

New York University

UNIVERSITY POLICIES

Title: USERRA Military Leave and Reemployment Policy – New York, District of Columbia, & California
Effective Date: January 18, 2019
Supersedes: December 5, 2016
Issuing Authority: Executive Vice President
Responsible Officer: Human Resources

Statement of Policy

In accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), applicable regulations, and the terms and conditions below, this Policy on Military Leave and Reemployment applies to New York University in New York, Washington, D.C., and California (collectively, “NYU” or “the University”). The purpose of this Policy is to provide for the prompt reemployment of persons who have completed their service in the uniformed services, and to prohibit discrimination against persons because of their service in the uniformed services.

To Whom the Policy Applies

This Policy applies to all University employees who meet the eligibility requirements below.

Policy and Procedures

Eligibility for Reemployment

Subject to the terms and conditions set forth below, any person whose absence from a position of employment with the University is necessitated by reason of service in the uniformed services shall be entitled to the reemployment rights and benefits and other employment benefits of this Policy in accordance with the following terms and conditions:

Providing Advanced Notice

Such person (or an appropriate officer of the uniformed service in which such service is performed) must provide advance written or oral notice of service in the uniformed services to the University, unless providing such notice is precluded by military necessity or, under all of the relevant circumstances, is otherwise impossible or unreasonable.

Not Exceeding Length of Service Limits

Unless otherwise noted below, the cumulative length of such person’s absence (including all previous absences) from a position of employment with the University by reason of service in the uniformed services may not exceed five years.

This five-year limit, however, does not apply to service:

- required, beyond five years, to complete an initial period of obligated service;
- where the person was unable to obtain orders releasing him or her from a period of service in the uniformed services before the expiration of the five-year limit and such inability was through no fault of his or her own;
- performed as required training, drills, or field exercises pursuant to applicable law, or to fulfill additional training requirements determined and certified in writing by the Secretary concerned, to be necessary for professional development, or for completion of skill training or retraining; or
- performed by a person who is:
 - ordered to or retained on active duty because of a war or national emergency declared by the President or the Congress as determined by the Secretary concerned (other than for training);
 - ordered to active duty in support, as determined by the Secretary concerned, of an operational mission for which personnel have been ordered to active duty under applicable law (other than for training);
 - ordered to active duty in support, as determined by the Secretary concerned, of a critical mission or requirement of the uniformed services;
 - called into federal service as a member of the National Guard under applicable law;
 - ordered to full-time National Guard duty (other than for training) under applicable law when authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by federal funds, as determined by the Secretary concerned; or
 - otherwise ordered to or retained on active duty under applicable law.

Reporting to the University/ Applying for Reemployment

The employee must report to, or submit an application for reemployment to, the University in accordance with the following terms and conditions:

- In the case of a person whose period of service in the uniformed services was less than 31 days, or in the case of a person who is absent from a position of employment for a period of any length for the purposes of an examination to determine his or her fitness to perform service in the uniformed services, by reporting to the University:
 - not later than the beginning of the first full regularly scheduled work period on the first full calendar day following the completion of the period of service and the expiration of eight hours after a period allowing for the safe transportation of the person from the place of that service to his or her residence; or
 - as soon as possible after the expiration of the above-mentioned eight-hour period, if reporting within that time is impossible or unreasonable through no fault of the person.

- In the case of a person whose period of service in the uniformed services was for more than 30 days but less than 181 days, by submitting an application for reemployment with the University not later than 14 days after the completion of the period of service or 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 possible.
- In the case of a person whose period of service in the uniformed services was for more than 180 days, by submitting an application for reemployment with the University not later than 90 days after the completion of the period of service.
- *Recovery from Illness/Injury.* A person who is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service in the uniformed services shall, at the end of the period that is necessary for the person to recover from such illness or injury, report to the University or submit an application for reemployment with the University, as applicable under USERRA. Such period of recovery may not exceed two years, except that such time period shall be extended by the minimum time required to accommodate the circumstances beyond such person's control that make reporting within that time period impossible or unreasonable.
- *Performing Funeral Honors Duty.* A person who takes a leave of absence from a position of employment with the University so that he or she may perform funeral honors duty as authorized by applicable law is deemed to have notified the University of his or her intent to return to such position of employment.

