

The University of Wisconsin System UPS OPERATIONAL POLICY: BN 9



SUBJECT: Military Leave

Original Issuance Date: July 1, 2015

Last Revision Date:

1. POLICY PURPOSE:

The purpose of this policy is to establish a policy for approving a military leave of absence and define military leave benefits for UW System employees.

2. POLICY BACKGROUND:

[Wis. Stat. § 230.35\(3\)](#) provides 30 work days of leave without loss of pay each calendar year for eligible military service. In addition, [Wis. Stat. § 230.315](#) provides up to four years of military differential pay and leave benefits for employees called up for eligible military duty from a reserve status on or after January 1, 2003. The provisions outlined in [Chapter 230](#) apply to classified employees and UW System extended these benefits to all eligible UW System employees.

Effective July 1, 2015, the provisions detailed above are now outlined in this policy and apply to all UW System employees.

3. POLICY DEFINITIONS:

Please see UPS Operational Policy [GEN 0: General Terms and Definitions](#) for a list of general terms and definitions.

Definitions specific to this policy:

“Differential pay” means the pay an employee receives from the University when an employee is on an eligible military leave and the employee’s pay from the University is higher than the employee’s military base pay. The University will pay the employee the employee’s University pay minus the employee’s military base pay received.

If an employee is eligible for the 4-year military leave benefit, differential pay is the employee’s University pay minus the sum of the employee’s military base pay and base military housing allowance (BAH).

4. POLICY:

All employees who are ordered or inducted into active military service, and who present their orders and request a military service leave, shall be placed on an unpaid military leave of absence. Once an

employee is approved for a military leave of absence, the institution must determine if the employee is eligible for any related military leave benefits, including differential pay (amount paid to the employee by the University when the employee’s University pay is greater than the employee’s military pay). An employee on an approved military leave of absence may also use accrued paid leave, except sick leave, to remain on payroll during all or part of the leave.

Eligibility for military leave benefits is based on the employee’s appointment type and type of military duty (see Section 4.C.: Eligibility). Employees on military leave may be eligible for one or both of the following military leave benefits:

- The annual 30-day military leave benefit; and/or
- The 4-year military leave benefit.

In addition to the military leave benefits outlined in this policy, UW System employees are also afforded the rights and protections provided by the federal [Uniformed Services Employment and Reemployment Rights Act \(USERRA\)](#).

A. 30-Day Military Leave Benefit

During the first 30 work days of an eligible military leave, an eligible employee shall receive differential pay if the employee’s University pay is greater than the employee’s military base pay. If military pay is higher than University pay, the employee has the option to take an unpaid military leave of absence or use accumulated leave, except sick leave, to remain on payroll. An employee is eligible to maintain all benefits, accumulate paid leave, and earn Wisconsin Retirement System (WRS) service credit (if covered by the WRS).

The 30-day military leave benefit applies to the first 30 work days of military leave each calendar year. If a legal holiday falls within the 30 work day period, it does not count towards the 30 work days. The employee is eligible for full University pay for any legal holidays that fall within these 30 days.

B. 4-Year Military Leave Benefit

During the 4-Year Military Leave Benefit, an eligible employee shall receive differential pay if the employee’s University pay is greater than the sum of the employee’s military base pay and base military housing allowance (BAH). If military pay is higher than University pay, the employee has the option to take an unpaid military leave of absence or use accumulated leave, except sick leave, to remain on payroll. An employee is eligible to maintain all benefits, accumulate paid leave, and earn WRS service credit (if covered by the WRS).

C. Eligibility

(1) The chart below outlines eligibility for military leave benefits by appointment type.

Appointment Type	30-Day Benefit	4-Year Benefit
University Staff w/ Expectation of Continued Employment	Yes	Yes
University Staff during Initial Probationary Period	No	Yes

Appointment Type	30-Day Benefit	4-Year Benefit
University Staff Project (never attained permanent status as classified employee or never held appointment w/ expectation of continued employment at UW)	No	Yes
University Staff Project (attained permanent status as classified employee or previously held appointment w/ expectation of continued employment at UW)	Yes	Yes
University Staff - temporary	No	No
Limited Appointee	Yes	Yes
Faculty	Yes	Yes
Academic Staff – renewable	Yes	Yes
Academic Staff – working in 1 st terminal appt w/ no intention of continued employment	No	Yes
Academic Staff - working in minimum of 2 nd consecutive terminal appointment	Yes	Yes
Student Assistant – Teaching Asst, Project/Program Asst, Research Asst	No	Yes
Student Assistant – Adv Opp Fellow, Scholar, Trainee	No	No
Employee-in-Training (Post-Grad Trainee/1-7, Intern (non-physician), Research Intern, Research Associate) working in 1st terminal appt w/ no intention of continued employment	No	No
Employees in Training (Post-Grad Trainee/1-7, Intern (non-physician), Research Intern, Research Associate) working in a minimum of 2nd consecutive terminal appointment	No	Yes
Employees in Training – Grad Intern/Trainee, Post Doc Fellow, Post Doc Trainee	No	No
Student Hourly	No	No

