

Uniformed Service Leave

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Employees are entitled to leave under the Uniformed Services Employment and Reemployment Rights Act of 1994. The Act applies to uniformed service that began on or after December 12, 1994, or uniformed service that began before December 12, 1994, if the employee was a reservist or National Guard member who provided notice to the employer before leaving work. The Act only applies to commissioned officer corps of the National Oceanic and Atmospheric Administration whose service began on or after December 23, 2020, or were actively engaged in service on December 23, 2020.

Reemployment rights extend to persons who have been absent from work because of “service in the uniformed services.” Service in the uniformed services means the performance of a duty on a voluntary or involuntary basis in a uniformed service as outlined below.

TYPE OF UNIFORM SERVICE	TYPE OF DUTY
United States Army, Navy, Marine Corps, Air Force, Space Force, and Coast Guard	Active duty, active duty for training, initial active duty for training, inactive duty training, 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
Reserves of the United States Army, Navy, Marine Corps, Air Force, Space Force, and Coast Guard	Active duty, active duty for training, initial active duty for training, inactive duty training, 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, performing funeral honors duty
Army National Guard or Air National Guard	Active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, state active duty for a period of 14 days or more, state active duty in response to a national emergency or major disaster declared by the President, state active duty in response to a major disaster, absence from work for an examination to determine a person’s fitness for any of the above types of duty, performing funeral honors duty
Commissioned Corps of the Public Health Service	Active duty, active duty for training, initial active duty for training, inactive duty training, 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

Commissioned Officer Corps of the National Oceanic and Atmospheric Administration	Active duty, active duty for training, initial active duty for training, inactive duty training, 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
System Members of the National Urban Search and Rescue Response System	Participation of the System member in exercises, pre-incident staging, major disaster and emergency response activities, and training events sponsored or sanctioned by the Administrator
Intermittent Personnel Appointed to the Federal Emergency Management Agency	Service to the Federal Emergency Management Agency or to train for such service
Any Other Category of Persons Designated by the President in a Time of War or National Emergency	Active duty, active duty for training, initial active duty for training, inactive duty training, 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

The employee may be absent for up to five (5) years for uniformed service and retain reemployment rights. There are, however, exceptions which can exceed the five (5) year limit. Reemployment protection does not depend on the timing, frequency, duration, or nature of an individual's service. The law enhances protections for disabled veterans including a requirement to provide reasonable accommodations and up to two (2) years to return to work if convalescing from injuries received during service or training.

The returning employee is entitled to be reemployed in the job that they would have attained had they not been absent for uniformed service, with the same seniority, status and pay, as well as other rights and benefits determined by law. If necessary, the employer must provide training or retraining that enables the employee to refresh or upgrade their skills so they can qualify for reemployment. While the individual is performing uniformed service, he or she is deemed to be on a furlough or leave of absence and is entitled to the non-seniority rights accorded other individuals on non-USERRA leaves of absence. Individuals performing uniformed service of more than 30 days may elect to continue employer sponsored health care for up to 24 months at a cost of up to 102 percent of the full premium. For uniformed service of less than 31 days, health care coverage is provided as if the individual had never left. All pensions which are a reward for length of service are protected.

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An individual must provide advance written or verbal notice to their employer for any uniformed service. Notice may be provided by the employee or by the branch of the uniformed service in which the individual will be serving.

Notice is not required if uniformed service necessity prevents the giving of notice; or if the giving of notice is otherwise impossible or unreasonable.

Accrued vacation or annual leave may be used, but is not required, while performing uniformed service. The individual's timeframe for returning to work is based upon the time spent in uniformed service.

TIME SPENT IN UNIFORMED SERVICE	RETURN TO WORK OR APPLICATION FOR REEMPLOYMENT
Less than 31 days:	Must return at the beginning of the next regularly scheduled work period on the first full day after release from service, taking into account safe travel home plus an eight (8) hour rest period.
More than 30 but less than 181 days:	Must submit an application for reemployment within 14 days of release from service.
More than 180 days:	Must submit an application for reemployment within 90 days of release from service.

The individual's separation from service must be under honorable conditions in order for the person to be entitled to reemployment rights. Documentation showing eligibility for reemployment can be required. The employer has the right to request that an individual who is absent for a period of service of 31 days or more provide documentation showing:

- The application for reemployment is timely;
- the five-year service limitation has not been exceeded; and
- separation from service was under honorable conditions.

If documentation is not readily available or does not exist, the individual must be reemployed. However, if after reemploying the individual, documentation becomes available that shows one or more reemployment requirements were not met, the employer may terminate the individual, effective immediately. The termination does not operate retroactively.

Questions regarding uniformed service leave should be directed to Veterans' Employment and Training Service, U.S. Department of Labor.

Kansas law also requires reemployment if an individual is called to active duty by the state.

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Approved:

KASB Recommendation 9/97; 4/07; 6/08; 6/09; 6/10; 6/23; 12/23