Please take note that the University may request additional documentation from a person who is required to submit an application for reemployment pursuant to this Policy. Such documentation shall establish that: (A) the person's application is timely; (B) the person has not exceeded the service limitations set forth herein; and (C) the person's entitlement to the benefits herein has not been terminated pursuant to this Policy.

Reemployment Rights

Upon meeting the abovementioned eligibility requirements and except as otherwise provided under this Policy, a person shall be “promptly reemployed” in a position of employment in accordance with the following order of priority. Please take note that “prompt reemployment” means as soon as practicable under the circumstances of each case. Absent unusual circumstances, reemployment must occur within two weeks of the person’s application for reemployment, as applicable.

Less than 91 days of Service. In the case of a person whose period of service in the uniformed services was for less than 91 days:

- in the position of employment in which the person would have been employed if the continuous employment of such person with the University had not been interrupted by such service, the duties of which the person is qualified to perform; or

- in the position of employment in which the person was employed on the date of the commencement of the service in the uniformed services, only if the person is not qualified to perform the duties of the abovementioned position after reasonable efforts by the University to qualify the person.

More than 90 days of Service. In the case of a person whose period of service in the uniformed services was for more than 90 days--

- in the position of employment in which the person would have been employed if the continuous employment of such person with the University had not been interrupted by such service, or a position of like seniority, status and pay, the duties of which the person is qualified to perform; or
- in the position of employment in which the person was employed on the date of the commencement of the service in the uniformed services, or a position of like seniority, status and pay, the duties of which the person is qualified to perform, only if the person is not qualified to perform the duties of the abovementioned position after reasonable efforts by the University to qualify the person.

Disability from Service. In the case of a person who has a disability incurred in, or aggravated during, such service, and who (after reasonable efforts by the University to accommodate the disability) is not qualified due to such disability to be employed in the position of employment in which the person would have been employed if the continuous employment of such person with the University had not been interrupted by such service:

- 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 efforts by the University; or
- if not employed as set forth above, in a position which is the nearest approximation to the abovementioned position in terms of seniority, status, and pay consistent with circumstances of such person's case.

Not Qualified. In the case of a person who is not qualified to be employed (i) in the position of employment in which the person would have been employed if the continuous employment of such person with the University had not been interrupted by such service, or (ii) in the position of employment in which such person was employed on the date of the commencement of the service in the uniformed services for any reason (other than disability incurred in, or aggravated during, service in the uniformed services), and cannot become qualified with reasonable efforts by the University, in any other position which is the nearest approximation to such positions that such person is qualified to perform, with full seniority.

Two or More Persons. If two or more persons are entitled to reemployment in the same position of employment and more than one of them has reported for such reemployment, the person who left the position first shall have the prior right to reemployment in that position. Any person otherwise entitled to reemployment who is not reemployed in a position of employment by this reason shall be entitled to be reemployed in order of the priority set forth above.

No Reemployment Rights

The University is not required to reemploy a person under this Policy if:

- the University's circumstances have so changed as to make such reemployment impossible or unreasonable;
- in the case of a disabled person or a "not qualified" person who is entitled to reemployment under applicable law, such employment would impose an undue hardship on the University; or
- the employment from which the person leaves to serve in the uniformed services is for a brief, non-recurrent period and there is no reasonable expectation that such employment will continue indefinitely or for a significant period.

Job Security

A person who is reemployed by the University shall not be discharged from such employment, except for cause: (i) within one year after the date of such reemployment, if the person's period of service before the reemployment was more than 180 days; or (ii) within 180 days after the date of such reemployment, if the person's period of service before the reemployment was more than 30 days but less than 181 days.

