

Personnel

Board of Trustees Policy

SUBJECT: Military Leave Policy: Employment and Reemployment Rights	NUMBER: 2.29
	DATE: June 21, 2010 Resolution #10-65
	SUPERSEDES:

This policy document directly relates to Military Leave Policy:
Employment and Reemployment Rights, of the SCCC Board of Trustees, as hereto
attached.

MILITARY LEAVE POLICY: EMPLOYMENT AND REEMPLOYMENT RIGHTS

Employment and Reemployment Rights

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), enacted October 13, 1994 expands the employment and reemployment rights of all uniformed service members.

Eligibility for reemployment:

Reemployment rights extend to employees who have been absent from a position of employment because of "service in the uniformed services." "Service in the uniformed services" means the 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 types of duty.
- Funeral honors duty performed by 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

The "uniformed services" consist of the following:

- 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.

Brief Non-recurrent positions - pre-service positions that are "brief or non-recurrent and that cannot reasonably be expected to continue indefinitely or for a significant period are exempt from USERRA regulations.

Advance Notice Requirement - Employees are required to provide the college with advance notice of military service. Notice may be either written or oral. It may be provided by the employee or by an appropriate officer of the branch of the military in which the employee will be serving. However, no notice is required if: military necessity prevents the giving of notice; or the giving of notice is otherwise impossible or unreasonable.

Length of Military Service - The cumulative length of service that causes an employee's absences from a position may not exceed five (5) years. Most types of service will be cumulatively counted in the computation of the five-year period.

Exceptions: Eight categories of service are exempt from the five-year limitation. These include:

1. **Service required beyond five years to complete an initial period of obligated service** - Some military specialties, such as the Navy's nuclear power program, require initial active service obligations beyond five years.
2. **Service from which an employee, through no fault of their own, is unable to obtain a release within the five year limit** - For example, the five-year limit will not be applied to members of the Navy or Marine Corps whose obligated service dates expire while they are at sea. Nor will it be applied when service members are involuntarily retained on active duty beyond the expiration of their obligated service date.
3. **Required training for reservists and National Guard members** - The two-week annual training sessions and monthly weekend drills mandated by statute for reservists and National Guard members are exempt from the five-year limitation. Also excluded are additional training requirements certified in writing by the Secretary of the service concerned to be necessary for individual professional development.
4. **Service under an involuntary order to, or to be retained on, active duty during domestic emergency or national security related situations.**
5. **Service under an order to, or to remain on, active duty (other than for training) because of a war or national emergency declared by the President or Congress** - This category includes service not only by employees involuntarily ordered to active duty, but also service by volunteers who receive orders to active duty.
6. **Active duty (other than for training) by volunteers supporting "operational missions" for which Selected Reservists have been ordered to active duty without their consent** - Such operational missions involve circumstances other than war or national emergency for which, under presidential authorization, members of the Selected Reserve may be involuntarily ordered to active duty. This sixth exemption for the five-year limitation covers employees who are called to active duty after volunteering to support operational missions. Employees involuntarily ordered to active duty for operational missions would be covered by the fourth exemption, above.
7. **Service by volunteers who are ordered to active duty in support of a "critical mission or requirement" in times other than war or national emergency and when no involuntary call up is in effect** - The Secretaries of the various military branches each have authority to designate a military operation as a critical mission or requirement.
8. **Federal service by members of the National Guard called into action by the President to suppress an insurrection, repel an invasion, or to execute the laws of the United States**

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

1. Separation from the service with a dishonorable or bad conduct discharge.
2. Separation from the service under other than honorable conditions. Regulations for each military branch specify when separation from the service would be considered "other than honorable."

3. Dismissal of a commissioned officer in certain situations involving a court martial or by order of the President in time of war.
4. 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.

Reporting Back to Work - Time Limits:

Time limits for returning to work depend, with the exception of fitness-for-service examinations, on the duration of an employee's military service.

Service of 1 to 30 days. The employee must report to the college by the beginning of the first regularly scheduled work day that would fall eight hours after the end of the calendar day following completion of the period of service.. If, due to no fault of the employee, timely reporting back to work would be impossible or unreasonable, the employee must report back to work as soon as possible.

Fitness Exam. The time limit for reporting back to work for an employee who is absent from work in order to take a fitness-for service examination is the same as the one above for employees who are absent for 1 to 30 days. This period will apply regardless of the length of the employee's absence.

Service of 31 to 180 days. An application for reemployment to the college must be submitted no later than 14 days after completion of a service. If submission of a timely application is impossible or unreasonable through no fault of the employee, the application must be submitted as soon as possible. If the 14th day falls on a day when the offices are not open, or there is otherwise no one available to accept the application, the time extends to the next business day.

Service of 181 or more days. An application for reemployment must be submitted no later than 90 days after completion of service. If the 90th day falls on a day when the offices are not open, or there is otherwise no one available to accept the application, the time extends to the next business day.

Disability incurred or aggravated. The reporting or application deadlines are extended for up to two years for employees who are hospitalized or convalescing because of a disability incurred or aggravated during the period of military service. The two-year period will be extended by the minimum time required to accommodate a circumstance beyond an individual's control that would make reporting within the two-year period impossible or unreasonable.

