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## **Model Military/Uniformed Service Leave Policy**

### **Long Form Policy**

Employees may be entitled to certain rights and benefits, and may have certain obligations, related to service in the uniformed services pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994 (“USERRA”) or related state laws. It is the company’s intent to comply with the requirements in USERRA and similar state laws with respect to leaves of absence, continuation of health coverage, reemployment, disabilities incurred or aggravated during uniformed service, non-discrimination and non-retaliation, and other covered matters.

### **Definitions**

“Uniformed service(s)” means the Navy, Marines, Army, Air Force, Coast Guard, the Army or Air National Guard, the Commissioned Corps of the Public Health Service, and any other category designated by the President of the United States in time of war or emergency.

“Service in the uniformed services” means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, absences for fitness-for-duty examinations, and certain absences for funeral honors duty.

### **Discrimination Prohibited**

Specifically, the company will not deny employment, reemployment, retention in employment, promotion, or any benefit of employment to an individual due to uniformed service, and will not tolerate discrimination or retaliation due to uniformed service.

### **Advance Notice**

Employees should notify [their manager/the HR department/etc.] of any need for leave to perform service in the uniformed services as far in advance as possible, preferably at least thirty (30) days in advance and in writing, unless such notice is precluded by military necessity or is impossible or unreasonable under the circumstances. Employees are asked to provide a copy of applicable orders, training calendar, and/or similar documentation, if at all possible, in time to ensure continued business operations during absences.

## **Use of Accrued Leave**

Employees will be granted unpaid leaves of absence for qualifying periods of uniformed service; however, employees may elect to use any accrued but unused [paid leave/vacation/PTO/etc.] during such absences.

## **Compensation During Uniformed Service [OPTIONAL]**

[If the company wants to continue paying base salary or wages during uniformed service (“pay continuation”) or wants to pay the difference between company pay and uniformed service pay (“differential pay”), for a limited period or for the entirety of uniformed service, that language should be inserted here.]

## **Benefits During Uniformed Service**

For periods of uniformed service of up to 30 days, health insurance coverage will be continued at the employee’s normal employee share, if any, of the cost of such coverage.

For periods of uniformed service exceeding 30 days, employees may elect to continue health insurance coverage, for themselves and their dependents, but will be required to pay up to 102% of the entire premium. These continuation rights under USERRA are similar to rights under the Consolidated Omnibus Budget Reconciliation Act (“COBRA”) for the employee and any dependents covered under the applicable group health plan. The maximum period for continuation coverage under USERRA begins on the date on which the employee’s absence for uniformed service begins and continues until the earlier of either 24 months after that date or the date the employee fails to return from uniformed service. The continuation period under USERRA runs concurrently with a continuation period required by COBRA. This means that, when both USERRA and COBRA apply, the greater of the COBRA maximum coverage period or the USERRA maximum coverage period should be applied.

Health insurance coverage will begin immediately upon request at reemployment. With the limited exception of certain illnesses or injuries incurred in or aggravated during uniformed service, no exclusions or waiting periods apply upon reinstatement of coverage provided none would have been imposed had coverage not been terminated by reason of uniformed service.

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

## **Timely Request for Reinstatement and Reinstatement Rights**

Barring any exception outlined in USERRA, employees will be eligible for reemployment after uniformed service as long as they return to work or apply for reinstatement within the following timeframes:

- For service of less than 31 days, at the beginning of the next regularly scheduled work period after release, subject to safe return home and an eight (8) hour rest period;
- For service of more than 30 days but less than 181 days, within 14 days of release;

- For service of more than 180 days, within 90 days of release; or
- For a person who is hospitalized or convalescing from an illness or injury incurred in, or aggravated during, uniformed service, at the end of the necessary recovery period, up to two years from the date of the completion of service (not counting the minimum time necessary to accommodate circumstances beyond the employee's control that make reporting within the period impossible or unreasonable).

To retain reinstatement rights, employees must provide appropriate advance notice and must not have been separated from uniformed service with a disqualifying discharge or under other than honorable conditions. Reinstatement rights are not guaranteed for any absence beyond five years unless an exception stated in USERRA applies.