Eligibility for military leave benefits ends when the employment contract ends unless the employee would have received another consecutive appointment if not on active military duty. If there is an established pattern of consecutive terminal appointments, the employer should make a reasonable determination of whether the employee would have received another consecutive terminal appointment if he or she were not on active duty and, if possible, renew the appointments prior to the beginning of the military leave.

In cases where the intent is not to renew the appointment in absence of the military duty, incumbents should be notified prior to reporting for active duty.

(2) Type of Military Leave Eligible for 30-Day Military Leave Benefit

If an employee is eligible for any military leave benefits per this policy, and the employee meets all the following criteria, the employee is eligible for the 30-day military leave benefit if:

- The employee is a member of the reserve component of the national guard, the state defense force, or any other reserve component of the military forces of the United States; and
- Is attending military school, annual field training or annual active duty for training, or any other state or federal tours of active duty, except extended active duty service or service as a member of the active armed forces of the United States; and
- The military duty is at least 3 continuous calendar days.

(3) Type of Military Leave Eligible for the 4-Year Military Leave Benefit

If an employee is eligible for any military leave benefits per this policy, and the employee meets all the following criteria, the employee is eligible for the 4-year military leave benefit:

- On or after January 1, 2003, the employee is activated to serve on military duty in the U.S. armed forces for other than training purposes; and
- On the date activated, the employee is either a member of the Wisconsin National Guard or a member of the reserve component of the U.S. armed forces or is recalled to active military duty from inactive reserve status; and
- The employee is on an approved military leave of absence from the University.

(4) Inactive Military Service

An employee whose military service is listed as “inactive” on his or her military orders is not eligible for benefits under the 30-day or 4-year military provisions. Employees on inactive military duty are not eligible for any paid military leave benefits. Such an employee does have the option to take either an unpaid leave of absence or use accrued paid leave, except sick leave, to remain on payroll in this situation.

The employee is eligible to accrue vacation, sick leave and legal holiday credits if an unpaid military leave is taken for inactive military service. An employee is eligible to maintain all benefits during inactive duty per the provisions in Section 4.E. of this policy.

D. Leave Benefits

(1) Accrual while on military leave

If an employee is eligible for the 30-day and/or 4-year military leave benefit or if the employee is on military leave due to “inactive” military service, the employee will continue to accrue vacation, sick leave and legal holiday hours as if the employee were in regular pay status.

(2) Leave usage upon release from military service

- (a) Once the employee is formally released from military service, the military leave of absence ends. Upon release from military service, the employee who is eligible for the 4-year military leave benefit can take up to a 180-day paid or unpaid personal leave of absence before returning to work. The employee remains an employee of the University while on military leave and while on a personal paid or unpaid leave of absence. During the 180-day period, the employee may use accumulated leave earned before or during the military leave.
- (b) An employee cannot lose leave time because of military duty. Upon return to work, any unused accrued leave available to the employee prior to military activation plus the amount of accrued leave earned during an employee's military leave will be available for use by the employee for a period of not more than 2 consecutive calendar years from the year the employee returns to work. Leave time earned after the employee returns to work to subject to normal carryover provisions.
- (c) If an employee was on military leave during a period of the year in which an employee is eligible to either bank unused vacation or receive a cash payout of vacation, the employee should be given notice of their eligibility and 30 days to make the choice upon return to work. See UPS Operational Policy BN 1: Vacation, Paid Leave Banks, and Vacation Cash Payouts.

E. Employee Benefits

(1) Insurance Benefits

An employee is eligible to maintain all employee benefits while on a military leave of absence. Employee benefit premiums may be deducted from payroll in advance of the leave, during the leave if the employee is receiving differential pay or through personal payment.

If the employee is not eligible for differential pay or the amount of differential pay is not enough to allow for benefit deductions, the employee may elect to be paid additional earnings in order to maintain benefit deductions. Any pay received that is greater than the differential pay provided for in this policy must be repaid by the employee upon return to work. The repayment period shall not exceed the length of the military leave.

The employee may also elect to have benefits lapse during a military leave of absence and re-enroll in any lapsed benefits within 30 days of returning to work. The employee may also enroll in any benefits that have open enrollments during the military leave.

