

# YOUTH SERVICES POLICY

<b>Title:</b> Uniformed Services Employment and Re-employment Rights	<b>Type:</b> A. Administrative <b>Sub Type:</b> 2. Personnel <b>Number:</b> A.2.33
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<b>References:</b> Title 38 of the United States Code, Chapter 43; the Uniformed Services Employment and Re-employment Rights Act of 1994 (USERRA); ACA Standards 2-CO-1C-13 (Administration of Correctional Agencies); Civil Service Rules 6.5 (e), 9.3, 11.26, 17.3, 17.24, 22.7 and 23.15; La. R.S. 29:401 - 415; YS Policy Nos. A.2.1 "Employee Manual" and A.2.2 "Pay Administration and Management"	
<b>STATUS: Approved</b>	
<b>Approved By:</b> <i>James Bueche, Ph.D., Deputy Secretary</i>	<b>Date of Approval:</b> 01/28/2019

**I. AUTHORITY:**

Deputy Secretary of Youth Services as contained in La. R.S. 36:405. Deviation from this policy must be approved by the Deputy Secretary.

**II. PURPOSE:**

To establish the Deputy Secretary's commitment to the Uniformed Services Employment and Re-employment Rights Act (USERRA).

**III. APPLICABILITY:**

Deputy Secretary, Assistant Secretary, Undersecretary, Deputy Undersecretary, Chief of Operations, Executive Management Advisor, Regional Directors, Facility Directors, Regional Managers, Office of Human Resources (OHR) staff located at Public Safety Services (PSS) , and all Youth Services (YS) employees.

Each Unit Head shall ensure that all necessary procedures are in place to comply with the provisions of this policy.

**IV. DEFINITIONS:**

**Service in the Uniformed Services** - Performance of duty on a voluntary or involuntary basis in a uniformed service including: active duty; active duty for training; initial active duty for training; inactive duty training; full time national guard duty; absence from work for an examination to determine a person's fitness for any of the above types of duty; funeral honors duty performed by National Guard or Reserve members; or duty performed by intermittent disaster response personnel for the Public Health Service and approved training to prepare for such service.

**Uniformed Services** - Army, Navy, Marine Corps, Air Force, Coast Guard, Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve, Coast Guard Reserve, Army National Guard, Air National Guard, Commissioned Corps of the Public Health Service and any other category of persons designated by the President of the United States of America in time of war or emergency.

**Unit Head** - Deputy Secretary, Facility Directors and Regional Managers.

**V. POLICY:**

It is the Deputy Secretary's policy to comply with USERRA and all other State, Federal and local laws governing employment and re-employment rights of members of the uniformed services.

**VI. PROCEDURES:**

A. Each Unit Head shall identify all uniformed services members employed at their unit and maintain a current list of their military branch and status.

B. In order to receive the full military benefits provided by YS, uniformed services employees must provide either written or oral advance notice of their impending service. Advance notice is not required in those cases where it is precluded by military necessity or otherwise impossible or unreasonable.

C. Any employee who leaves employment in order to perform service in the uniformed services shall be advised by appropriate OHR personnel at PSS of all employment and re-employment rights which include, but are not limited to, the following:

1. **Military Leave of Absence:**

Maximum military leave with pay, for military purposes, is 15 working days per calendar year. After that, uniformed services employees will be entitled to an unpaid military leave of absence for the duration of their duty up to six (6) years (pursuant to Civil Service Rule 23.15). Uniformed services employees may elect to use their accumulated annual and/or compensatory leave in lieu of leave without pay. Any employee who elects to use annual or compensatory leave during active service shall not be eligible for receipt of military pay differential.

2. **Military Pay Differential:**

All uniformed services employees who are in leave without pay when activated will be paid the difference between their regular State pay and their military pay, if their military pay rate is the lesser

of the two. In order to receive this benefit, uniformed services employees must provide verification of their pay while on military duty.

