HSC OP: 70.54, Military Leave

PURPOSE: The purpose of this Operating Policy/Procedure (OP) is to establish Texas Tech University Health Sciences Center (TTUHSC) policy for various types of military leave to employees who are members of the state military forces, the United States Armed Forces reserve components, or the United States Armed Forces as provided by state and federal law.

REVIEW: This HSC OP will be reviewed in July of each odd-numbered year (ONY) by the Vice President / Chief Human Resource Officer (VP/CHRO).

POLICY/PROCEDURE:

1. Definitions

   **Employee:** An employee employed to work at least 20 hours per week for a period of at least four and one-half months, excluding students employed in positions that require student status as a condition of employment.

   **State Military Forces:** The Texas Military Forces is the three-branch military of the U.S. state of Texas. It is composed of the Texas Army National Guard, the Texas Air National Guard, and the Texas State Guard. All three branches are administered by the state adjutant general, an appointee of the Texas governor, and fall under the command of the governor. (The Army and Air National Guards are under the command of the Governor, unless the President of the United States activates the Guard into federal service by executive order. As for the Texas State Guard, the governor of Texas has sole control over this force.)

2. Military Leave

   **Authorized Training or Active Duty**

   Employees who are members of the State’s military forces, a reserve branch of the U.S. Armed Forces, or a state or federally authorized Urban Search and Rescue team, who are called to active duty or authorized training are entitled to a leave of absence of no more than 15 workdays in each federal fiscal year (October 1 – September 30) without lose of pay or benefits. The 15 workdays of paid Military leave need not be consecutive.

   In addition, if the employee does not use the 15 workdays of military leave in a federal fiscal year, the employee is entitled to carry forward from one federal fiscal year to the next federal fiscal year the net balance of the unused accumulated leave not to exceed 45 workdays. After exhausting the 15 workdays of paid Military leave, the employee may choose to use accrued vacation leave, holiday comp or be placed on leave without pay for the remainder of Military leave.

   The Departments are required to adjust the work schedule of an employee who is a member of the Texas National Guard or a reserve branch of the U.S. Armed Forces so that two of the employee’s days off each month coincide with two days of military duty.

   Employees who are members of the State’s military forces, a reserve branch of the U.S. Armed Forces, or a state or federally authorized Urban Search and Rescue team, who are ordered to duty by proper authority are entitled, when relieved from duty, to be restored to the position that they held when ordered to duty.
Call to Duty

An employee called to active duty during a national emergency to serve in a reserve component of the U.S. Armed Forces under Title 10 or Title 32 of the United States Code is entitled to an unpaid leave of absence. The employee may choose (but is not required) to use all or some portion of the employee’s accrued vacation leave or holiday comp before he or she chooses to go on leave without pay while on military leave.

An employee called to state active duty as a member of the state military forces by the governor because of an emergency is entitled to receive emergency leave without loss of military or vacation leave. This leave will be provided without a deduction in salary. This time is not limited and does not count against the 15 days maximum military leave per fiscal year.

An employee called to federal active duty for the purpose of providing assistance to civil authorities in a declared emergency or for training for that purpose is entitled to receive paid emergency leave for no more than 22 workdays without loss of military leave or vacation leave.

A members of the state military forces who is ordered to active state duty by the governor or by other proper authority under Texas law is entitled to the same benefits and protections provided:

1) To persons performing service in the uniformed services in accordance with Title 38 U.S.C., Sections 4301-4313 and 4316-4319, as that law existed on April 1, 2003; and
2) To persons in the military service of the United States in accordance with Title 50 U.S.C., App. Sections 501-536, 560- and 580-594, as that law existed on April 1, 2003.

An employee is required to provide advance written or verbal notice to their department administrator and the VP/CHRO or designee of all military duty unless giving notice is impossible, unreasonable, or precluded by military necessity.

Leave and State Service

Employees called to active duty during a national emergency to serve in a reserve component of the U.S. Armed Forces under Title 10 or 32 of the United States Code are entitled to state service for longevity pay purposes, vacation leave accruals, and sick leave accruals while on an unpaid leave of absence. This leave will be accrued but not posted until the employee returns to TTUHSC employment. In addition, the employee retains the leave balances unless the employee chooses to use any accrued vacation leave or holiday comp to maintain benefits for the employee or the employee’s dependents while on military duty.

