

Section 135

Leave of Absence— Uniformed Service

POINTS TO COVER

- **Compliance with applicable statutes.** Ensure that your policy meets the minimal requirements of applicable state and federal law.
- **Length of leave.** How much leave is granted for emergencies? How much leave is granted for long-term tours of duty? How much leave is granted for short-term training periods (e.g., National Guard and Reserve duty)? Often state or federal law will set a minimum. Employers can decide to be more generous than the standard in the applicable statute.
- **Notification procedures.** Which administrator must the employee notify of his or her anticipated absence from work? How far in advance of the actual leave must this be done? Which administrator must the employee notify of his return from service? What happens if an emergency prevents notice by the employee?
- **Compensation.** While employees are not usually paid during long-term service leaves, it is customary to pay the difference between an employee's regular wages and the service pay (assuming the service pay is less) when an employee is on short-term uniformed service leave. When and how will this pay be received? How long will this benefit last?
- **Other compensatory payments.** Some firms also offer employees who volunteer, who enlist, or who are called to active duty a compensatory payment at the start of their leave on the basis of their length of service and/or the length of their prospective tour of duty.

- **Reinstatement.** State any restrictions concerning reinstatement. Generally, under the federal law only individuals discharged under honorable conditions are eligible for reemployment. Further, the individual is usually required to give advance notice of the leave, be on leave for no more than 5 years, and reapply for reemployment within specified time frames. The advance notice may be written or verbal. State law may also provide for reinstatement.

- **The 5-year limit.** The 5-year limit is the cumulative length of absence from a job with a particular employer. Please note that no prior notice of the leave is required if it is precluded by military necessity or the giving of such a notice is impossible or unreasonable. The sample policy contains the current timelines for notices. Further, the 5-year limit is the cumulative length of absence from a job with a particular employer.

Note: No prior notice of the leave is required if it is precluded by military necessity or the giving of such a notice is impossible or unreasonable. The standard policy contains the current timelines for notices established by federal statute.

- **Seniority and benefits.** Under what conditions will the employee's seniority and benefits be continued during the leave? Will some benefits be canceled during a long-term military leave? Generally, benefits based on seniority or given to similarly situated employees on furlough or leave of absence must be granted to the employee who returns from uniformed service. Additionally, employees on uniformed leave have the right to elect continuation coverage similar to the rights under the Consolidated Omnibus Budget Reconciliation Act (COBRA).

- **Paperwork.** What types of documentation are required when applying for uniformed service leave, first responder leave, or reinstatement, etc.?

Note: Failure to provide documentation cannot be a basis for denying reemployment under the federal law if the failure occurs because the documentation does not exist or is not readily available at the time the employer requests it.

- **Impact on vacation entitlement.** What happens to an employee's vacation rights? Is vacation considered to be concurrent with short-term military leave? With the first 2 weeks (or however long) of an extended leave? Generally, vacation is categorized as a nonseniority-based benefit. Therefore, for vacation accrual purposes, the employer must treat employees on military leave in the same manner as similarly situated employees on a leave of absence or furlough.

LEGAL POINTS

- **USERRA.** The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) (38 USC 4301 *et seq.*) prohibits employers from denying initial employment, reemployment, retention in employment, promotion, or any benefit of employment to an individual on the basis of his or her membership, performance of service, application for service, or obligation for service in the uniformed services. The law covers all public and private employers. In December 2005, the U.S. Department

of Labor published final regulations interpreting USERRA and explaining employer's obligations under the law (20 CFR Part 1002 *et seq.*). This federal law overrides any state or local law that reduces or eliminates any rights or benefits required by the federal statute.

- **Time period for reemployment.** The amount of time a returning employee has to return to his or her position or reapply for work depends on his or her period of service (38 USC 4312(e)(1)). For periods of service less than 31 days or for a fitness examination, the employee must report to the employer not later than the beginning of the first full regularly scheduled work period on the first full calendar day following the completion of the period of service, and following the expiration of 8 hours after a period allowing for safe transportation from the place of that service to the employee's residence. For periods of service more than 30 days but less than 181 days, the employee must submit an application for reemployment (written or verbal) to the employer not later than the beginning of the first full regularly scheduled work period on the first full calendar day following the completion of the period of service, and following the expiration of 8 hours after a period allowing for safe transportation from the place of that service to the employee's residence. For periods of service of more than 180 days, the employee must submit an application for reemployment (written or verbal) not later than 90 days after completing service (20 CFR Part 1002.115).
- **Reinstatement position.** As a general rule, the employee is entitled to reemployment in the job position that he or she would have attained with reasonable certainty if not for the absence for uniformed service. This is known as the "*escalator position.*" The principle behind the escalator position is that, if not for the period of uniformed service, the employee could have been promoted (or, alternatively, demoted, transferred, or laid off) because of intervening events. The escalator principle requires that the employee be reemployed in a position that reflects with reasonable certainty the pay, benefits, seniority, and other job perquisites that he or she would have attained if not for the period of service (20 CFR Part 1002.193). Your policy should cover the following rights:

Individuals are to be reemployed according to the following schedule:

1. **Reemployment position after less than 91 days of service.** Following a period of service of less than 91 days, the employee must be reemployed in the escalator position. He or she must be qualified to perform the duties of this position. If the employee is not qualified to perform the duties of the escalator position after reasonable efforts by the employer, the employee must be reemployed in the position in which he or she was employed on the date that the period of service began. If the employee is not qualified to perform the duties of the escalator position or the preservice position, after reasonable efforts by the employer, he or she must be reemployed in any other position that is the nearest approximation first to the escalator position and then to the preservice position. The employee must be qualified to perform the duties of this position.

2. Reemployment position after more than 90 days of service. Following a period of service of more than 90 days, the employee must be reemployed in the escalator position or a position of like seniority, status, and pay. He or she must be qualified to perform the duties of this position. If the employee is not qualified to perform the duties of the escalator position or a like position after reasonable efforts by the employer, the employee must be reemployed in the position in which he or she was employed on the date that the period of service began or in a position of like seniority, status, and pay. The employee must be qualified to perform the duties of this position. If the employee is not qualified to perform the duties of the escalator position, the preservice position, or a like position, after reasonable efforts by the employer, he or she must be reemployed in any other position that is the nearest approximation first to the escalator position and then to the preservice position. The employee must be qualified to perform the duties of this position. The employer must make reasonable efforts to help the employee become qualified to perform the duties of each of the positions described above.

If two or more persons are entitled to the same job under this law, the one who left the position first shall have the prior right to reemployment.

Although USERRA's reemployment provisions do not apply to a person whose employment is for a brief, nonrecurrent period when there is no reasonable expectation that such employment will continue indefinitely or for a significant period, USERRA's provisions regarding discrimination and retaliation still apply to such a person.

- **Prior misconduct.** Address what is to occur if the person called to duty was in the process of being fired. If an employer can establish that disciplinary action would have been taken against an individual in the absence of uniformed service or other protected actions, the employer can take that disciplinary action.

As an example, to apply this concept, the employer may require the investigation of the wrongdoing to have been completed, the supervisor to have written the discharge papers, and the employee simply to have failed to return to work for a discharge meeting. Identify the steps needed to obtain the details to support a decision not to rehire a person because of prior misconduct.

Exercise great care to obtain satisfactory proof that the individual would have actually been discharged before leaving for uniformed service or applying for uniformed service. You should consult with counsel before acting.

- **Discharge.** The federal USERRA statute creates exceptions to the normal employment at-will rule. For example, within the first year of their return, an employer may fire employees reemployed after uniformed service only if cause exists. After the first year, the employee can then return to an at-will status if that is the employer's policy. To sustain an employee's discharge during the protected period, the employer bears the burden of proving either that the discharge was based on the employee's conduct or it was the result of some other legitimate nondiscriminatory reason that would have affected any employee in the reemployed service member's position, regardless of his or her protected status or activity. Other reasons for discharge may include the elimination of the

employee's position, corporate reorganization or "downsizing," and layoff, provided those reasons are legitimate, nondiscriminatory, and nonpretextual.

- **Bioterrorism Preparedness and Response Act.** This law extended the protection of USERRA to persons called to service as part of the National Disaster Medical System (NDMS), even if they are not members of the uniformed services. NDMS programs include: the Disaster Medical Assistance Team; National Pharmacy Response Team; National Nurse Response Team; the Veterinary Medical Assistance Team; and the Disaster Mortuary Operational Response Team.
- **State uniformed service laws.** If you do business in several states with differing rights for military leave, you may want to maintain a consistent policy in all of your facilities by following the law with the most generous provisions for employees. In fact, the federal law states that it does not reduce any other federal or state law that is more beneficial or creates any additional rights for members of the uniformed services.
- **State first responders law.** State law may require leave for some "first responders" to emergencies.
- **State family military leave act.** State law may require employers to provide eligible employees with job-protected, unpaid leave to be with a spouse or child who has been called into military service.