3. Retirement Benefits:

All Uniformed Services employees who have been activated will continue to accrue service credit toward retirement whether in paid or unpaid leave. Uniformed services employees have the option to purchase up to four (4) years of their retirement earnings for the time during which they were activated and in leave without pay. Employment contributions and interest due must be received by the system within four (4) years of return to employment.

4. Seniority and Pay Adjustments:

All uniformed services employees will continue to earn State service credit in the classification to which they were designated when activated. Uniformed services employees shall also be granted any pay adjustment they would have received had they been present in that job at the time of the adjustment.

5. Leave Accruals:

All uniformed services employees will continue to earn annual and sick leave according to the regular accrual rate. This leave will be credited to them upon their return to work following military duty.

6. Training:

All uniformed services employees who have been in military leave of absence are entitled to any training or retraining that they would have received had they been present.

7. Insurance:

All uniformed services employees who are called to active duty may choose to do one of the following:

- a. Elect to cancel their current state insurance benefits upon their departure, and to restore the coverage held prior to their departure at the current rate without the pre-existing conditions and limitations; or
- b. Continue to pay their insurance premiums and retain their coverage while on military leave.

8. Employment Rights upon Return:

All uniformed services employees who have served in active duty for not more than six (6) years of voluntary service or an indefinite period of involuntary service, have been honorably discharged, and have reported to, or notified their employer in writing of the intent to return to a position of employment within the periods defined in Section VII shall be restored to employment within ten (10) days.

If still qualified to perform the duties of his/her position, the employee shall be restored to that position of like seniority, status, and pay. If not qualified by reason of disability sustained during service, the employee shall be restored to another position he/she is qualified to perform that will provide like seniority, status, and pay or the nearest approximation thereof.

9. Protection from Termination:

A re-employed uniformed services employee may not be discharged without cause as follows:

- a. For one (1) year after the date of re-employment if the person's period of military service was 181 days or more; or
- b. For six (6) months after the date of re-employment if the person's period of military service was for more than 30 days but less than 181 days.

Persons who serve for 30 or fewer days are not protected from termination without cause.

**VII. TIME FRAMES FOR REPORTING BACK TO WORK:**

A. Service of less than 31 days:

The employee must report to his employer by the beginning of the first regularly scheduled work period that begins on the next calendar day following completion of service, after allowance for safe travel home from the military duty location and an eight-hour rest period. For example, an employer cannot require a service member who returns home at 10:00 p.m. on a Monday to report to work at 12:30 a.m. Tuesday. However, the employer can require the employee to report for the 6:00 a.m. shift on Tuesday.

If, due to no fault of the employee, timely reporting back to work would be impossible or unreasonable, the employee must report back to work as soon as possible.

**B. Service of more than 30 days but less than 181 days:**

Notification in writing of the intent to return to a position of employment must be submitted no later than 14 days after completion of a person's service.

If submission of a timely written notice is impossible or unreasonable through no fault of the person, the written notice must be submitted as soon as possible. If the 14<sup>th</sup> day falls on a day when the offices are not open, or there is otherwise no one available to accept the notice, the time extends to the next business day.

**C. Service of 181 days or more:**

Notification in writing of the intent to return to work must be submitted no later than 90 days after completion of a person's military service. If the 90<sup>th</sup> day falls on a day when the offices are not open, or there is otherwise no one available to accept the notice, the time extends to the next business day.

**D. Fitness Exam:**

The time limit for reporting back to work for a person who is absent from work in order to take a fitness-for-service examination is the same as described in Section VII. A. above for persons who are absent for less than 31 days. This time frame will apply regardless of the length of the person's absence.

**E. Disability incurred or aggravated:**

The reporting and notification deadlines are extended for up to two (2) years for persons who are hospitalized or convalescing because of a disability incurred or aggravated during the period of military service.

The two-year period will be extended by the minimum time required to accommodate a circumstance beyond an individual's control that would make reporting within the two-year period impossible or unreasonable.

