

Chapter: Leave Benefits	Effective Date: 9/1/13
Title: Military Service and Leave	Page: 1 of 6
ACA: N/A	Replaces: PRS.28.19, 12/1/11
Statute(s): Title 38 U.S. Code, Ch. 43 TX Gov't Code, Ch. 437; §658.008 ; §§661.903 – 661.9041	

(a) **Policy.**

The Texas Juvenile Justice Department (TJJD) complies with federal and state laws that establish pay and leave entitlements for employees who are members of the U.S. uniformed services or Texas military forces.

(b) **Definitions.**

- (1) **Military Service** – Voluntary or involuntary duty performed in the U.S. uniformed services or Texas military forces, including:
 - (A) active duty;
 - (B) active duty for training;
 - (C) initial active duty training;
 - (D) inactive duty training;
 - (E) full-time National Guard duty;
 - (F) absence from work for an examination to determine a person's fitness for any of the above types of duty;
 - (G) funeral honors duty performed by National Guard or reserve members;
 - (H) approved training or duty performed by intermittent disaster response personnel for the Public Health Service; and/or
 - (I) authorized training or duty performed as a member of a state- or federally-authorized urban search-and-rescue team.
- (2) **State Active Duty** – Military or emergency service performed for the state of Texas at the call of the governor or the governor's designee.
- (3) **State Training and Other Duty** – Service and training typically performed by service members to prepare for state active duty, including training for man-made and natural-disaster response and for equipment and property maintenance.
- (4) **Texas Military Forces** – The Texas National Guard, the Texas State Guard, and any other military force organized under state law.
- (5) **Texas National Guard** – The Texas Army National Guard and the Texas Air National Guard.
- (6) **Texas State Guard** – Volunteer military forces that provide community service and emergency-response activities for Texas, as organized under the Second Amendment to the U.S. Constitution and operating as a defense force authorized under 32 U.S.C. Section 109.
- (7) **Uniformed Services** – Consist of the following:
 - (A) Army, Navy, Marine Corps, Air Force, or Coast Guard;
 - (B) Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve, or Coast Guard Reserve;
 - (C) Army National Guard or Air National Guard;
 - (D) Commissioned Corps of the Public Health Service; or
 - (E) any other category of persons designated by the President in time of war or emergency.

(c) Advance Notice of Military Service.

- (1) An employee or an appropriate officer of the military branch in which the employee is serving must provide the employee's supervisor with advance written or verbal notice of military service except as noted below.
- (2) No advance notice is required when:
 - (A) military necessity prevents the ability to provide notice; or
 - (B) circumstances make providing notice impossible or unreasonable.
- (3) When a situation prevents the employee from providing advance notice, he/she must notify his/her supervisor of the military service as soon as practicable.
- (4) The supervisor must notify the local human resources office as soon as practicable after becoming aware of an employee's military service.

(d) Monthly Adjustment of Work Schedule for Members of National Guard or Reserve.

- (1) An employee who is a member of the Texas National Guard or the U.S. Armed Forces Reserve is entitled to have his/her work schedule adjusted so that two of his/her regular days off each month coincide with two days of military service. This allows the employee to perform two days of military service each month without losing pay or paid leave entitlements.
- (2) The employee should provide his/her supervisor with a schedule of required training as soon as possible to allow the supervisor to adjust the employee's work schedule.

(e) Types of Military Leave.**(1) Annual Military Leave Entitlement.**

- (A) An employee who is a member of the Texas military forces, the U.S. Armed Forces Reserve, or a state- or federally-authorized urban search-and-rescue team is entitled to 15 workdays of paid leave in a fiscal year for use on days on which the employee is engaged in:
 - (i) authorized training; or
 - (ii) duty ordered or authorized by a proper authority.
- (B) An employee who is a member of more than one group listed in (A) above does not receive more than 15 workdays of annual military leave.
- (C) On September 1 of each year, TJJJD grants 120 hours of paid military leave to full-time employees who are members of groups listed in (A) above to participate in authorized activities.
 - (i) The 120 hours are based on 15 eight-hour workdays.
 - (ii) TJJJD grants additional hours of paid military leave for an employee to engage in an authorized activity if he/she:
 - (I) has not already been absent for more than 15 workdays for such activities in the current fiscal year; and
 - (II) is absent to engage in these activities on a workday that he/she is scheduled to work more than eight hours (not including overtime).

Example: An employee whose regular schedule is a 10-hour workday is granted two additional hours of annual military leave on each day of absence up to 15 workdays to

engage in such activities. The additional hours ensure that the employee receives sufficient leave for his/her entire workday.

- (D) TJJJ grants part-time employees paid leave on the day of absence based on their regularly scheduled work hours for that day.
- (E) Unused annual military leave that does not exceed 45 workdays (360 hours) carries over to the next federal fiscal year. The leave may only be used for the purposes for which it was granted. (See (A) above.)

(2) **Emergency Leave for Employees in Texas Military Forces.**

- (A) An employee called to state active duty as a member of the Texas military forces is entitled to paid emergency leave for the duration of active duty when the call is by:
 - (i) the governor or other appropriate authority in response to a natural or man-made disaster; or
 - (ii) the governor because of an emergency.
- (B) An employee called to federal active duty to assist civil authorities in a declared emergency or to train for that purpose is entitled to receive up to 22 days of paid emergency leave in a calendar year for active duty or training.
 - (i) The number of leave hours granted for each day of federal active duty equals the number of the employee's regularly scheduled work hours for the day of absence.
 - (ii) Emergency active duty or training is not included in the duty or training for which annual military leave is granted; therefore, the 15 days of annual military leave may not be used for this purpose.
 - (iii) After exhausting 22 days of paid emergency leave, the employee must use other paid leave accruals or unpaid military leave if he/she is required to be on leave.