Note: Please refer to BLR's *Military Leave: The Complete Guide to USERRA Compliance* for specific details about state uniformed service leave laws. Call 800-727-5257 for ordering information or visit BLR's website at <http://www.blr.com>.

THINGS TO CONSIDER

1. Benefits. As you prepare your policy for uniformed service, carefully review your benefits to identify those that are based on seniority that must be provided to employees called to uniformed service and those benefits that are not based on seniority. During a period of service in the uniformed services, the employee is deemed to be on furlough or leave of absence. In this status, the employee is entitled to the nonseniority rights and benefits generally provided by the employer to other employees with similar seniority, status, and pay who are on furlough or leave of absence. The employee is entitled to nonseniority rights and benefits that the employer provides to similarly situated employees by an employment contract, agreement, policy, practice, or plan in effect at the employee's workplace. These rights and benefits include those in effect at the beginning of the employee's employment and those established after employment began. They also include those rights and benefits that become effective during the employee's period of service and that are provided to similarly situated employees on comparable periods of furlough or leave of absence.

- **Health insurance.** The Veterans Benefits Improvement Act (VBIA), which amended USERRA, requires that employers offer those on military leave and their dependents the right to continue in the group health plan for up to 24 months of service. Employees may be required to pay 102 percent of the full premium

for insurance, except if the employee is on leave for 31 days or less. Then the employee may not be charged more than the amount he or she would have paid if still employed (38 USC 4317(a)(1)(b)). Upon reemployment, an employee and his or her family may reenter the employer's health plan. VBIA is effective for elections made on or after December 10, 2004.

- **Vacation and sick leave.** An employee must be permitted, on request, to use any accrued vacation, annual, or similar leave with pay during the period of service in order to continue his or her civilian pay. The employer may not require the employee to use accrued vacation, annual, or similar leave during a military service. The employee is not entitled to use sick leave that accrued with the employer during a period of service in the uniformed services, unless the employer allows employees to use sick leave for any reason, or allows other similarly situated employees on comparable furlough or leave of absence to use accrued paid sick leave. Sick leave is usually not comparable to annual or vacation leave; it is generally intended to provide income when the employee or a family member is ill and the employee is unable to work (20 CFR Part 1002.153(a)).
- **Pension benefits.** Under USERRA, no break in employment is considered to have occurred because of military service, no forfeiture of benefits already accrued is allowed, and there is no need for an employee to requalify for participation in the pension plan because of absence for military service (38 USC 4318). In addition, employers are required to make (on behalf of returning employees) any contribution to their pension plans that the employer would have made if the employee had not been absent for military service. For defined contribution plans, which offer benefits only when the employee makes contributions, returning employees will have up to three times their length of service—up to a maximum of 5 years—to make contributions that may have been missed while the employee was in service. The employer must make matching contributions only to the extent that the reemployed service member makes the required employee contribution to the plan. Employers are not required to credit the employee with any interest that would have been earned.

2. Length of policy. You may want to adopt a very simple policy stating that you will comply with applicable law. If you adopt this approach, you must make certain that when anyone identifies himself or herself as someone called to duty in a uniformed service, you carefully review applicable law to be sure you comply with it. At the very least, have your front-line supervisors tell you when anyone goes into uniformed service. Then you will need to communicate the definition of uniformed service to those individuals.

3. Discrimination. As you draft your policy, keep in mind that the federal law prohibits discrimination against persons who are members of, or apply to be members of, the uniformed services.

4. Coordinate with other policies. Coordinate any volunteer emergency leave policy with your uniformed service leave policy. An employee may be eligible for leave under either or both policies. Often, employees who serve in the military also serve in volunteer emergency groups, such as volunteer firefighters.

Subject: Leave of Absence—Uniformed Service

Organization: Anonymous

Example of: Strict Policy

The company grants leaves for uniformed or other emergency service in accordance with applicable law. Any employee who needs time off for uniformed service is to immediately notify his or her supervisor, who will provide details regarding the leave. If an employee is unable to provide notice prior to leaving for uniformed service, then a family member should notify his or her supervisor as soon as practical.

A full-time, regular employee who has completed the orientation period will be compensated for the difference between his or her base company pay and uniformed service pay for a maximum of 10 working days per year for short-term uniformed service leave. A full-time, regular employee who has completed his or her orientation period and is called to duty for a period of 4 months or more will be paid his or her normal base pay at the start of the leave, as follows:

- 4 weeks of base company pay if the prospective tour of duty is less than 2 years
- 8 weeks of base company pay if the prospective tour of duty is 2 years or more

This policy applies to every employee, except temporary employees as noted. It is based on the Uniformed Services Employment and Reemployment Rights Act enacted in 1984 and the Bioterrorism Preparedness and Response Act.

