

Military Leave Policy

I. Purpose

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) imposes obligations on employers to provide certain rights to employees who are called for military service. Specifically, it requires employers to grant employees military leave and to reinstate them upon returning from such leave; guarantees employees a continuation of health benefits for up to the first twenty-four (24) months of military leave; and protects an employee's pension benefits. Finally, USERRA prohibits discrimination against employees because of military obligations.

II. Scope

This policy applies to all Employees of Albert Einstein College of Medicine.

III. Policy

A. Eligibility

All employees absent for work due to “service in the uniformed service” are covered under USERRA. The uniformed service includes the Armed Forces (Army, Navy, Air Force, Marines, and Coast Guard), the Army National Guard, the Reserves, the Air National Guard, full-time National Guard duty, the Commissioned Corps of the Public Health Service and any other category of persons designated by the President of the United States in time of war or national emergency.

The performance of the following duties on an involuntary or voluntary basis constitutes “service in the uniformed service” under USERRA:

- Active duty;
- Active duty for training;
- Initial active duty for training;
- Inactive duty training;
- Full-time National Guard Duty;
- Duty in or with a force of the organized militia or in the division of the military;
- Duty performed by intermittent employees of the NDSM, which is part of the Homeland Security-Federal Emergency Management Agency (FEMA), when activated for a public health emergency and approved training to prepare for such service; and
- Absence from work for an examination to determine the individual's fitness for any of the above types of duty.

B. Requesting Military Leave

In order to request a leave, the employee must provide advance notice preferably in writing to your immediate supervisor with a copy sent to Einstein's Benefits Office of their military service obligation unless it is impossible or unreasonable to do so. Upon request, Einstein is entitled to a copy of the employee's service orders and military schedule as soon as possible.

With some limited exception as defined by law, the cumulative length of an individual's military leave absence from employment may not exceed five (5) years. Einstein will not refuse to grant an employee a leave of absence because it finds the duration, timing or frequency of an employee's military obligation to be unreasonable.

C. Utilizing Military Leave - Unpaid

While the employee will not be compensated for absences due to military service, the employee may elect to use any accrued vacation leave or personal time in lieu of unpaid military leave. However, Einstein will not require the employee to use vacation time or personal time for purposes of military leave.

D. Reemployment Rights

To be eligible for reemployment rights, the employee must:

- Provide Einstein with appropriate notice of their military leave obligation;
- Have served in the military for a period not exceeding five (5) years (subject to specific exceptions as defined by law);
- Apply for reinstatement preferably in writing to your immediate supervisor of your intent to return to work within the appropriate time frame as defined by law; and
- Have been discharged from the military service under honorable conditions.

An employee who fails to apply for reinstatement following the end of their military service in a timely manner will be subject to Einstein's disciplinary rules governing unexcused absences and absence without leave.

An employee must be cleared as fit for duty before returning from a military leave of absence.

Returning employees must be: 1) qualified for their former or similar position; or 2) can become qualified after reasonable efforts by the employer to qualify the individual.

E. Exceptions to Reinstatement

An employee will not be entitled to reinstatement if:

- Einstein's circumstances have so changed as to make re-employment impossible or unreasonable;
- The employee's employment prior to the military service was for a non-recurrent period and there was no reasonable expectation that the employment would have continued indefinitely or for a significant period;
- The employee did not receive an honorable discharge from military service;

- The employee did not apply for reinstatement in a timely manner, as described in section III D above.

F. Benefits

Employees on military leave are entitled to the same benefits provided to employees on other forms of leave. The law provides certain additional benefit rights for employees on military leave and after their return.

If the employee's military service period is fewer than thirty-one (31) days, then he or she will not be required to pay more than the active employee share for health plan coverage. If, however, the employee's military service period lasts for thirty-one (31) or more days, then he or she may be required to pay up to 102% of the full premium under the plan, representing Einstein's share plus the employee's share, plus a 2% administrative cost.

Employees returning from military leave are entitled to "the seniority and other rights and benefits determined by seniority" that they would have attained with reasonable certainty had they not gone on leave. For example, an employee returning from military leave is entitled to any unused vacation accrued at the time the leave began and the employee is entitled to begin accruing vacation at the rate he or she would have attained had he or she not taken military leave.

Specific benefit questions should be addressed to Einstein's Benefits Office at (718) 430-2566. Union benefits: An employee who has returned from a military leave of absence should consult with a union representative and the applicable collective bargaining agreement for information about their benefits.

G. Protection from Discharge or Discrimination

Einstein will not retaliate against any individual or discriminate against any individual because of past, present or future military obligations.

An employee who is reemployed after a military leave of more than thirty (30) days but less than one hundred eighty (180) days may not be discharged without cause for one hundred eighty (180) days after the date of reemployment.

Employees reemployed after a military leave of one hundred eighty (180) days or more may not be discharged without cause for one (1) year after the date of reemployment.

H. Contact & Additional Information

Benefits Office: (718) 430-2547 benefits@einsteinmed.org

Additional [HR Policy & Procedures](#)

IV. Definitions

None.

V. Effective Date

Effective as of: 26 May 2016.

VI. Policy Management and Responsibilities

Einstein's Human Resources department is the Responsible Office under this Policy. Einstein's Associate Dean for Finance and Administration is the Responsible Executive, and Einstein's Vice President for Human Resources and Diversity is the Responsible Officer for the management of this policy.

VII. Approved (or Revised)

	<u>21 Feb '18</u>
_____ Responsible Executive	_____ Date
Jed M. Shivers Associate Dean for Finance and Administration	