Additionally, employees may continue to accrue service credit with Teachers Retirement System (TRS) by receiving at least one hour of pay during each month of active military service. Employees may use any combination of paid leave, including vacation leave, holiday comp, military leave, or military emergency leave differential pay, to qualify for this pay.

VP/CHRO or designee must provide written notice regarding the number of workdays of paid leave to which the employees who are members of the State’s military forces, a reserve branch of the U.S. Armed Forces, or a state or federally authorized urban search and rescue team are entitled to each fiscal year and, if applicable, the number of workdays of paid leave that can be carried forward each fiscal year.

Before employees depart for military service, the VP/CHRO or designee shall review with them any issues relating to maintaining health insurance coverage, including what employees must do to maintain their health insurance coverage, how their health insurance coverage is affected by paid or unpaid leave, and how to pay any premium required for the insurance coverage.

Additionally, VP/CHRO or designee must, upon the request of the employee who is a member of the State’s military forces, a reserve branch of the U.S. Armed Forces, or a state or federally authorized urban search and rescue team, provide to that employee a statement that contains:

1) The number of workdays for which the employee claimed as paid leave under Texas Government Code, Section 437.202 (a), in that fiscal year,
2) The net balance of unused accumulated paid leave for that fiscal year that the employee is entitled to carry forward to the next fiscal year, and
3) The net balances of all unused accumulated paid leave under Texas Government Code, Section 437.202, to which the employee is entitled.

3. **Differential Pay (Military Emergency Leave)**

An employee called to active duty during a national emergency to serve in a reserve component of the armed forces of the United States under Title 10 or 32, United States Code, is entitled to an unpaid leave of absence. During such an unpaid leave of absence due to emergency military duty, the employee will continue to accrue state service credit for purposes of longevity pay, vacation leave, and sick leave. An employee on such unpaid military leave will be granted sufficient emergency leave as differential pay by TTUHSC President or designee if the employee’s military pay is less than the employee’s gross TTUHSC salary at the time of call to active duty. The combination of emergency leave and military pay may not exceed the employee's actual state gross pay. Military emergency leave will be granted in accordance with the Texas Government Code. Normal military training or attendance of military schools does not qualify for the granting of military emergency leave.

**Procedure:**

1) Employees who are called to active military service as described above should provide a copy of their orders to active duty to their department administrator and a copy to the VP/CHRO or designee

2) Upon notification, the department will prepare a Leave Without Pay Form placing the employee on military leave and attach a copy of the orders. Any vacation time used prior to reporting to active duty must be reported through Web-time entry for non-exempt employees or Web-leave report for exempt employees.

3) The employing department will instruct employees called to active duty to contact the VP/CHRO or designee at (806) 743-2865. The VP/CHRO or designee will advise the employee of information needed by TTUHSC during the employee’s active military duty and will coordinate the review of TTUHSC insurance coverages for comparison with his or her military insurance benefits. Activation in military service is considered an ERS qualifying life event, and employees may elect to discontinue coverage in the state insurance plan until they return to full employment.

4) The employee is responsible for furnishing copies of his or her military leave and earnings statements (LES) for each military pay period to: VP/CHRO- Military Leave, TTUHSC, Human Resources, Stop 8100, Lubbock, Texas 79430. Upon receipt of the LES, the VP/CHRO or designee will calculate the difference between the employee’s military pay and his or her regular TTUHSC pay for each pay period, in accordance with instructions from the state auditor’s office and directives from the state comptroller. Pay received while assigned to a combat zone, hardship duty pay, and family separation pay is excluded when computing military differential pay. The service members’ pay may change during the period of active duty because of a promotion or change in entitlements; any increase in pay may reduce or cease the need for state military differential pay. The VP/CHRO or designee will prepare and authorize a payment form that will be forwarded to the Payroll Department.

5) Employees who are granted military emergency leave will accrue sick and vacation leave for each month they are entitled to military emergency leave. The sick and vacation leave hours will be accrued, but the employee will not be eligible to use or be paid for the accruals until after returning to active employment with TTUHSC.