Subject: Leave of Absence Policy Based on USERRA

Organization: Anonymous

Example of: Standard Policy

This policy is based on USERRA. This federal law overrides any state or local law if it reduces or eliminates any rights or benefits required by the federal statute.

Employers may elect to use the sample strict policy for an employee handbook, and this more detailed policy for a supervisor's or human resources manual.

1. Definitions

- **Uniformed services.** "Uniformed services" means the performance of duty on a voluntary or involuntary basis in the armed forces, Army National Guard, and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, Commissioned Corps of the Public Health Service, or any other category of persons designated by the president in time of war or emergency.
- **Service in the uniformed services.** "Service in the uniformed services" means performance of duty on a voluntary or involuntary basis in a uniformed service. Service in the uniformed services includes active duty, active and inactive duty for training, National Guard duty under federal statute, and a period for which a person is absent from a position of employment for an examination to determine the fitness

of the person to perform duties in the uniformed service. The term also includes a period for which a person is absent from employment to perform funeral honors duty as authorized by law.

2. Discrimination prohibited. Company policy prohibits discrimination against a person who:

- Is a member of or applies to be a member of the uniformed services,
- Performs or has performed in the uniformed services,
- Applies to perform active duty, *or*
- Has an obligation to perform service in a uniformed service.

In general, these individuals may not be denied: (1) employment, (2) reemployment, (3) retention employment, (4) promotion, or (5) any employee benefit. This discrimination policy applies to both regular and temporary employees.

3. Reemployment rights. Generally, only individuals discharged under honorable conditions who were regular employees (full- or part-time) are eligible for reemployment. Under USERRA, the individual is generally required to give advance notice of the leave, be on leave for no more than 5 years, and reapply for reemployment within specified time frames. The advance notice may be written or verbal. No prior notice is required if it is precluded by military necessity or such notice is impossible or unreasonable. The 5-year limit is the cumulative length of absence from a job.

4. Notices. Under this policy, notice is to be given to the human resources department. Generally, notice for the need for leave is to be given as soon as practical. No prior notice is required if it is precluded by military necessity or such notice is impossible or unreasonable. On the basis of the provisions of USERRA, the following notices to return to work are required with respect to the indicated period of service:

Period of Service Time Required for Return-to-Work Notice

- **Less than 31 days or for a fitness examination.** The employee must report to the employer for the first full regularly scheduled work period following completion of the service (with an 8-hour period for safe transportation).
- **More than 30, but less than 181 days.** Employee must submit an application for reemployment (written or verbal) with the employer no later than 14 days after the completion of service (or if impossible or unreasonable through no fault of the person, the next first full calendar day when application becomes possible).
- **More than 180 days.** Employee must submit an application for reemployment (written or verbal) not later than 90 days after completing service.
- **A person who is hospitalized or convalescing from an injury caused by active duty.** The employee may report to or submit an application for reemployment at the end of the period that is necessary for the person to recover, not to exceed 2 years.
- **The service member must document the time away and the time of release.** However, failure to provide documentation cannot be a basis for denying reinstatement if the documentation does not exist or is not readily available at the time of the request.

5. Reemployment. Based on USERRA provisions, the company has adopted the following rules for reemployment: The company will not reemploy an individual when:

- The company's circumstances have so changed as to make such reemployment impossible or unreasonable.
- The person is no longer qualified for the prior position as a result of a disability, and reemployment imposes an undue hardship on the company.
- The employment from which the person leaves to serve in the uniformed services is a temporary job, and there is no reasonable expectation that the job will continue indefinitely or for a significant period. The company must define impossibility or unreasonableness, undue hardship, or temporary nature of the job.

6. Discharge. A person who is reemployed pursuant to USERRA cannot be discharged except "for cause" pursuant to the following schedule:

- Within 1 year, if the person's service was more than 180 days.
- Within 6 months if the person's period of service was more than 30 days, but less than 181 days.
- Individuals who serve for 30 days or less have no protected period.

7. Seniority-based benefits. Individuals who are reemployed are entitled to all seniority-based benefits for the time accrued, including their uniformed service time. For example, vacations are tied to years of service, and accordingly, the amount of uniformed service is added to actual employment service.

