



Jamestown Community College
Policies and Procedures

Policy Title	Military Leave	Policy Number	054
Section	Governance, Organization and General Information	Approval Date	10/2001
Subsection	Individual Rights	Effective Date	10/2001
Responsible Office	Human Resources	Review Date	7/5/2005; 9/18/2018

1.0 Purpose

1.1 To ensure compliance with The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).

2.0 Policy

2.1 It is unlawful to deny initial employment, reemployment, retention in employment, promotion, or any benefit of employment with respect to a person who is a member of or performs, applies to be a member of or perform, or who is obligated to perform service in a uniformed service.

2.2 JCC will not discriminate in employment or take any adverse employment action against any person who exercises their rights under USERRA, testifies or assists another person under the Act, or otherwise participates in an investigation or exercises his or her rights under the Act.

2.3 An employee is entitled to reemployment rights and maintenance of employment benefits only if the person returning from military service meets five eligibility criteria:

- The person must have held a civilian job with the employer;
- The person must have given advance notice to the employer that she or she was leaving the job for service in the uniformed services;
- The period of service must not have exceeded five (5) years;
- The person must have been released from service under honorable conditions; and
- The person must have reported back to the civilian job in a timely manner or have submitted a timely application for reemployment

2.4 In order to be eligible for reemployment rights under USERRA, the cumulative length of service that causes an employee's absences from a position may not exceed five (5) years.

2.4.1 The five (5) year service limit does not include:

- Inactive duty training
- Annual training
- Involuntary recall to active duty or involuntary retention on active duty

- Voluntary or involuntary active duty in support of war, national emergency or certain operational missions

2.4.2 Service that does not qualify for the five (5) year service limitation:

- Separation from the service with a dishonorable or bad conduct discharge
- Separation from the service under other than honorable conditions.
- Dismissal of a commissioned officer in certain situations involving a court martial or by order of the President in time of war
- Dropping an individual from the rolls when the individual has been absent without authority for more than three months or who is imprisoned by a civilian court

2.5 Reinstatement

2.5.1 Employees who are absent for period of service of 31 days or more will be required to provide the College with documentation which demonstrates that:

- the employee's application for reemployment is timely;
- the employee has not exceeded the five-year service limitation; and
- the employee's separation from service was other than disqualifying under Section 4304 of the Act.

2.5.2 JCC will make reasonable efforts to accommodate those employees who have a disability incurred in or aggravated by military service that prevents them from performing the essential functions of their job to which they would have otherwise been re-employed.

2.6 Returning Employees' Job Rights

2.6.1 Returning employees whose military service was less than 91 days are entitled to return to the positions in which they were employed or would have been employees if their employment had not been interrupted.

2.6.2 Returning employees whose military service was for more than 90 days are entitled to return to the positions in which they were employed, would have been employed, or a position of "like seniority, status and pay, the duties of which the person is qualified to perform" after reasonable efforts by the employer to qualify the person.

2.6.3 JCC will make reasonable efforts, such as training or retraining, to reenable returning employees to refresh and upgrade their skills in order to qualify for reemployment in the position which they would have held if employment had been uninterrupted by military service.

2.7 Exceptions to Veterans' Reemployment Rights

2.7.1 Under the "brief non-recurrent job" exception, reemployment rights do not apply to positions for brief, non-recurrent projects or periods of time, or where there was no reasonable expectation that the employment would continue indefinitely or for a significant period.

2.7.2 Under the "changed circumstances" exception, an employer is not required to reemploy a returning veteran if the employer's circumstances have changed sufficiently that reemployment would be impossible, unreasonable, or would impose an undue hardship on the employer.

2.8 Returning Employees' Benefits

2.8.1 Health insurance

2.8.1.1 Health care coverage of less than 31 days shall be provided by the employer as if the employee out on military service had remained employed.

2.8.1.2 Service members who are on duty for more than 30 days may elect to continue employer-sponsored health care for themselves and their families for up to 24 months, but they may be required to pay up to 102 percent of the full premium.

2.8.1.3 Upon return from military service, JCC will reinstate health insurance coverage without any waiting period or exclusion for preexisting conditions, other than what would have applied ordinarily. However, this rule will not apply to the coverage of any illness or injury determined by the Secretary of Veterans Affairs to have been incurred in, or aggravated during the employee's performance of military duty.

2.8.2 Pension Benefits

2.8.2.1 Pension benefits for returning service members will be provided as if they have been continuously employed for purposes of participation, vesting, and accrual of benefits.

2.9 Termination Protection

2.9.1 JCC cannot discharge an individual who served in the military for more than 180 days and who was reemployed under USERRA for one year after being reemployed, except for cause.

2.9.2 JCC cannot discharge an individual who served in the military between 30 and 180 days and who was reemployed under USERRA for 180 days after being reemployed, except for cause.

2.10 This policy is subject to any additional or superseding requirements in applicable law.

3.0 Procedures

3.1 An employee must provide advance written or verbal notice to JCC of all military duty, unless giving notice is impossible, unreasonable, or precluded by military necessity.

3.1.1 Notice may be provided by the employee or by an appropriate officer of the branch of the military service in which the employee will be serving.

3.1.2 The law only requires "advance" notice, but does not specify how far in advance notice must be given.

3.2 A returning employee's notification of an intent to return to work must be made promptly following completion of military service. Time limits for returning to work depend on the length of a person's military service.

3.2.1 Service of fewer than 31 days – the returning employee must report to JCC no later than the beginning of the first regularly scheduled work period on the first full calendar day following completion of service and the expiration of eight hours (i.e., an 8-hour "rest period") after a period allowing for safe transportation home from the place where military service was performed.

3.2.2 Service of 31 to 180 days - an application for reemployment must be submitted no later than 14 days following completion of military service, or "as soon as possible" if the failure to make timely application is through no fault of the returning employee.

3.2.3 Service of more than 180 days - applications for reemployment must be submitted no later than 90 days from completion of military service.

3.2.4 Notice by disabled persons - returning employees who are hospitalized for or convalescing from injuries incurred in or aggravated by military service may apply for reemployment within two (2) years following recovery from such injuries.

3.2.5 If a returning employee fails to apply for reemployment or report to work within the specified time limits, the returning employee will be subject, without discrimination, to JCC's rules governing unexcused absences.

3.3 Service members will be required to pay the employee cost, if any, of any funded benefit consistent with leave of absence guidelines.

3.3.1 A returning service member may be given an extended period of time in which to repay employee contributions for fringe benefits. Repayment may be over a period which is 3 times the period of military service, but cannot exceed 5 years.

3.4 Military leave provided to JCC employees is without pay. However, at the request of the employee, JCC will allow the employee to use accrued vacation time for the military leave.

4.0 Definitions

4.1 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 an employee's fitness for any of the above-referenced types of duty
- Funeral honors duty performed by the National Guard or reserve members
- Duty performed by intermittent disaster response personnel for the Public Health Service, and approved training to prepare for such service

4.2 Uniformed services

- Army, Navy, Marine Corps, Air Force or Coast Guard
- Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve, or Coast Guard Reserve

- Army National Guard or Air National Guard
- Commissioned Corps of the Public Health Service
- Any other category of persons designated by the President in time of war or emergency.

5.0 References

5.1 The Uniformed Services Employment and Reemployment Act of 1994