**VIII. PROTECTION FROM DISCRIMINATION AND RETALIATION:**

Employment discrimination because of past, current, or future military obligations is prohibited. The ban is broad, extending to most areas of employment, including: hiring; promotions; re-employment; termination; and benefits.

**IX. REQUIRED POSTING:**

The Veterans Benefits Improvement Act, enacted by Congress in December 2004, mandates that employers provide notice to "all persons entitled to rights and benefits under USERRA"; therefore, Your Rights under USERRA (see attachment) shall be posted to make it available to all employees.

**Previous Regulation/Policy Number:** A.2.33

**Previous Effective Date:** 1/21/2016

**Attachments/References:** USERRA Poster.April 2017



# YOUR RIGHTS UNDER USERRA THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

**USERRA protects the job rights of individuals who voluntarily or involuntarily leave employment positions to undertake military service or certain types of service in the National Disaster Medical System. USERRA also prohibits employers from discriminating against past and present members of the uniformed services, and applicants to the uniformed services.**

## REEMPLOYMENT RIGHTS

You have the right to be reemployed in your civilian job if you leave that job to perform service in the uniformed service and:

- ☆ you ensure that your employer receives advance written or verbal notice of your service;
- ☆ you have five years or less of cumulative service in the uniformed services while with that particular employer;
- ☆ you return to work or apply for reemployment in a timely manner after conclusion of service; and
- ☆ you have not been separated from service with a disqualifying discharge or under other than honorable conditions.

If you are eligible to be reemployed, you must be restored to the job and benefits you would have attained if you had not been absent due to military service or, in some cases, a comparable job.

## RIGHT TO BE FREE FROM DISCRIMINATION AND RETALIATION

If you:

- ☆ are a past or present member of the uniformed service;
- ☆ have applied for membership in the uniformed service; or
- ☆ are obligated to serve in the uniformed service;

then an employer may not deny you:

- ☆ initial employment;
- ☆ reemployment;
- ☆ retention in employment;
- ☆ promotion; or
- ☆ any benefit of employment

because of this status.

In addition, an employer may not retaliate against anyone assisting in the enforcement of USERRA rights, including testifying or making a statement in connection with a proceeding under USERRA, even if that person has no service connection.

## HEALTH INSURANCE PROTECTION

- ☆ If you leave your job to perform military service, you have the right to elect to continue your existing employer-based health plan coverage for you and your dependents for up to 24 months while in the military.
- ☆ Even if you don't elect to continue coverage during your military service, you have the right to be reinstated in your employer's health plan when you are reemployed, generally without any waiting periods or exclusions (e.g., pre-existing condition exclusions) except for service-connected illnesses or injuries.

## ENFORCEMENT

- ☆ The U.S. Department of Labor, Veterans Employment and Training Service (VETS) is authorized to investigate and resolve complaints of USERRA violations.
- ☆ For assistance in filing a complaint, or for any other information on USERRA, contact VETS at **1-866-4-USA-DOL** or visit its website at <http://www.dol.gov/vets>. An interactive online USERRA Advisor can be viewed at <http://www.dol.gov/elaws/userra.htm>.
- ☆ If you file a complaint with VETS and VETS is unable to resolve it, you may request that your case be referred to the Department of Justice or the Office of Special Counsel, as applicable, for representation.
- ☆ You may also bypass the VETS process and bring a civil action against an employer for violations of USERRA.

The rights listed here may vary depending on the circumstances. The text of this notice was prepared by VETS, and may be viewed on the internet at this address: <http://www.dol.gov/vets/programs/userra/poster.htm>. Federal law requires employers to notify employees of their rights under USERRA, and employers may meet this requirement by displaying the text of this notice where they customarily place notices for employees.



**U.S. Department of Labor**  
1-866-487-2365



**U.S. Department of Justice**



**Office of Special Counsel**



**1-800-336-4590**

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