In other words, if an individual is entitled to 3 weeks of vacation after 5 years of employment, a person who had 4 years of employment service and 1 year of uniformed service is entitled to 3 weeks of vacation.

In general, there must be a reasonable certainty that the benefit would have accrued if the employee had not gone into uniformed service, and the nature of the benefit must be a reward for length of service.

Part-time employees and temporary employees are not eligible for any benefits, and thus this policy does not apply to them.

8. Nonseniority-based benefits. An individual returning from uniformed service is entitled to all benefits not based on seniority in the same manner as a similarly situated employee on a leave of absence or furlough would be able to accrue under other company policies. These policies are either those in effect at the time the individual left on uniformed service or those that were implemented while the employee was away.

9. Favorable treatment. In general, the most favorable treatment accorded any type of leave must also be accorded to the uniformed service leave. Again, part-time employees and temporary employees are not eligible for any benefits, and thus this policy does not apply to them.

Note: Where employees are required to pay a portion of the cost for nonseniority-based benefits, the individual on a uniformed service leave is also required, just like all other employees, to pay a portion.

10. Waiver. According to USERRA, an employee may waive his or her rights of nonseniority-based benefits by knowingly providing a written notice of intent not to return.

Note: If an employee does seek reemployment even after signing an effective waiver of nonseniority rights, the company must provide the employee with the required seniority-based benefits.

11. Use of accrued leave. Employees are permitted to use any accrued leave such as vacation leave or other leave with pay toward uniformed service time. However, the company does not require employees to use paid vacation leave to apply toward a uniformed service leave.

12. Compensation. The company will pay the difference between service pay and normal company pay for a maximum of 4 weeks. This time period may be increased in wartime or during national emergencies.

13. Uniformed service, health care, and COBRA. Under USERRA, employees on uniformed service leave who are enrolled in the healthcare plan have the right to elect continuation coverage similar to the rights under COBRA, but will continue for a period of 24 months. Employees returning to work are entitled to reinstated health coverage as if they had never left.

14. Pension rights. Participation and benefits under retirement plans will be granted in accordance with federal law.

15. Reemployment positions. Individuals are to be reemployed according to the following schedule:

- If the individual's service was less than 91 days, the individual will be placed in the job that he or she would have had if employment had not been interrupted by service, assuming the person is qualified to perform those job duties (e.g., a person may have to be promoted).
- If the person served for less than 91 days and is not qualified to perform the duties of the job he or she would have had if there had not been any service, and the company has made reasonable efforts to qualify the person for that job, then this individual will be reinstated in the job held on the date service began.
- If the service was more than 90 days, then the person will be placed in the job the person would have had if employment had not been interrupted (e.g., a promoted position) or a position of like seniority, status, and pay that the person is qualified to perform.
- If the person served more than 90 days and is not qualified to perform the job that he or she would have had if not for service, and the company has made reasonable efforts to qualify the person for that job, the person is to be placed in the job which he or she held on the date the service commenced.
- In the case of a person with a disability, if after reasonable efforts by the company to accommodate the disability, the person is not qualified to be employed in the positions required by USERRA, the person is to be employed in any other position that is equivalent in seniority and pay and for which the person is qualified.

- If an individual is not qualified to hold any of the positions as required by USERRA, the person will be placed in any other position of lesser status and pay that the person is qualified to perform with full seniority.
- If two or more persons are entitled to the same job under USERRA, the one who left the position first shall have the prior right to reemployment.

16. Temporary employees. Temporary employees are not eligible for reinstatement.

17. Disciplined employees. Under USERRA, employees who were about to be discharged for misconduct had they not left for uniformed service are not eligible for reinstatement and will not be rehired.

As an example, this policy applies if the investigation of the wrongdoing was completed, the supervisor had written the discharge papers, and the employee simply failed to return to work for a discharge meeting.

The company will grant military and uniformed service leave as necessary in compliance with all applicable state and federal regulations. Any changes in those laws or interpretations that add to or detract from those rights are to be immediately applied to this policy.

This policy will be reviewed annually by the Human Resources department for compliance with current practices and applicable law.

Subject: Uniformed Service and Healthcare Coverage

Organization: Anonymous

Example of: Standard Policy

Under USERRA, employees on uniformed service leave who are enrolled in the healthcare plan have the right to elect continuation coverage similar to the rights under COBRA, except continuation shall extend for 24 months. Employees returning to work are entitled to reinstated health coverage as if they had never left.

Essentially, exclusions for preexisting conditions, proof of good health, and waiting periods cannot be applied. However, exclusions for illnesses or injuries that were service-connected are applied.