6) Upon release from active duty, the employee should present a copy of the orders releasing him or her from active duty; the department will prepare a Leave Without Pay form returning the employee to regular employment with TTUHSC and will attach a copy of such orders.

4. **Restoration of Employment**

An employee who:
1) 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 and;
2) who is ordered to duty by the proper authority is entitled, when relieved from duty, to be restored to the position that the employee held when ordered to duty or to a position of similar seniority, status, and pay.

USERRA also requires that reasonable efforts (such as training or retraining) be made to enable returning service members to refresh or upgrade their skills to help them qualify for reemployment.

To be eligible for reemployment, the employee must be discharged, separated, or released from active military service under honorable conditions no later than five years after induction, enlistment, or call to duty. In addition, the employee must be physically and mentally qualified to perform the duties of the job. If an employee is unable to perform the duties of the previous job due to a service-related disability, the veteran is entitled to be restored to a position that he or she can perform with similar or the nearest possible seniority, status, and pay. Veterans whose employment has been restored may not be dismissed without cause within a year of their reinstatement.

For applications for reemployment, an eligible veterans must apply for reinstatement within 90 days after discharge or release from service. The application must be made in writing to the VP/CHRO and must include evidence of discharge under honorable conditions.

5. **Entitlement to Retirement or Other Benefits**

Employees who are restored to employment will be considered as having been on leave of absence without pay, and the employee will be entitled to participate in all benefits and retirement to which employees of TTUHSC may be entitled. Such active military service will be considered service with TTUHSC for vacation and longevity pay accrual entitlement and retirement vesting purposes. Restored employees also have the opportunity to make any mandatory or elective retirement contributions for the period of military service.

Once the employee makes up the missed contributions, TTUHSC will make any matching contributions that ordinarily would have been made for such contributions. Such contributions will be based on the salary the employee would have received had the employee remained at work, and must be made within a period three times the length of the absence, not to exceed five years.

**Insurance Options while on Active Duty**

Regular employees who enter active duty may:

1) Continue all coverages, except disability, which is suspended subject to payment of the due premiums without TTUHSC contributions; and
2) Drop coverages in force and re-enroll in those coverages within 30 days of returning to work, provided the employee returns to work within 90 days of being discharged from active duty. No new period of preexisting conditions exclusion for HealthSelect or disability income coverage applies.

6. **Military Family Leave under the Family and Medical Leave Act**

The Military Family Leave provisions of the Family and Medical Leave Act (FMLA) entitle eligible employees to take FMLA leave for any qualifying exigency arising from the foreign deployment of the employee’s spouse, son, daughter, or parent with the Armed Forces, or to care for a service member with a serious injury or illness if the employee is the service member’s spouse, son, daughter, parent or next of kin.

To be eligible for FMLA benefits, an eligible employee must:

1) Have at least 12 months of qualified employment with the State; and
2) Have worked at least 1,250 hours (excluding unpaid and/or paid leave time) with TTUHSC over the previous 12 months of the onset of FMLA leave.
An employee seeking Military Family Leave provision of the FMLA should provide notice as soon as possible by completing the FMLA Leave Application (Click here for online FMLA Leave form) or contact the HR Leave Administrator via hrleaveadmin@ttuhsc.edu or his or her supervisor or local HR office. For additional information, processes, or procedure see TTUHSC OP 70.32.

Qualifying Exigency Leave

An eligible employee may be granted up to 12 workweeks of unpaid, job-protected leave during any 12-month period for qualifying exigencies that arise when the employee’s spouse, son, daughter, or parent is on covered active duty or has been notified of an impending call or order to covered active duty.

Covered active duty means:

1) for members of the Regular Armed Forces, duty during deployment of the member with the Armed Forces to a foreign country; or
2) for members of the Reserve components of the Armed Forces (members of the National Guard and Reserves), duty during deployment of the member with the Armed Forces to a foreign country under a call or order to active duty in support of a contingency operation.

Deployment to a foreign country means deployment to areas outside of the United States, the District of Columbia, or any Territory or possession of the United States. It also includes deployment to international waters.

An eligible employee may take FMLA leave for the following qualifying exigencies:

1) Issues arising from the military member’s short notice deployment (i.e., deployment within seven or less days of notice). For a period of up to seven days from the day the military member receives notice of deployment, an employee may take qualifying exigency leave to address any issue that arises from the short-notice deployment.

