Military Leave BU-PP 409

Policy:

Baylor University complies with all federal regulations regarding military leave for regular eligible faculty and staff.

Topics:

General background Unlawful discrimination Policy on reemployment Policy on medical/dental plans Policy on retirement income plan Attachment A

Related policies:

BU-PP 400 — Non-Compensated Leaves and Absences

Additional information:

Provisions of this policy are in accordance with the federal Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).

Contact:

Compensation & Benefits Department (x2218)

General background —

- 1. Scope of policy. Baylor University:
 - a. Prohibits unlawful discrimination against persons who serve or attempt to serve in the uniformed services,
 - b. Provides certain reemployment rights
 - c. Provides certain rights with respect to health plan coverage
 - d. Provides certain rights with respect to retirement income plan benefits.
- **2. Loss of protections generally.** The protections of this policy are terminated if the applicant or employee is separated from uniformed service with an other-than-honorable discharge or by being dropped from the rolls.

Unlawful discrimination —

- 1. Policy. An applicant or employee who
 - a. is a member of,
 - b. applies to be a member of,
 - c. performs,
 - d. has performed,
 - e. applies to perform, or
 - f. has an obligation to perform service in a uniformed service, shall not be denied
 - i. initial employment,
 - ii. reemployment,
 - iii. retention in employment,
 - iv. promotion, or
 - v. any benefit of employment on the basis of that membership, application for membership, performance of service, application for service or obligation.
- **2. Definition of service in a uniformed service.** Service in a uniformed service means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority. It includes,
 - a. active duty,

- b. active duty for training,
- c. initial active duty from training,
- d. inactive duty training,
- e. full-time National Guard duty, and
- f. 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.

Policy on reemployment —

- **1. Policy.** Any person who is absent from a position of employment with Baylor by reason of service in the uniformed services shall be entitled to the reemployment rights and benefits contained in this policy if **all** of the following conditions are met:
 - a. Advance notice of service in the uniformed services. The person (or an appropriate officer of the uniformed service in which such service is performed) has given advance written or verbal notice of such service to Baylor, unless such notice is impossible, unreasonable, or precluded by military necessity.
 - b. Total absence less than five years. The cumulative length of the absence and of all previous absences from a position of employment with Baylor by reason of service in the uniformed services does not exceed five years (not including certain service defined by law).
 - c. Timely reporting or application to Baylor after completion of service in accordance with Attachment A. Except as otherwise provided, the person must report to, or submit an application for reemployment, to Baylor within the time set forth in Attachment A.
- **2. Circumstances with no reemployment rights.** Baylor is not required to reemploy a person even if all the conditions are met if:
 - a. Changed circumstances. Baylor's circumstances have changed so much to make reemployment impossible or unreasonable.
 - b. *Undue hardship*. Reemployment would cause Baylor undue hardship (only in the case of service-connected disability or lack of qualifications for any position).
 - c. *Temporary employment*. The employment from which the person leaves to service in the uniformed services is for a brief, nonrecurring period and there is not reasonable expectation that such employment will continue indefinitely or for a significant time.
 - d. *Failure to give notice*. The person fails to give Baylor the required notice and Baylor's leave of absence policy permits termination of employment with Baylor.
- **3. Priority if entitled to reemployment rights.** If a person is otherwise entitled to reemployment in accordance with this policy, Baylor shall promptly reemploy the person in a position of employment in accordance with the following order of priority:
 - a. Period of service less than 91 days.
 - i. In the position the person would have held but for the absence of service, the duties of which the person is qualified to perform or
 - ii. In the position in which the person was employed at the commencement of service, if with reasonable effort by Baylor the person cannot become qualified for the position in i. above.
 - b. Period of service greater than 90 days.
 - In the position the person would have held but for the absence for service, or a
 position of like seniority, status and pay, the duties of which the person is qualified to
 perform, or
 - ii. In the position in which the person was employed at the commencement of service, if with reasonable effort by Baylor the person cannot become qualified for the position in i. above.
 - c. Disability. In the event that the person has a disability incurred in, or aggravated during, such service, and that person does not qualify for any of the positions as set forth in a or b above, as appropriate for period of service, then
 - 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 effort by Baylor, or
 - ii. If not reemployed under i. above, then in a position which is the nearest

- approximation to such position in terms of seniority, status, and pay consistent with circumstances of such person's case.
- d. All cases other than disability. If the person is not qualified or cannot become qualified in accordance with any provision other than disability, then in any other position of lesser status and pay which such person is qualified to perform, with full seniority.
- e. Two or more persons entitled to reemployment in accordance with this policy to same position.
 - i. If two or more persons are entitled to reemployment under this policy to the same position and more than one has reported for such reemployment, the person who left the position first shall have the prior right to reemployment in that position.
 - ii. If a person entitled to reemployment is not reemployed to a position because of this paragraph e, then that person shall be entitled to be reemployed in accordance with the provisions of a, b, or c in another position that provides a similar status and pay, consistent with the circumstances of such person's case, with full seniority.