### **Reinstatement Position**

If employees meet these reinstatement requirements, employees will be reemployed in a position depending upon their length of service. If an employee's uniformed service was less than 91 days, the employee will be reemployed in the position he or she would have had if continuously employed (i.e., the "escalator position"), or, if the employee is not qualified to perform the duties of the escalator position, after the Company has made reasonable efforts to qualify the employee, the employee will be reinstated in his or her pre-service position. If an employee's uniformed service was more than 90 days, the employee will be reemployed in the escalator position or a position of similar seniority, status, and pay, or, if the employee is not qualified to perform the duties of either position, after the Company has made reasonable efforts to qualify the employee, the employee will be reinstated in his or her pre-service position, or a position of similar seniority, status, and pay if the employee is not qualified to perform the duties of the escalator position or a position of similar seniority, status, and pay, after the Company has made reasonable efforts to qualify the employee. In the case of an employee with a service-related disability who cannot become qualified to be employed in the positions required by USERRA, after the Company has made reasonable efforts to qualify the employee, the employee is to be employed in a position of similar seniority, status, and pay to the escalator position or the nearest approximation to the escalator position and for which the employee is qualified.

Consistent with USERRA's "escalator principle," employees will be compensated upon reinstatement at the rate of pay they would have obtained with reasonable certainty if such employment had not been interrupted due to uniformed service. Likewise, employees will receive a reasonable amount of time to complete any training that they may have missed during uniformed service leave necessary to perform your job. If an employee becomes disabled during uniformed service the company will make a reasonable effort to accommodate the employee's disability so that the employee can perform the position the employee would have held if continuously employed. If the employee is still not qualified for the position the employee would have held if continuously employed due to his or her disability, the employee will be reemployed in a position of equivalent seniority, status, and pay, so long as the employee is qualified to perform the duties of the position or can become qualified to perform them with reasonable efforts by the company. If the employee cannot become qualified for either position, the employee will be employed in the nearest approximation with respect to seniority, status and pay.

Absent unusual circumstances (such as an extended period of uniformed service leave) or with respect to periods of service less than 31 days, reemployment will occur as soon as practical under the circumstances, typically within two weeks of an employee's application.

## **Discharge**

An employee who is reemployed following a period of uniformed service 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 180 days if the person's period of service was more than 30 days, but less than 181 days.

However, discharge "for cause" may include the employee's own conduct or other legitimate, nondiscriminatory reasons unrelated to the employee's uniformed service, such as where an employee's job position is eliminated or the employee is selected for layoff.

Employees who are members of the uniformed services should speak to [their manager/the HR department/etc.] concerning any questions regarding rights and obligations related to uniformed service leave, advance notice of uniformed service, benefits during uniformed service, or related issues.

## **Short Form Policy**

Employees may be entitled to certain rights and benefits, and may have certain obligations, related to service in the uniformed services pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") or related state laws. It is the company's intent to comply with the requirements in USERRA and similar state laws with respect to leaves of absence, continuation of health coverage, reemployment, disabilities incurred or aggravated during uniformed service, non-discrimination and non-retaliation, and other covered matters. Specifically, the company will not deny employment, reemployment, retention in employment, promotion, or any benefit of employment to an individual due to uniformed service, and will not tolerate discrimination or retaliation due to uniformed service.

Employees should notify [their manager/the HR department/etc.] of any need for leave to perform service in the uniformed services as far in advance as possible. Employees are asked to provide a copy of applicable orders or similar documentation to ensure continued business operations during absences. Leave is generally unpaid, although employees may elect to use any accrued but unused [paid leave/vacation/PTO/etc.] during such absences.

Employees who are members of the uniformed services should speak to [their manager/the HR department/etc.] concerning any questions regarding rights and obligations related

uniformed service leave, advance notice of uniformed service, benefits during uniformed service, or related issues.

If you have any questions about this form, please contact: Matthew K. Johnson | Greenville, SC | Telephone: 864-271-1300 | E-mail: [matthew.johnson@ogletree.com](mailto:matthew.johnson@ogletree.com)

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