2) Attending military events and related activities, such as official ceremonies, programs, events and informational briefings, or family support or assistance programs sponsored by the military, military service organizations, or the American Red Cross that are related to the member’s deployment.

3) Certain childcare and related activities arising from the military member’s covered active duty, including arranging for alternative childcare, providing childcare on a nonroutine, urgent, immediate need basis, enrolling in or transferring a child to a new school or day care facility.

   Note: The employee taking FMLA qualifying exigency leave does not need to be related to the military member’s child. However, (1) the military member must be the parent, spouse, son or daughter of the employee taking FMLA leave, and (2) the child must be the child of the military member (including a child to whom the military member stands in loco parentis).

4) Certain activities arising from the military member’s covered active duty related to care of the military member’s parent who is incapable of self-care, such as arranging for alternative care, providing care on a non-routine, urgent, immediate need basis, admitting or transferring a parent to a new care facility, and attending certain meetings with staff at a care facility, such as meetings with hospice or social service providers.

   Note: The employee taking FMLA qualifying exigency leave does not need to be related to the military member’s parent. However, (1) the military member must be the parent, spouse, son or daughter of the employee taking FMLA leave, and (2) the parent must be the parent of the military member (including an individual who stood in loco parentis to the military member when the member was a child).

5) Making or updating financial and legal arrangements to address a military member’s absence while on covered active duty, including preparing and executing financial and healthcare powers of attorney, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), or obtaining military identification cards.

6) Attending counseling for the employee, the military member, or the child of the military member when the need for that counseling arises from the covered active duty of the military member and is provided by someone other than a health care provider.
7) Taking up to 15 calendar days of leave to spend time with a military member who is on short-term, temporary Rest and Recuperation leave during deployment. The employee’s leave for this reason must be taken while the military member is on Rest and Recuperation leave.

8) Certain post-deployment activities within 90 days of the end of the military member’s covered active duty, including attending arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military, and addressing issues arising from the death of a military member, including attending the funeral.

9) Any other event that the employee and TTUHSC VP/CHRO or designee agree is a qualifying exigency.

Certification Requirements for Qualifying Exigency Leave

TTUHSC requires an employee requesting qualifying exigency leave to provide an appropriate certification. TTUHSC require that the certification include a copy of the military member’s active duty orders. However, the employee is only required to provide this information to TTUHSC once for a military member on a specific deployment. TTUHSC also require the employee to submit certification providing the appropriate facts related to the particular qualifying exigency for which leave is sought. For example, if an employee is taking leave to meet with an alternate childcare provider or a financial consultant, TTUHSC requires an employee to provide the contact information of the third party with whom the employee is meeting. Where an employee seeks leave to spend time with a military member on Rest and Recuperation leave, TTUHSC requires an employee to provide a copy of the military member’s Rest and Recuperation orders, or other documentation confirming the dates of the member’s leave. The HR Leave Administrator will provide the eligible employee with the appropriate certification form and any additional information needed at the time the eligible employee is provided the Notice of Eligibility or the employee may obtain the appropriate certification form from the link below. (Click here)

TTUHSC may not request second and third opinions or recertification for qualifying exigency leave. When the leave involves meeting with a third party, the HR Leave Administrator may contact the third party to confirm that the meeting is taking place and the nature of the meeting, but may not request additional information. The HR Leave Administrator may also contact the Department of Defense to verify a military member’s covered active duty status.

Military Caregiver Leave

Military caregiver leave allows an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember with a serious injury or illness to take up to a total of 26 workweeks of unpaid leave during a “single 12-month period” to provide care for the servicemember.

A covered servicemember is a current member of the Armed Forces, including a member of the National Guard or Reserves, who is receiving medical treatment, recuperation, or therapy, or is in outpatient status, or is on the temporary disability retired list for a serious injury or illness.

A serious injury or illness is one that is incurred by a servicemember in the line of duty on active duty that may cause the servicemember to be medically unfit to perform the duties of his or her office, grade, rank, or rating. A serious injury or illness also includes injuries or illnesses that existed before the servicemember’s active duty and that were aggravated by service in the line of duty on active duty.

