procedure shall be maintained in a manner consistent with the Georgia Archives Retention Schedule for State Government Paper and Electronic Records and state and federal law.



YOUR RIGHTS UNDER USERRA THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

USERRA protects the job rights of individuals who voluntarily or involuntarily leave employment positions to undertake military service or certain types of service in the National Disaster Medical System. USERRA also prohibits employers from discriminating against past and present members of the uniformed services, and applicants to the uniformed services.

REEMPLOYMENT RIGHTS

You have the right to be reemployed in your civilian job if you leave that job to perform service in the uniformed service and:

- ☆ you ensure that your employer receives advance written or verbal notice of your service;
- ☆ you have five years or less of cumulative service in the uniformed services while with that particular employer;
- ☆ you return to work or apply for reemployment in a timely manner after conclusion of service; and
- ☆ you have not been separated from service with a disqualifying discharge or under other than honorable conditions.

If you are eligible to be reemployed, you must be restored to the job and benefits you would have attained if you had not been absent due to military service or, in some cases, a comparable job.

RIGHT TO BE FREE FROM DISCRIMINATION AND RETALIATION

If you:

- ☆ are a past or present member of the uniformed service;
- ☆ have applied for membership in the uniformed service; or
- ☆ are obligated to serve in the uniformed service;

then an employer may not deny you:

- ☆ initial employment;
- ☆ reemployment;
- ☆ retention in employment;
- ☆ promotion; or
- ☆ any benefit of employment

because of this status.

In addition, an employer may not retaliate against anyone assisting in the enforcement of USERRA rights, including testifying or making a statement in connection with a proceeding under USERRA, even if that person has no service connection.

HEALTH INSURANCE PROTECTION

- ☆ If you leave your job to perform military service, you have the right to elect to continue your existing employer-based health plan coverage for you and your dependents for up to 24 months while in the military.
- ☆ Even if you don't elect to continue coverage during your military service, you have the right to be reinstated in your employer's health plan when you are reemployed, generally without any waiting periods or exclusions (e.g., pre-existing condition exclusions) except for service-connected illnesses or injuries.

ENFORCEMENT

- ☆ The U.S. Department of Labor, Veterans Employment and Training Service (VETS) is authorized to investigate and resolve complaints of USERRA violations.
- ☆ For assistance in filing a complaint, or for any other information on USERRA, contact VETS at **1-866-4-USA-DOL** or visit its **website at <http://www.dol.gov/vets>**. An interactive online USERRA Advisor can be viewed at **<http://www.dol.gov/elaws/userra.htm>**.
- ☆ If you file a complaint with VETS and VETS is unable to resolve it, you may request that your case be referred to the Department of Justice or the Office of Special Counsel, as applicable, for representation.
- ☆ You may also bypass the VETS process and bring a civil action against an employer for violations of USERRA.

The rights listed here may vary depending on the circumstances. The text of this notice was prepared by VETS, and may be viewed on the internet at this address: <http://www.dol.gov/vets/programs/userra/poster.htm>. Federal law requires employers to notify employees of their rights under USERRA, and employers may meet this requirement by displaying the text of this notice where they customarily place notices for employees.



U.S. Department of Labor
1-866-487-2365

U.S. Department of Justice Office of Special Counsel

1-800-336-4590

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