

## **MILITARY LEAVE**

**PURPOSE:** To ensure all Care Staffing Professionals employees, managers and supervisors are knowledgeable of the Federal, State and County regulations guiding military leave of absence.

**SCOPE:** This policy applies to all Care Staffing Professionals employees and to all requests for military leave of absence.

**POLICY STATEMENT:** Employer obligations to provide military leave and reinstatement rights for employees are addressed in both Federal and State Statutes: the Uniformed Services Employment and Reemployment Rights Act (USERRA) effective December 12, 1994, as amended December 19, 2005.

This law provides civilian job protection and benefits for employees, veterans and members of the U.S. Armed Services, National Guard and Reserves, who voluntarily or involuntarily take a leave of absence for military service or training.

### **Criteria For Protected Military Leave**

There are four criteria for an employee to have reinstatement rights following a military leave of absence, both short-term absences for training and longer absences for military service. The criteria are:

1. The employee must provide notice to Care Staffing Professionals that leave is needed for military training or service.
2. The leave must not exceed five-years of cumulative service (not including periodic absences for training).
3. The employee must be released from service under honorable conditions.
4. The employee must report back to work in a timely manner or make timely application for reemployment.

### **Notice Requirement**

An employee must give advance written or verbal notice to Care Staffing Professionals for any leave of absence for military service or training. Advance notice is referenced by USERRA as "as much advance notice as possible." The only circumstance in which advance notice is not required is "if the giving of such notice is precluded by military necessity or, under all of the relevant circumstances, the giving of such notice is otherwise impossible or unreasonable." Examples include a classified recall of military personnel or when the employee cannot give notice due to failure of the phone system, mail system, or other means of delivering notice.

Military leave must be granted by Care Staffing Professionals and the employee shall be considered to be on leave of absence for the period of military service.

### **Duration Of Service**

An employee may be absent for up to five (5) years (cumulative or consecutive) for military duty and retain reemployment rights. The following leaves do not count toward the cumulative five (5) year limit:

1. periodic and special Reserve training;
2. voluntary or involuntary service performed by Reserve and National Guard members in time of emergency, when Reserve Component members are being recalled; and
3. service that is performed if the person is unable to obtain orders releasing them prior to expiration of the five (5) year period and which was of no fault of their own.

An employee will be entitled to take leave beyond five (5) years if necessary to complete an initial period of obligated service (i.e., a six year tour in the Navy's nuclear power program).

### **Reporting Back To Work**

Employees absent on leave for military training or service are eligible for reinstatement to their former or equivalent position. As a condition of reinstatement the employee must be discharged under honorable conditions and return to work or apply for reemployment under the following timelines:

- **Periods of training or service up to 30 consecutive days:** The employee must report back to work on the first full work shift following completion of military service and the expiration of eight hours following safe transportation to the employee's residence.
- **Periods of training or service between 31-180 days:** The employee must "submit an application for reemployment" or register an intent to return, not later than 14 days after the completion of the service.
- **Periods of training or service of 181 days or more:** The employee must "submit an application for reemployment" or register an intent to return not later than 90 days after completion of the period of service, or from hospitalization continuing after discharge for a period of not more than a year.

When "submitting an application for reemployment" the employee is notifying Care Staffing Professionals that he/she is a former employee returning from military service and not a new applicant. The application need not be in writing, but Care Staffing Professionals may require documentation of service to establish if the application for reemployment is timely and to verify the service has not exceeded five (5) years (via a DD-214, an endorsed copy of military orders or a letter from the Commanding Officer).

The laws require the following in returning an employee from military leave:

- The employee must be "promptly reemployed" which is defined by law to be a matter of days, not weeks or months.

- An employee returning from military leave is entitled to reinstatement to their former position or an equivalent position if the former position no longer exists. Reinstatement shall be made regardless of another individual filling the position on a temporary basis while the employee was on leave.
- Employees returning from military leave have special protection against discharge, except for cause, for a limited time. If the period of service was for 181 days or more, the period of special protection is one (1) year. If the period of service was 31-180 days, the period of special protection is 180 days.
- Care Staffing Professionals must make “reasonable efforts” to train or retrain an employee returning from leave.

### **Vacation Donation Program**

The vacation donation program is intended to provide a means to assist employees on military leave whose rate of pay on active duty is less than what he/she earns in base wages as a Care Staffing Professionals employee for a period of up to six months. Recipients of donated vacation may not receive more compensation under this program than they would have earned had they not been on military leave. This program does not apply to routine training or other similar activities of the National Guard or the military reserves.

The employee going on military leave must provide written documentation of the rate of pay the employee will receive for the anticipated duration of the military leave, including any differentials or special pay, and the date the employee is expected to be released from active duty. If the employee will receive more in military pay than his/her base pay, the employee is not eligible for the vacation donation program.

Employees may donate vacation time in whole hours only. The dollar value of the donated vacation hours will be calculated by multiplying the donor’s hourly rate times the number of hours donated. Donors must sign a declaration that the donation is voluntary, is intended as a gift, and has been made without coercion, compensation or other consideration. Donations are irrevocable, even if the employee returns from military leave sooner than expected.

During the six-month eligibility period and so long as donated hours are available, recipients will receive a salary payment on their regularly scheduled pay day for an amount up to the difference between their military gross pay and their regular base pay, less any normal payroll deductions and withholdings. All payments made will be treated as wages and will be reported as such to all appropriate taxing authorities.

Employees are prohibited from threatening or coercing other employees concerning the vacation donation program, including but not limited to, pressuring another employee to donate vacation hours.

### **Service Accruals During Military Leave**

All time spent on military leave counts towards continuous employment with Care Staffing Professionals. Military leave outside the annual entitlement for paid leave is considered unpaid leave (including any stipend provided through the donated vacation program) and therefore employees do not receive regular pay, or additional payments, such as longevity or incentive pay. However, upon their return to Care Staffing Professionals, the employee is entitled to begin at the seniority, salary step, level of leave accrual and additional payments as the employee would have achieved had they not left on military leave. If the employee had not completed

probation prior to entering the military, the employee will be required to complete the remainder of the probation period upon return to County service.

All military leave must be reported on a Personnel Action form and identified as leave with pay or leave without pay. Leave with pay shall be the first eleven work days for an employee on a 5 day/week work schedule or the first nine work days for an employee on a 4 day/week schedule occurring between October 1 and September 30th. In addition the timesheets for the employee shall be designated for military leave with pay or military leave without pay. If an employee chooses to use vacation or compensatory time for additional days of training or weekend duty, this time is not required to be designated on a personnel action form.

### **Benefits During Military Leave**

During military leave with pay, all employee benefits will continue, subject to Federal and state laws, rules and regulations and in accordance with provider contracts.

Under Federal law, active duty service members (including activated Guard/Reserve members) are required to enroll in a military health insurance plan and cannot be enrolled in other health insurance.

The subject of military leave is sufficiently complex to warrant careful consideration of any situation in which an employee provides notification of military training or service. If you have any questions, please contact the Operations Division before taking action.

### **Internet Links**

US Department of Labor/Uniformed Services Employment and Reemployment Rights Act of 1994 as amended 12-19-05. (<http://www.dol.gov/vets>)  
Employee Self Service (<https://carestaffingprofessionals.com/forms-database/>)

### **Additional Resources**

Also see:

- EPP 3 – Americans with Disabilities Act
- EPP 11 – Family and Medical Leave Policy
- EPP 13 – Leaves of Absence