The employee is eligible for the employer contribution towards all benefits during the entire military leave of absence, regardless of whether the leave is paid or unpaid.

The employee should complete an [Employee Benefit Checklist \(UWS 47a\)](#) and [Health Insurance Election for Military Personnel \(ET-2350\)](#) form prior to the start of the leave to indicate what actions should be taken relative to benefits during the military leave.

(2) Wisconsin Retirement System

While on an approved military leave of absence, either paid or unpaid, the employee is eligible to continue to accrue WRS service credits. The employee will receive WRS service credit while on military leave of absence if:

- The employee notifies the University of the military leave; and
- Upon return to work, the employee provides a copy of a DD214 or military leave and earnings statements showing the dates of duty; and
- The employee must not have separated military service with a disqualifying discharge or under other than honorable conditions; and
- The employee returns to work for the UW System.

The employee is required to pay employee-required WRS contributions on any differential pay received while on a military leave of absence. If the military leave is partially or fully unpaid, the employee has the option to pay some, all or none of the WRS contributions based on what the employee would have earned in absence of the military leave. The UW will match the employee contributions. The UW will also fund any additional obligations, including interest that would have accrued on the employee- and employer-required contributions, once those contributions are made.

If the employee elects to not pay the WRS contributions on what the employee's full salary would have been while on military leave, the employee will still receive WRS service credit for the hours the employee would have worked during the military leave but the employee will not receive the associated earnings or employer-required WRS contributions.

If an employee received differential pay or no pay during a military leave, the institution must provide the employee with a [USERRA Certification form \(ET-4560\)](#) upon the employee's return to work. Once the employee completes the form, the institution must complete the employer section of the form and remit it to the Department of Employee Trust Funds along with a copy of the DD-214 or the employee's military orders if the DD-214 is not available. A copy is sent to the UW Service Center.

(3) Continuous Service

An employee's continuous service is considered uninterrupted during a military leave of absence.

F. Re-Employment Rights

Upon return from military leave, an employee has the right to return to the same or similar position that the employee had prior to the military leave unless a decision has been made to terminate or non-renew an employee prior to the military leave. If an employee's fixed terminal appointment ends during the military leave, there is no mandatory right back to the fixed terminal appointment under this policy. Employees will be afforded the rights and protections provided by the federal [Uniformed Services Employment and Reemployment Rights Act \(USERRA\)](#).

An employee in a probationary period when the military leave began should be returned to that point in the probationary period upon return to work.

5. RELATED DOCUMENTS:

UPS Operational Policy BN 1: [Vacation, Paid Leave Banks, and Vacation Cash Payouts](#)

Informational Documents

- [Summary of Military Leave Provisions & Information about Benefits during a Military Leave of Absence \(UWS-47\)](#)
- [30 Day and 4 Year Military Leave Provisions Q&A](#)
- [List of Appointment Types Eligible for Military Leave](#)
- [Military Service and Your WRS Benefits](#) (Department of Employee Trust Funds)
- Information about the federal Uniformed Services Employment and Reemployment Rights Act ([USERRA](#))

Forms

- [Employee Benefit Check-List Upon Activation for Military Service \(UWS 47a\)](#)
- [Health Insurance Election for Military Service Personnel ET-2350](#) (ETF)
- [USERRA Certification Form \(ET-4560\)](#) - must be submitted by employee after every military leave of absence

6. POLICY HISTORY:

Statutory References

- Wis. Stat. § [230.35\(3\)\(a\)](#), [State office hours; standard workweek; leaves of absence; holidays](#) (refers to annual 30 day military leave benefit)
- Wis. Stat. § [230.315](#), [Differential pay, sick leave, and annual leave for state employees activated into certain federal service](#)
- Wis. Stat. § [230.32](#), [Restoration after military leave](#)

DOA – Division of Personnel Management References

- [CLR/PP-216/MRS-220/OS-86](#) Rights & Benefits of Employees Called Up for Active Military Duty (October 26, 2001)
- [OSER-0019-CLR/LR](#) Implementation of New Military Leave Provisions, Incl Leave Without Loss of Pay or Benefits & Use of Accrued Leave Before Return to Work (March 31, 2004)
- [OSER-0046-CLR/LR](#) Implementation of Executive Order #50: Extending Military Leave Benefits for up to Two Years (August 4, 2004)
- [OSER-0140-CLR/LR](#) Extension of Military Leave Benefits for an Additional Two Years by Executive Order #156 (September 18, 2006)
- [OSER-0211-CLR](#) Leave Accrual During Military Leave Without Pay (July 23, 2008)

Reviewed by the Board of Regents, April 10, 2015