The “next of kin” of a current servicemember is the nearest blood relative, other than the current servicemember’s spouse, parent, son, or daughter, in the following order of priority:

1) a blood relative who has been designated in writing by the servicemember as the next of kin for FMLA purposes
2) blood relative who has been granted legal custody of the servicemember
3) brothers and sisters
4) grandparents
5) aunts and uncles
6) first cousins
When a servicemember designates in writing a blood relative as next of kin for FMLA purposes, that individual is deemed to be the servicemember’s only FMLA next of kin. When a current servicemember has not designated in writing a next of kin for FMLA purposes, and there are multiple family members with the same level of relationship to the servicemember, all such family members are considered the servicemember’s next of kin and may take FMLA leave to provide care to the servicemember. For example, if a current servicemember has three siblings and has not designated a blood relative to provide care, all three siblings would be considered the servicemember’s next of kin. Alternatively, where a current servicemember has one or more siblings and designates a cousin as his or her next of kin for FMLA purposes, then only the designated cousin is eligible as the servicemember’s next of kin.

The single 12-month period for military caregiver leave begins on the first day the employee takes leave for this reason and ends 12 months later, regardless of the 12-month period established by TTUHSC for other FMLA leave reasons.

An eligible employee is limited to a combined total of 26 workweeks of leave for any FMLA-qualifying reasons during the single 12-month period. Up to 12 of the 26 weeks may be for an FMLA-qualifying reason other than military caregiver leave. For example, if an employee uses 10 weeks of FMLA leave for his or her own serious health condition during the single 12-month period, the employee has up to 16 weeks of FMLA leave left for military caregiver leave.

Military caregiver leave is available to an eligible employee once per servicemember, per serious injury or illness. However, an eligible employee may take an additional 26 weeks of leave in a different 12-month period to care for the same servicemember if he or she has another serious injury or illness. For example, if an eligible employee takes military caregiver leave to care for a current servicemember who sustained severe burns, the employee would be entitled to an additional 26 weeks of caregiver leave in a different 12-month period if the same servicemember is later diagnosed with a traumatic brain injury that was incurred in the same incident as the burns.

An eligible employee may also take military caregiver leave to care for more than one current servicemember or covered veteran with a serious injury or illness at the same time, but the employee is limited to a total of 26 weeks of military caregiver leave in any single 12-month period. Additionally, an eligible employee may be able to take military caregiver leave for the same family member with the same serious injury or illness both when the family member is a current servicemember and when the family member is a veteran.

Certification Requirements for Military Caregiver Leave

TTUHSC requires leave to care for a covered servicemember be supported by a certification completed by an authorized health care provider or by a copy of an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) issued to any member of the covered servicemember’s family.

An authorized health care provider is a:

1) United States Department of Defense ("DOD") health care provider;
2) United States Department of Veterans Affairs ("VA") health care provider;
3) DOD TRICARE network authorized private health care provider;
4) DOD non-network TRICARE authorized private health care provider; or
5) non-military-affiliated health care provider.

The HR Leave Administrator will provide the eligible employee with the appropriate certification form and any additional information needed at the time the eligible employee is provided the Notice of Eligibility or the employee may obtain the appropriate certification form from the link below. (Click here)

TTUHSC may request a second or third opinion of a current servicemember’s serious injury or illness only when a certification is provided by a non-military-affiliated health care provider.

Veteran Medical and Mental Health Care Leave

An employee who is a veteran and is eligible for health benefits under a program administered by the Veterans Health Administration of the US Department of Veterans Affairs may be granted up to fifteen
(15) days, each fiscal year, paid leave to obtain medical or mental health care, including physical rehabilitation by the Veterans Health Administration. The president of TTUHSC may grant additional days as determined appropriate for the employee.

8. **Additional information**

For additional information on FMLA application processes and procedures see TTUHSC OP 70.32.

9. **Right to Change Policy**

TTUHSC reserves the right to interpret, change, modify, amend, or rescind this policy, in whole or in part, at any time without the consent of employees.

**References:**


Uniformed Services Employment and Re-employment Rights Act;
Texas Government Code, Sections 613.001-613.006; and Attorney General's Opinion MW-109
Texas Human Resources Management Statutes Inventory