

# Yeshiva University

## Military Leave Policy

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) imposes obligations on employers to provide certain rights to employees who are called for military service. Specifically, it requires employers to grant employees military leave and to reinstate them upon returning from such leave; guarantees employees a continuation of health benefits for up to the first 24 months of military leave; and protects an employee's pension benefits. Finally, USERRA prohibits discrimination against employees because of military obligations.

### Who Is Eligible?

All employees absent for work due to "service in the uniformed service" are covered under USERRA. The uniformed service includes the Armed Forces (Army, Navy, Air Force, Marines, and Coast Guard), the Army National Guard, the Reserves, the Air National Guard, full-time National Guard duty, the commissioned Corps of the Public Health Service and any other category of persons designated by the President in time of war or national emergency.

The performance of the following duties on an involuntary or voluntary basis constitutes "service in the uniformed service" under USERRA:

- active duty;
- active duty for training;
- initial active duty for training;
- inactive duty training;
- full-time National Guard Duty; and
- absence from work for an examination to determine the individual's fitness for any of the above types of duty.

### Military Leave

In order to request a leave, the employee must provide advance notice preferably in writing to your immediate supervisor with a copy to be sent to the University's Benefits Office of their military service obligation unless it is impossible or unreasonable to do so. Upon request, the University is entitled to a copy of the employee's service orders and military schedule as soon as possible.

With some limited exception, the cumulative length of an individual's military leave absence from employment may not exceed 5 years. The University will not refuse to grant an employee a leave of absence because it finds the duration, timing or frequency of an employee's military obligation to be unreasonable.

While the employee will not be compensated for absences due to military service, the employee may elect to use any accrued vacation leave in lieu of unpaid military leave. However, the University will not require the employee to use vacation time for purposes of military leave.

## Reinstatement Rights

To be eligible for reemployment rights, the employee must: 1) provide the University with appropriate notice of his or her military leave obligation; 2) have served in the military for a period not exceeding five years (subject to specific exceptions); 3) apply for reinstatement preferably in writing to your immediate supervisor of your intent to return to work within the appropriate time frame; and 4) have been discharged from the military service under honorable conditions.

If an employee's military service is less than thirty-one days or is for the purpose of taking an examination to determine fitness for service, the employee must report for reemployment at the beginning of the first regularly scheduled work day that will fall eight hours after he or she returns home unless such reporting is impossible or unreasonable. If the period of service is thirty-one days to one hundred eighty days, the employee must submit an application to the University no later than fourteen days following completion of service unless such a time period becomes impossible or unreasonable. If the period of military service is greater than one hundred eighty days, the employee must submit an application to the University not later than ninety days after completion of the service. The University has the right to request that an individual on military leave for a period of thirty-one days or more provide documentation that establishes the timeliness of his or her application for reemployment and the length and character of military service.

USERRA provides an extension of these time limits for up to two years if an employee is hospitalized or convalescing from a service-related illness or injury. However, if an employee fails to report to work or to reapply for employment within the appropriate time frame, the employee does not automatically forfeit his or her rights and benefits under USERRA, but the employee's absence shall be unexcused and subject to the University's practices regarding discipline with regard to absences from scheduled work.

If an employee has met the requirements for reinstatement, the University has an affirmative obligation to reemploy the employee subject to only very limited exceptions. Specifically, the University will promptly reemploy the returning individual in the position he or she would have attained if continuously employed so long as the individual: 1) is qualified for the job; or 2) can become qualified after reasonable efforts by the employer to qualify the individual.

## Benefits

Employees on military leave are entitled to the same benefits provided to employees on other forms of leave. The law provides certain additional benefit rights for employees on military leave and after their return.

If the employee's military service period is fewer than 31 days, then he or she will not be required to pay more than the active employee share for health plan coverage. If, however, the employee's military service period lasts for 31 or more days, then he or she may be required to

pay up to 102% of the full premium under the plan, representing the University's share plus the employee's share, plus a 2% administrative cost.

Employees returning from military leave are entitled to "the seniority and other rights and benefits determined by seniority" that they would have attained with reasonable certainty had they not gone on leave. For example, an employee returning from military leave is entitled to any unused vacation accrued at the time the leave began and the employee is entitled to begin accruing vacation at the rate he or she would have attained had he or she not taken military leave.

Specific benefit questions should be addressed to the University's Benefits Office at (718) 430-2566.

#### Protection of Reinstated Veterans from Discharge or Discrimination

Employees reemployed after a military leave of one hundred eighty days or more may not be discharged without cause for one year after the date of reemployment. Additionally, an employee who is reemployed after a military leave of more than thirty days but less than one hundred eighty days may not be discharged without cause for one hundred eighty days after the date of reemployment. The University will not retaliate against any individual or discriminate against any individual because of past, present or future military obligations.

#### Conclusion

Before a leave of absence is denied for military duty, reemployment is denied to a returning veteran or a returned veteran is dismissed during the first year of reemployment, the Chief Human Resources Officer should be contacted at (718) 430-2541.