

State of Alabama
Alabama Department of Mental Health

NUMBER: 60-66

SUBJECT: Personnel/Payroll
TITLE: USERRA/Military Leave of Absence

EFFECTIVE: 10/30/89 REVIEWED: 1/19/07 CHANGED: 3/17/2011

RESPONSIBLE OFFICE: Division of Administration/Bureau of Human Resources

APPROVED:

I. POLICY:

It is the policy of our Alabama Department of Mental Health to comply with USERRA. Under the Uniformed Services Employment and Reemployment Rights Act, the department is required to grant a military leave of absence to an employee who requests such leave in order to perform services in the uniformed services as required under the Act.

In addition, a person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligations to perform service in a uniformed service shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment on the basis of that membership, application for membership, performance of service, application for service, or obligation. Service as defined under the Act will not be considered when making hiring, promotion, or firing decisions.

II. DEFINITIONS:

- a. Uniformed Services – the uniformed services are the Army, Navy, Marine Corps, Air Force, Coast Guard, and the commissioned corps of the Public Health Service. This includes the Reserve components of these services and the Army National Guard and the Air National Guard. Under another Federal law, enacted in 2002, Congress extended reemployment rights under USERRA to persons who serve as Intermittent Disaster Response Appointees.
- b. Service in the Uniformed Service – the term “service in the uniformed service” means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, initial active duty for training, inactive duty training, full-time

National Guard duty, a period for which a person is absent from a position of employment for the purpose of: examination to determine fitness for duty or performing funeral honors duty.

- c. Employee – for the purposes of this policy employee includes probationary, seasonal, or temporary employees. There is no minimum period of employment before the absence for uniformed service in order to be eligible under the law.
- d. Reemployment – an employee is entitled to reemployment if they meet the following criteria:
 - 1. The employee must have given prior verbal or written notice of the impending service to the immediate supervisor, anyone in the rating chain of command or an Alabama Department of Mental Health personnel official. Notice is not required in those rare cases where advanced notice is precluded by military necessity or otherwise impossible or unreasonable.
 - 2. The employee's cumulative period of uniformed service during employment with the department shall not exceed five years.
 - 3. The employee must have completed the period of uniformed service without having received a punitive or other than honorable discharge or having been dismissed or dropped from the rolls of the uniformed service.
 - 4. The employee must have made a timely application for reemployment or have been timely in reporting back to work.
- e. Leave of absence – for the purposes of this policy a leave of absence is any period of absence for service including absences covered by military leave, annual leave, leave without pay or resignation due to military service.

III. **STANDARDS:**

- 1. An employee who leaves his or her job for voluntary or involuntary service in the uniformed services will upon giving notice be granted a military leave of absence.
- 2. Verbal notice of service in the uniformed service to the immediate supervisor or anyone in the rating chain of command or an ADMH personnel official is sufficient under the statute but the notice must be given before leaving the job. Advanced notice is not required in those rare cases where advanced notice is precluded by military necessity or otherwise impossible or unreasonable. While the department would prefer notice in writing, it is not required.

3. Employees may use military leave (21 days paid leave granted under state law), annual leave, compensatory time (in the case of FLSA non-exempt employees) or leave without pay during their leave of absence.
4. Employees may choose to resign in order to perform uniformed service.
5. An employee who leaves employment for service in the uniformed services will be entitled to reemployment, provided he or she meets the USERRA eligibility criteria outlined in the definitions. An employee is not required to decide/notice the department in advance of leaving for service whether he or she will seek reemployment.
6. An employee is not required to remain an employee of the department during his or her uniformed service in order to qualify for reemployment rights under USERRA.
7. The employee is entitled to be reinstated after return from service. After a period of less than 31 days of service, the employee is required to report for work the next workday. After a period of 31 days or more of service, the employee is required to submit an application for reemployment.
8. The application for reemployment may be verbal and does not require a specific form. If the period of service was more than 30 days and less than 181 days, the application for reemployment must be submitted within 14 days. If the period of service is 181 days or more, the application for reemployment must be submitted within 90 days.
9. The application for reemployment may be given to the immediate supervisor, anyone in the rating chain of command during employment or to an ADMH personnel official. If employees' facility no longer exists or has been consolidated with another facility, the service member should contact ADMH Central Office Personnel at 100 North Union Street, Fourth Floor, Montgomery, Alabama; telephone number (334) 242-3112. The returning service member may also contact any ADMH facility personnel official for assistance in contacting the ADMH Central Office.
10. Reemployment will be in a position of equivalent seniority, status and pay.

IV. REFERENCE:

1. The Uniformed Services Employment and Reemployment Rights Act (USERRA)