The right to continue coverage during uniformed service applies to employees and their dependents. This right to continuation coverage applies to all health plans, not just group health plans.

The maximum length of required continuation coverage is the lesser of 18 months beginning on the day that the uniformed service commences or a period ending on the day after the employee fails to return to employment within the time allowed by the federal law. If an individual has COBRA rights, and the COBRA rights are greater than the rights under USERRA, COBRA applies.

Should an eligible employee or dependent elect to continue coverage, he or she is required to pay 102 percent of the full premium just as provided by COBRA. Whenever

the uniformed service leave is less than 31 days, however, the employee may not be required to pay more than the employee's share, if any. Following is an excerpt from the company healthcare plan regarding uniformed service.

Excerpt from Healthcare Plan

Employees in the active service of the United States or any other country are not eligible for coverage under this plan except as follows: An employee who is absent from work for more than 31 days in order to fulfill a period of duty in the uniformed services (as defined by USERRA) experiences a qualifying event as of the first day of the employee's absence for such duty. Such an employee and his or her covered dependents shall be treated as any other qualified beneficiary under COBRA as explained in the Continuation of Coverage section.

The plan administrator shall furnish the employee and his or her covered dependents a notice of the right to elect COBRA continuation coverage and the opportunity to elect such coverage. However, individuals qualifying for coverage due to uniformed service are limited to coverage for the lesser of: (1) 24 months beginning on the date of the employee's absence, or (2) the day after the date on which the employee fails to apply for, or return to, active employment with the employer.

Any employee and any of his or her dependents whose coverage ended due to a period of the employee's absence for duty in the uniformed services for more than 31 days shall again be eligible for coverage without the imposition of any waiting period or proof of good health as soon as the employee returns to full-time service, provided that the employee returns to or reapplies for reemployment within 90 days of completion of such duty.

The plan exclusion for any service-connected sickness or injury, including any aggravation of an injury or sickness as a result of service, continues to apply. However, the pre-existing condition exclusion does not apply to any medical condition that is not service-connected and which arose during the uniformed service leave.

If the employee or his or her covered dependents have greater rights under COBRA, those rights apply.

Should an employee or dependent elect to continue coverage, the premium will be 102 percent of the full contribution just as provided by COBRA. Whenever the uniformed service leave is less than 31 days, however, the employee will not be required to pay more than the employee's normal share of the cost.

Subject: Uniformed Service

Organization: Anonymous

Example of: Progressive Policy

The company grants leaves for uniformed or other emergency service in accordance with applicable law. Any employee who needs time off for uniformed or emergency service is to immediately notify his or her supervisor, who will provide details regarding the leave. If an employee is unable to provide personal notice prior to leaving for uniformed or emergency service, then the employee may use voice mail, e-mail, or have a family member notify his or her supervisor as soon as practical.

The form for leave is to be completed as soon as practical.

A regular employee will be compensated for the difference between their base company pay and uniformed service pay for a maximum of 10 working days per year for short-term uniformed or emergency service leave. Once the maximum of 10 days has been reached, the employee may be eligible for additional time under the company's leave bank policy.

During a national or local emergency, the company may expand eligibility for uniformed or other emergency service leave or may extend paid leave benefits for first responders or other volunteer emergency personnel who take leave under the company's emergency volunteer leave policy.

A regular employee who is called to duty for a period of 4 months or more will be paid his or her normal base pay at the start of the leave as follows:

- 4 weeks of base company pay if the prospective tour of duty is less than 2 years
- 8 weeks of base company pay if the prospective tour of duty is 2 years or more

Under its personal leave policy, the company may grant personal leave for an employee to visit a spouse, parent, or child on extended uniformed service duty.

Generally, benefits, e.g., vacation, sick leave, holiday pay, will accrue for employees who are on active duty for less than 30 days. All time spent away on uniformed leave will be counted toward all seniority-based benefits.

Employees returning from uniformed leave will be reinstated in all benefit plans pursuant to applicable law or applicable plan terms, whichever is more favorable to the employee.

Even if employees are not entitled to reemployment under applicable law, the company will consider any individuals returning from uniformed service for any open position for which they are qualified.

This policy is based on the Uniformed Services Employment and Reemployment Rights Act enacted in 1984, the Bioterrorism Preparedness and Response Act, and applicable state law. Any changes in those laws or interpretations that add to these benefits are to be immediately applied to this policy.

This policy will be reviewed annually by the Human Resources department for compliance with current best practices in human resources and applicable law.