4. Rights, benefits and obligations after reemployment or during absence.

- a. Seniority based. A person who is reemployed in accordance with this policy is entitled to the seniority that the person had on the date of the commencement of service plus the additional seniority and rights and benefits that such person would have attained if the person had remained continuously employed.
- b. *Non-seniority based.* 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 to employees having similar seniority, status, and pay who are on furlough or leave of absence under policies in effect at the time of commencement of such service.
- c. Conditions on non-seniority based rights.
 - i. 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 services is not entitled to rights and benefits under
 - b. See also Reemployment rights above.
 - ii. Such person may be required to pay the full cost of any funded benefit continued under this provision to the extent other employees on furlough or leave of absence are required to pay.
- d. *Temporary limitation on employment at will*. A person who is reemployed in accordance with this policy shall not be discharged from such employment except for cause:
 - i. Within one year after the date of such reemployment, if the period of service was more than 180 days, or
 - ii. Within 180 days after the date of such reemployment, if the period of service was more than 30 days but less than 181 days.
- e. Use of accrued benefits. Any person whose employment with Baylor is interrupted by a period of service in the uniformed services shall be permitted, upon request of that person, to use during the period of service any paid vacation or personal time accrued by the person before the commencement of such service.

Policy on medical/dental plans —

- **1. Policy.** In accordance with USEERA, an employee with coverage under a health plan in connection with the employee's position of employment with Baylor may elect to continue such coverage if such employee is absent from such position by reason of service in the uniformed services.
- 2. Conditions on continued coverage under such election.
 - a. Maximum period of coverage. The maximum period of coverage of the employee and dependents shall be the less of:
 - The 18 month period beginning on the date on which the employee's absence begins, or

- ii. The day after the date on which the person has failed to timely apply for or return to a position of employment in accordance with the requirements for reemployment rights.
- b. Payment of premium. An employee who elects to continue coverage may be required to pay not more than 102 percent of the full premium of the plan, unless the employee performs service in the uniformed service for less than 31 days in which case the employee may not be required to pay more that the employee's share.
- c. Exclusion or waiting period imposed upon reinstatement. If coverage has been terminated by reason of service in a uniformed service, an exclusion or waiting period may not be imposed upon reinstatement upon reemployment, in accordance with this policy if such exclusion or waiting period would not have been imposed if coverage had terminated for reasons other than service in the uniformed services.

Policy on retirement income plan —

Policy. In accordance with USERRA, a person reemployed in accordance with this policy shall be treated as not having incurred a break in service with Baylor by reason of such person's period or periods of service. Upon reemployment in accordance with this policy, each period of service served by a person shall be deemed to constitute service with Baylor for the purpose of:

- a. Determining the nonforfeitability of the person's accrued benefits, and
- b. Determining the accrual of benefits under the plan.

ATTACHMENT A

- 1. If period of service is less than 31 days or if absence is for fitness examinations to determine fitness to perform service in the uniformed services, persons seeking reemployment must personally report to Baylor:
 - a. not later than the beginning of the first full regularly scheduled work period on the first full calendar day following completion of the period of service and the expiration of eight hours after the period allowing for the safe transportation of the person from the place of that service to the person's residence; or
 - b. as soon as possible thereafter if reporting as required in a. is impossible or unreasonable.
- **2.** If period of service is more than 30 days but less than 181 days, persons seeking reemployment must submit an application to Baylor:
 - a. not later than 14 days after the completion of the period of service; or
 - b. 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 practicable.
- **3.** If period of service is greater than 180 days, persons seeking reemployment must submit an application to Baylor not later than 90 days after the completion of the period of service.
- **4. Hospitalization.** If the person is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service in the uniformed service, such reporting (absence less than 31 days or for fitness examinations) or submitting of an application shall be at the end of the period that is necessary to recover from the illness or injury, such period not to exceed two years plus the minimum time required to accommodate circumstances beyond the person's control.