

****409- Military Leave.** The Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") sets forth the rights of employees who voluntarily or involuntarily leave employment to undertake military service or certain types of service in the National Disaster Medical System. This updated policy clarifies districts' obligations under the act and includes updated legal citations, as well as a sample of the notice that must be posted in district offices.

The district is committed to protecting the rights of its employees who voluntarily or involuntarily leave employment to undertake military service or certain types of service in the National Disaster Medical System. This policy and the attached Notice of Rights sets forth district obligations and employee rights under the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"). A notice containing the rights and benefits available to employees on military duty under USERRA will be posted in the district office or other location(s) where such notices are customarily placed.

DEFINITIONS

"Employee" means any person employed by a district, including a person who is a citizen, national, or permanent resident alien.

"Military duty," also referred to as "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 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 for the purpose of performing funeral honors duty.

"Notice" means any written or verbal advance notification by an employee to the district of an obligation or intention to perform service in the uniformed services.

"Veteran," for the purposes of Idaho law provisions, means any person who has served in the active service of the armed forces of the United States during any period of war recognized by the United States Department of Veterans Affairs for the purpose of awarding federal veterans benefits, and who has been honorably discharged from service.

"Uniformed services" means the Armed Forces (active and reserve components of the United States Army, Navy, Marine Corps, Coast Guard, and Air Force); 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 of the United States in time of war or national emergency.

MILITARY ORDERS AND DISTRICT BENEFITS

Any employee who begins military duty pursuant to valid military orders will be placed on leave without pay, except to the extent an employee elects to use accrued vacation or personal leave.

An employee called to military duty may elect to continue group health care coverage for the employee and dependents for the lesser of:

1. The eighteen (18) month period beginning on the date the leave begins;
2. A period of twenty-four (24) months beginning on the date the leave begins, for those employees called to military duty who make such election to continue coverage on or after December 10, 2004; or
3. The day after the date on which the person fails to apply for or return to a position of employment with the district.

The employee may be required to pay not more than one hundred two percent (102%) of the full premium of the plan, except in the case the military duty was less than thirty-one (31) days, in which case the employee shall only be responsible for the employee's share of the coverage.

Any employee called to military duty and reemployed by the district after the military duty ceased may elect to make contributions to any employer pension benefit plan, not to exceed the amount the employee would have been permitted or required to contribute had the employee remained continuously employed by this district throughout the period of military duty. Military duty will not be counted as time away from the district for retirement purposes.

REEMPLOYMENT RIGHTS

Reemployment rights occur whenever an employee:

1. Leaves his or her position, whether voluntarily or involuntarily, to perform military duty;
2. Has given the district prior notice of the military duty, unless prior notice is precluded by military necessity or is otherwise impossible or unreasonable;
3. Is relieved or discharged from such duty under honorable conditions; and
4. The employee makes application for reemployment as follows:
 - a. For military duty which lasted no more than thirty (30) days, the employee must be available to begin work at the first regularly scheduled work day or eight (8) hours after the end of the military duty, plus reasonable commuting time from the military duty state to home.

- b. For military duty that lasted between thirty-one (31) and one hundred eighty (180) days, the employee's application for reinstatement must be submitted to the district not later than fourteen (14) days after completion of military duty.
- c. For military duty that lasted between one hundred eighty-one (181) days and up to five (5) years, the employee's application for reinstatement must be submitted not later than ninety (90) days after he or she is relieved from military duty.
 - (1) The timelines set forth above may be extended for up to two (2) years in the event the employee is convalescing due to a disability incurred or aggravated during military service.
 - (2) The two-year period shall be extended by the minimum time required to accommodate circumstances beyond the employee's control that make reporting within the ninety (90) days impossible or unreasonable.

An employee who fails to report or apply for employment or reemployment within the appropriate time period specified above shall not automatically forfeit the employee's entitlement to the rights and benefits but shall be subject to the conduct rules, established policy, and general practices of the district pertaining to explanations and discipline with respect to absence from scheduled work.

The cumulative length of the current absence and of all previous absences from employment with the district for military duty may not exceed five (5) years, unless an exception applies.

Employees who meet the above criteria for reemployment will be given the reemployment positions as required by [USERRA](#).

Any employee who is restored to a former position will be considered to have been on leave of absence during his or her period of military duty and will not be discharged from that position without cause as follows:

1. Within one (1) year after the date of such reemployment, if the person's period of military duty before the reemployment was more than one hundred eighty (180) days; or
2. Within one hundred eighty (180) days after the date of reemployment, if the person's period of military duty before the reemployment was more than thirty (30) days but less than one hundred eighty-one (181) days.

An employee will not be reinstated if the district is able to show that:

1. The district's circumstances have so changed as to make reemployment impossible or unreasonable;
2. Reemployment would impose an undue hardship (as defined by federal law) on the district;

3. The prior employment with the district was for a brief, nonrecurrent period and there is no reasonable expectation that such employment will continue indefinitely or for a significant period;
4. Any reemployment is impossible or unreasonable because of a change in the district's circumstances; or
5. Any accommodation, training, or effort would impose an undue hardship on the district.



LEGAL REFERENCE:

| Uniformed Services Employment and Reemployment Rights Act of 1994
38 USC §§4301-4334, as amended by the Veterans Benefits Improvement Act of 2004
(PL 108-454, § 201(a))
20 CFR §1002 *et seq.*

ADOPTED: August 28, 2002

AMENDED: February 15, 2005, October 7, 2009, August 2018

Note: Eligible veterans are entitled to preference in the initial hiring process. See Policy 400.10, entitled "Idaho State Veteran Employment Preference," for details regarding the district's obligation in such cases.