



**Angelo State University**  
**Operating Policy and Procedure**

**OP 52.25: Military Leave**

**DATE:** March 29, 2019

**PURPOSE:** The purpose of this Operating Policy/Procedure (OP) is to establish policy regarding military leave for state employees in accordance with federal and state law.

**REVIEW:** This OP will be reviewed in July every three years, or as needed, by the director of human resources with recommended revisions forwarded through the vice president for finance and administration to the president by August 15 of the same year.

**POLICY/PROCEDURE**

**1. Policy**

Per Texas Government Code Section 437.202, state employees are eligible for leave to accommodate:

- a. Authorized training or duty for the state's military forces and members of any reserve branch of the U.S. Armed Forces.
- b. Activation of the State's National Guard by the Governor.
- c. National emergency activation for members of a reserve branch of the U.S. Armed Forces.

**2. Authorized Training or Duty**

- a. State employees are eligible for 15 workdays in each federal fiscal year (October - September 30) without loss of pay or benefits to accommodate authorized training or duty for the State's military forces, a reserve branch of the U.S. Armed Forces, or a state or federally authorized urban search and rescue team.
- b. The 15 days of paid leave need not be consecutive. These days are considered business days, not calendar days.
- c. If the employee does not use the 15 days of military leave in a federal fiscal year, the employee is entitled to carry the balance forward to the next federal fiscal year, not to exceed 45 workdays.

- d. The university will adjust the work schedule of an employee who is a member of the Texas National Guard or a reserve branch of the U.S. Armed Forces so that two of the employee's days off each month coincide with two days of military duty.

### **3. Call to State Active Duty**

- a. As outlined in Texas Government Code 437.254, a state employee who is called to state active duty as a member of the state military forces by the Governor because of a state emergency is entitled to receive emergency leave without loss of military or vacation leave. This leave time is not limited, will be provided with full pay, and does not count against the 15 days maximum military leave per federal fiscal year.
- b. A member of the state military forces who is ordered to active state duty by the Governor or by other proper authority under Texas law is entitled to the same benefits and protections provided:
  - To persons performing service in the uniformed services in accordance with Title 38 U.S. Code, Sections 4301–4313 and 4316–4319, as that law existed on April 1, 2003; and
  - To persons in the military service of the United States in accordance with Title 50, U.S. Code, Appendix Sections 501–536, 560, and 580–594, as that law existed on April 1, 2003.

### **4. Call to Federal Duty**

- a. An employee called to federal active duty during a national emergency to serve in a reserve component of the U.S. Armed Forces under Title 10 or Title 32 of the U.S. Code is entitled to an unpaid leave of absence.
- b. An employee called to federal active duty for the purpose of providing assistance to civil authorities in a declared emergency or for training for that purpose is entitled to receive paid emergency leave for not more than 22 workdays without loss of military leave or vacation leave per calendar year.
- c. Employees called to active duty during a national emergency to serve in a reserve component of the U.S. Armed Forces under Title 10 or 32 of the United States Code are entitled to state service for longevity purposes, vacation leave accruals, and sick leave accruals while on unpaid leave of absence. This leave will be accrued but not posted until the employee returns to state employment.
- d. The employee may use any accrued annual leave, compensatory time, or overtime leave to maintain benefits for the employee or the employee's dependents while on military duty.
- e. The employee may continue to accrue service credit with the Employee Retirement System (ERS) by receiving at least one hour of state pay during each month of active military service. The employee may use any combination of paid leave to qualify for state pay.

## **5. Differential Pay**

Angelo State University shall grant sufficient emergency leave to provide a pay differential if the employee's military gross pay is less than the employee's state gross pay. The combination of gross military pay and emergency leave may not exceed the employee's actual state gross pay.

Per U.S. Code, Title 10 or Title 32, only state employees called to active duty in support of a national emergency or Homeland Security mission and whose military pay is less than their gross state pay are eligible for differential pay. Service members involved in routing military training or who are attending military schools are not entitled to this differential pay.

If emergency leave is granted to state employees for activated military duty, those employees will accrue sick leave and vacation leave each month they receive pay from the university. The sick and vacation leave will not be posted until the employee returns to full employment with the state agency.

## **6. The Uniformed Services Employment and Reemployment Rights Act (USERRA)**

The Uniformed Services Employment and Reemployment Act (USERRA) is the federal law intended to ensure that persons are not disadvantaged in their civilian careers because of their current or past service in the U.S. Armed Forces, the National Guard, or other uniformed services.

USERRA prohibits an employer from denying initial employment, reemployment, retention in employment, promotion, or any benefit of employment on the basis of an individual's membership, application for membership, performance in service, application for service or obligation for service in the uniformed services.

## **7. Notice of Military Leave**

The Uniformed Services Employment and Re-employment Act (USERRA) requires that service members provide advance written or verbal notice to their employers for all military duty unless giving notice is impossible, unreasonable, or precluded by military necessity.

By Texas law, Angelo State University must provide written notice regarding the number of workdays of paid leave to which state employees who are members of the State's military forces, a reserve branch of the U.S. Armed Forces, or a state or federally authorized urban search and rescue team are entitled to each fiscal year and, if applicable, the number of workdays of paid leave that can be carried forward each fiscal year.

Upon request, the university must also provide the employee with a statement that contains the following information:

- a. The number of workdays the employee claimed as paid leave under Texas Government Code, Section 437.202, in that fiscal year;
- b. The net balance of unused accumulated paid leave for that fiscal year that the employee is entitled to carry forward to the next fiscal year; and

- c. The net balance of all unused accumulated paid leave under Texas Government Code, Section 437.202, to which the employee is entitled.

## **8. Military Family Leave Entitlements**

The Family Medical Leave Act (FMLA) allows eligible employees to take up to 12 weeks of job-protected leave in a 12-month period for any “qualifying exigency” arising out of the active duty or call to active duty status of a spouse, son, daughter, or parent.

FMLA also allows eligible employees to take up to 26 weeks of job-protected leave in a single 12-month period to take care for a covered service member with a serious injury or illness.

For more information about Military Family Leave Entitlements, please refer to [OP 52.16 Family Medical Leave Act \(FMLA\)](#).

## **9. Restoration of Employment**

- a. An employee who is a member of the state’s military forces, a reserve component of the U.S. Armed Forces, or a member of a state or federally authorized urban search and rescue team and who is ordered to duty by proper authority is entitled, when relieved from duty, to be restored to the position that he or she held when ordered to duty or to a position of similar seniority, status, and pay.
- b. The Uniformed Services Employment and Re-employment Rights Act (USERRA) also requires that reasonable efforts (such as training or retraining) be made to enable returning service members to refresh or upgrade their skills to help them qualify for reemployment.
- c. Under state and federal law, to be eligible for restoration of employment the employee must be discharged, separated, or released from active military service under honorable conditions no later than five years after induction, enlistment, or call to duty.
- d. Under state law, the employee must be physically and mentally qualified to perform the duties of the job. If an employee is unable to perform the duties of the previous job because of a service-related disability, the veteran is entitled to be restored to a position that he or she can perform with similar or the nearest possible seniority, status, and pay.
- e. Veterans whose employment has been restored may not be dismissed without cause within a year of their reinstatement.
- f. Under state law, eligible veterans must apply for reinstatement within 90 days after discharge or release from service. This application must be in writing and include evidence of discharge under honorable conditions.
- g. State employees who are reemployed after military service will be eligible for health insurance on the first date of reemployment on which the employee performs services.