Documentation upon return

The college will require documentation upon return to work for employee's who are absent for a period of service of 31 days or more. The documentation must show 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.

If documentation is not available:

If an employee does not provide satisfactory documentation because it's not readily available or doesn't exist, the employer still must promptly reemploy the employee. However, if, after reemploying the employee, documentation becomes available that shows one or more of the reemployment requirements were not met, the employer may terminate the employee. The termination would be effective as of that moment. It would not operate retroactively.

Reinstatement to a Position:

Except with respect to employees who have a disability incurred in or aggravated by military service, the position into which an employee is reinstated is based on the length of an employee's military service. If a returning service member's disability restricts the individual's ability to perform the position to which he or she would otherwise be reemployed, **SCCC is obligated to make reasonable efforts to accommodate the individual's disability. This reasonable accommodation obligation also applies to temporary impairments that may not be considered "disabilities" under the American's with Disabilities Act (ADA)**

1 to 90 days of service -. An employee whose military service lasted 1 to 90 days must be "promptly reemployed" in the following order of priority:

- A. in the job the employee would have held had the employee remained continuously employed, so long as the employee is qualified for the job or can become qualified after reasonable efforts by the employer to qualify the employee; or,
- B. in the position of employment in which the employee was employed on the date of the commencement of the service in the uniformed services, only if the employee is not qualified to perform the duties of the position in #1 above, after reasonable efforts by the employer to qualify the employee.

If the employee cannot become qualified for either position described above (other than for a disability incurred in or aggravated by the military service) even after reasonable employer efforts, the employee is to be reemployed in a position that is the nearest approximation to the positions described above (in that order) which the employee is able to perform, with full seniority.

With respect to the first two positions, employers do not have the option of offering other jobs of equivalent seniority, status, and pay.

91 or more days. Reemployment of employees returning from military service of 91 or more days will be reinstated in the following order of priority:

- A. In the job the employee would have held had the employee remained continuously employed, or a position of like seniority status and pay, so long as the employee is qualified for the job or can become qualified after reasonable efforts by the employer to qualify the employee; or,
- B. in the position of employment in which the employee was employed on the date of the commencement of the service in the uniformed services, or a position of like seniority, status, and pay the duties of which the employee is qualified to perform, only if the employee is not qualified to perform the duties of the position referred to in (A) above after reasonable efforts by the employer to qualify the employee.

If the employee cannot become qualified for the position either in (A) or (B) above: in any other position of lesser status and pay, but that most nearly approximates the above positions (in that order) that the employee is qualified to perform with full seniority.

Conflicting reemployment claims - If two or more employees are entitled to reemployment in the same position, the following reemployment scheme applies:

- The employee who first left the position has the superior right to it.
- The employee without the superior right is entitled to employment with full seniority in any other position that provides similar status and pay in the order of priority under the reemployment scheme otherwise applicable to such employee.

Forfeiture of rights. If, prior to leaving for military service, an employee knowingly provides clear written notice of an intent not to return to work after military service, the employee waives entitlement to leave-of absence rights and benefits not based on seniority.

At the time of providing the notice, the employee must be aware of the specific rights and benefits to be lost. If the employee lacks that awareness, or is otherwise coerced, the waiver will be ineffective.

Continuation of Benefits:

Pay During Leave: The College will pay current employees who are called to active duty their salary for up to a period of 30 days or 22 working days, whichever is greater.

Vacation, Holiday, Personal Time: Employees may, at their request, be permitted to use any vacation, holiday, or personal time that accrued before the beginning of their military service instead of unpaid leave.

Seniority: an employee called to active duty will receive all rights and benefits based upon seniority that they would have received had they remained continuously employed. Employees will accrue seniority for the time spent in service. In addition, any time take off by the employee after military service is completed to recuperate from injury or illness (up to two (2) years), or to apply for reemployment with the statutory time periods, also counts as service with the employer for purposes of pension rights.

Health/Prescription and Dental Insurance:

Service of less than 90 calendar days – an employee who is on active duty for less than ninety days shall be provided health care as if the employee had not left his/her position. The employee will continue to pay the employee share of the benefit.

Service of 91 calendar days or more - Employees who are on active duty more than 91 days may elect to continue College sponsored health care for themselves and their families for up to 24 months.. They may be required to pay up to 102% of the full premium.

Pension/retirement plans: The college is liable for funding any resulting obligation; and the reemployed employee is entitled to any accrued benefits from employee contributions only to the extent that the employee repays the employee contributions. Repayment of employee contributions can be made over three times the period of military service but no longer than five years.

Calculation of contributions - for purposes of determining an employer's liability or an employee's contributions under a pension benefit plan, the employee's compensation during the

period of his or her military service will be based on the rate of pay the employee would have received from the employer but for the absence during the period of service.

Pension contributions - if an employee has been absent for military service for 91 or more days, the college may delay making retroactive pension contributions until the employee submits satisfactory documentation. However, contributions will still be made for employees who are absent for 90 or fewer days. A reemployed employee will be treated as not having incurred a break in service with the college. Military service will be considered service with the College for vesting and benefit accrual purposes;

Approved by the Board of Trustees per Resolution #10-65 dated June 21, 2010