



## POLICY MANUAL

### BENEFITS

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**Number 3103**

**Subject: Military Leave**

**Covered Employees: University Employees**

**Date of Origin: January 24, 1997; revised March 26, 2010; revised August 22, 2014**

**Previous USU Policy #: 359: Military Leave**

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#### 3103.1 POLICY

This policy provides guidelines for the call to covered active duty of University faculty and staff who are members of any reserve branch of the United States Armed Forces or a National Guard unit. It also applies to any faculty and staff who are not reserve or guard members who may be called to active duty by the United States Armed Forces through any other means. Utah State University is compliant with the National Defense Authorization Act (NDAA) of 2010.

#### 3103.2 DEFINITIONS

##### 2.1 Covered Active Duty

“Covered active duty” means

(1) in the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and

(2) in the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10,

##### 2.2 Covered Service Member

“Covered service member” means

(1) a member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or

(2) a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of five years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

## **2.4 Next of Kin**

“Next of kin” used with respect to an individual, means the nearest blood relative of that individual.

## **2.5 Outpatient**

“Outpatient” status, with respect to a covered service member, means the status of a member of the Armed Forces assigned to

(1) a military medical treatment facility as an outpatient; or

(2) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

## **2.6 Serious Injury or Illness**

The term “serious injury or illness”

(1) in the case of a member of the Armed Forces (including a member of the National Guard or Reserves), means an injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating; and

(2) in the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during a period described in 3103.2.2(2), means a qualifying (as defined by the Secretary of Labor) injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

## **3103.3 PROVISIONS**

### **3.1 Annual Encampment**

University employees on leave for active duty at annual encampments or other required active duty training are entitled to a leave of absence with full pay for up to 15 working days per year. This leave will be paid in addition to any annual leave the individual may have accrued. The leave with pay provisions do not apply when an individual voluntarily seeks active duty in addition to the required annual encampment.

A copy of the orders requiring the attendance of an eligible employee for military leave must be attached to the request for leave with pay.

The provisions of this section are governed by 1953 Utah Code Annotated, Section 39-3-2.

### **3.2 Active Duty Beyond Annual Encampments**

(1) Re-employment.

Faculty and staff who leave the University to enter active duty in the armed forces of the United States, voluntarily or involuntarily, are protected by the federal veterans' re-employment rights laws (Chapter 43, U.S. Code Title 38) and 1953 Utah Code Annotated, Section 39-1-36. To be eligible for the provisions of these laws, an employee must:

- (a) Leave a non-temporary position at the University.
- (b) Leave the University to go on active duty.
- (c) Remain on active duty no longer than five years.
- (d) Be discharged or released from active duty under honorable conditions.
- (e) Notify the Office of Human Resources within 90 days after official separation from active duty that he/she is ready to be re-employed. This deadline will be extended for up to one year following the release from duty if the employee is hospitalized for injuries resulting from service.

A person meeting the above criteria is entitled to return to the previous position, or a position of similar status, seniority, and pay. The person is to be restored as if he/she had been continuously employed by the University during the course of active duty, with no loss of promotion, pay increases, seniority, or other position attributes that would have occurred had the person remained employed. Tenure-track faculty called to active duty will be granted a hiatus from their probationary period. A re-adaptation period of up to two years, as negotiated with the department head and dean, and approved by the

Provost, will be granted to returning tenure-track faculty before the reinstatement of the tenure clock.

The University's Americans with Disabilities (ADA) Coordinator is available for consultation regarding work accommodation(s) for employees who may have acquired a disability.

(2) Retirement benefits.

Under Utah law, individuals whose employment is interrupted by military service must be given benefit accruals for the period of military leave (1953 Utah Code Annotated, Sections 49-1-401 and 49-1-402). Contributions can either be made (a) on a monthly basis during the period of the official call to duty, or (b) a contribution adjustment (including interest) after the official call but at least five years before the employee's retirement date. The individual must return to covered service (employment at the University) after receiving an honorable discharge from military service to qualify for the above-stated retirement credits.

Utah State University will make retirement contributions for employees called to active duty for up to five years at the contribution rate specified by state statute and based on the employee's compensation when he/she was called to military duty.

(3) Other benefits.

In the case of a call to active duty, the University will continue an employee's medical, dental, and life insurance benefits at the same level that was provided immediately before the call to active service, for 30 days after the employee begins active duty. Beyond this 30-day benefit continuation period, other basic employee benefits will be handled as they are for any other employee taking a leave of absence or using annual leave.

### **3.3 Leave Benefits**

Special military leave days with pay that are allowed in 3.1 of this policy may be used when covered active duty begins if those days have not already been used in the current calendar year. If covered active duty continues into additional calendar years, the leave provided in 3.1 will not be granted for those additional years. Annual leave may be taken according to existing University policy. Accrual of annual and sick leave ceases during leave without pay.

Leave with pay using annual leave allows for the continuation of all benefits as if the employee were still working. Leave without pay does not allow for the continuation of benefits paid by the University, but does allow the employee to continue insurance benefits by paying the premiums for such benefits under the COBRA continuation provisions of federal law.

Eligible employees are entitled to up to 12 weeks of leave because of “any qualifying exigency” arising out of the fact that the spouse, son, daughter, or parent of the employee is on covered active duty, or has been notified of an impending call to covered active duty status, in support of a contingency operation. See Policy 3101 Family and Medical Leave.

An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member who is recovering from a serious illness or injury, either sustained in the line of duty on active duty or incurred because service on active duty aggravated existing or pre-existing injuries, is entitled to up to 26 weeks of leave in a single 12-month period to care for the service member. This military caregiver leave is available during “a single 12-month period” during which an eligible employee is entitled to a combined total of 26 weeks of all types of FMLA leave (see Policy 351 Family and Medical Leave).

### **3103.4 RESPONSIBILITY**

#### **4.1 Office of Human Resources**

Responsible for communicating and administering this policy in accordance with federal and Utah law.

#### **4.2 Employees**

Responsible for filling out Request for Leave and FMLA Forms and providing the necessary documentation to supervisors when requesting a Military leave of absence, and when returning to employment at USU.