(3) **Emergency Leave for Employees in Other States' Military Forces.**

TJJJ grants emergency leave to members of other states' military forces for the same reasons and in the same amount as in Section (2) above.

(4) **Federal Active Duty During a National Emergency.**

An employee who is ordered to federal active military duty during a national emergency may use paid leave accruals or be placed on an unpaid leave of absence for the duration of federal active duty.

(A) **HRA's Responsibilities.**

When notified that an employee has been called to federal active duty due to a national emergency, the local human resources administrator (HRA) or his/her designee provides the employee with a Military Activation Benefits Review form, [HR-108](#), and explains:

- (i) what the employee must do to maintain state health insurance coverage and optional coverage during his/her military duty;
- (ii) how insurance coverage is affected by paid or unpaid leave;
- (iii) how to pay any premiums required for insurance coverage;

- (iv) which options for using paid leave accruals will enable the employee to maintain benefits for his/her dependents while he/she is on active duty;
- (v) which options for using state compensatory time balances will ensure balances are used before they lapse;
- (vi) how state service credit emergency leave is accrued and used; and
- (vii) how eligibility for differential pay is determined. (See [\(C\)](#) below.)

(B) State Service Credit Emergency Leave.

TJJD grants employees one hour of state service credit emergency leave each month of deployment up to the applicable return-to-work deadline.

- (i) The employee receives and uses the one hour of leave even if he/she uses other paid leave for all or part of the month.
- (ii) The one hour of leave is recorded as administrative leave in the TJJD human resources information system.
- (iii) If the employee also uses other paid leave balances, the one hour of leave is used first.
- (iv) The employee continues to accrue the following while on active duty:
 - (I) service credit with the Employees Retirement System of Texas;
 - (II) state service credit for longevity pay and/or hazardous duty pay; and
 - (III) vacation and sick leave, which will not become available for use until the employee returns to work.

(C) Differential Pay.

If the employee's monthly military gross pay is less than the employee's regular monthly state gross pay, the employee is eligible for differential pay.

- (i) For purposes of differential pay, military gross pay does not include money the employee receives:
 - (I) for service in a combat zone;
 - (II) as hardship pay; or
 - (III) for being separated from his/her family.
- (ii) Total differential pay and military gross pay may not exceed the employee's regular state gross pay.
- (iii) An employee receives differential pay only for a month in which:
 - (I) he/she is not on paid leave for the full month; and
 - (II) the total pay that he/she receives for the one hour of state service credit emergency leave, any applicable leave hours from his/her leave balances, longevity/hazardous duty pay, and benefit replacement pay is insufficient to make up the difference between his/her regular state gross pay and military gross pay.

(5) **Reinstatement Rights under Federal and State Law.**

- (A) Federal law (the Uniformed Services Employment and Reemployment Rights Act of 1994, or “USERRA”) provides rights to employees absent from work due to voluntary or involuntary service in the uniformed services.
 - (i) Employment reinstatement rights established by USERRA apply to an employee who:
 - (I) remained on leave from his/her job while on active duty; and
 - (II) separated employment to perform active duty.
 - (ii) State law extends the same benefits and protection provided by USERRA to an employee who is a member of the:
 - (I) Texas military forces or another state’s military forces and who is ordered to authorized training or duty by a proper authority; or
 - (II) Texas military forces ordered to state active duty or to state training and other duty by the governor, the adjutant general, or another proper authority under Texas state law.

- (B) In order to be entitled to reinstatement rights under USERRA, the following conditions must generally be met. However, limited exceptions set forth in USERRA may apply to some of the conditions. Therefore, a local HRA must contact the TJJJ benefits coordinator whenever an employee returns from military leave or applies for reinstatement upon return from active duty before denying reinstatement.
 - (i) The employee complied with provisions in (c) of this policy regarding advance notice of military service.
 - (ii) The period of military service did not exceed five years.
 - (iii) The employee received an honorable release from military service.
 - (iv) The employee reported to work or applied for reinstatement within the following time limits:

Period of Service	When Employee Must Report to Work or Apply for Reinstatement
1 to 30 days	<p>The employee must report to work:</p> <p style="margin-left: 20px;">no later than the next work day after eight hours have expired following the completion of military service, or</p> <p style="margin-left: 20px;">as soon as possible after this eight-hour period if reporting for work by the next work day is impossible or unreasonable through no fault of the employee.</p>

Period of Service	When Employee Must Report to Work or Apply for Reinstatement
31 to 180 days	<p>The employee must apply for reinstatement no later than 14 days after military service or as soon as possible if applying for reinstatement within 14 days is impossible or unreasonable through no fault of the employee.</p> <p>If the 14th day is not a regular business day, the application deadline is the next business day.</p>
181 or more days	<p>The employee must apply for reinstatement no later than 90 days after completing service.</p> <p>If the 90th day is not a regular business day, the application deadline is the next business day.</p>

- (C) The position into which an employee is reinstated following military service depends on the length of the period of military service, unless he/she no longer meets the minimum qualifications for the position.
- (i) If federal military service is less than 90 days and the returning employee meets minimum qualifications, the employee is restored to the position he/she would have held if he/she had been actively employed with the agency during the period of service (“escalator” position).
 - (ii) If federal military service is 90 days or more and the returning employee meets minimum qualifications, the employee is restored to the position he/she would have held if he/she had been actively employed with the agency during the period of service (“escalator” position), or to an equivalent position.
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