Anti-Discrimination & Anti-Retaliation

A person 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 by the University on the basis of that membership, application for membership, performance of service, application for service, or obligation.

The University may not discriminate in employment against or take any adverse employment action against any person because such person: (1) has taken an action to enforce a protection afforded to any person under USERRA, (2) has testified or otherwise made a statement in or in connection with any proceeding under USERRA, (3) has assisted or otherwise participated in an investigation under USERRA, or (4) has exercised a right provided for in USERRA.

Seniority Rights

Subject to the terms and conditions of this Policy, a person who is reemployed under this Policy is entitled to the seniority and other rights and benefits determined by seniority that the person had on the date of the commencement of service in the uniformed services, plus the additional seniority and rights and benefits that such person would have attained if the person had remained continuously employed.

Continuation of Benefits

Subject to the terms and conditions of this Policy, a person who is absent from a position of employment by reason of service 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 by the University to employees having similar seniority, status, and pay who are on furlough or leave of absence under a contract, agreement, policy, practice, or plan in effect at the commencement of such service or established while such person performs such service. Such person may be required to pay the employee cost, if any, of any funded benefit continued to the extent other employees on furlough or leave of absence are so required.

Please take note that 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 service, is not entitled to such rights and benefits.

Health Benefits

In any case in which a person (or the person's dependents) has coverage under a health plan in connection with the person's employment with the University, and such person is absent from his or her employment by reason of service in the uniformed services, in accordance with the terms and conditions set forth in this Policy, the person may elect to continue such coverage for the lesser of: (i) the 24-month period beginning on the date on which the person's absence begins; or (ii) the day after the date on which the person fails to apply for or return to a position of employment, as provided under this Policy.

Pension Benefits

With respect to pension benefits, a person reemployed under this Policy shall be treated as not having incurred a break in service with the University by reason of such person's period or periods of service in the uniformed services, in accordance with the terms and conditions set forth in this Policy. Specifically, each period served by a person in the uniformed services shall, upon reemployment under this Policy, be deemed to constitute service with the University for the purpose of determining the nonforfeitability of the person's accrued benefits and for the purpose of determining the accrual of benefits under the applicable pension benefits plan.

Cessation of Benefits

A person's entitlement to the benefits under this Policy by reason of his or her service in the uniformed services terminates upon the occurrence of any of the following events:

- A separation of such person from such uniformed service with a dishonorable or bad conduct discharge.
- A separation of such person from such uniformed service under other than honorable conditions, as characterized pursuant to regulations prescribed by the Secretary concerned.
- A dismissal of such person permitted under applicable law (for commissioned officers).

- A dropping of such person from the rolls pursuant to applicable law (for commissioned officers).

Other University Policies

Nothing in this Policy shall supersede, nullify or diminish any contract, agreement, policy, plan, practice, or other matter that establishes a right or benefit that is more beneficial to, or is in addition to, a right or benefit provided for such person under this Policy.

Leave taken pursuant to this policy will be unpaid. However, any person whose employment with the University is interrupted by a period of service in the uniformed services may be eligible for military leave pay under applicable University policy and shall be permitted, upon request of that person, to use during such period of service any vacation, annual, or similar leave with pay accrued by the person before the commencement of such service. Such paid leave will run concurrently with the leave afforded under this Policy.

Please take note that the University may not require any such person to use vacation, annual, or similar leave during such period of service.

Definitions

“Notice” means any written or oral notification of an obligation or intention to perform service in the uniformed services that is provided to the University by the person who will perform such service or by the uniformed service in which such service is to be performed.

“Service in the uniformed services” means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, a period for which a person is absent from a position of employment with the University for the purpose of an examination to determine the fitness of the person to perform any such duty, and a period for which a person is absent from employment with the University for the purpose of performing funeral honors duty as otherwise authorized by applicable law.

“Uniformed services” means 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, and any other category of persons designated by the President in time of war or national emergency.