

Executive Directive

PD-76, “Employment and Reemployment of Members of the Uniformed Services”



September 1, 2023 (rev. 7)
Supersedes November 1, 2021 (rev. 6)

Authority

1. 10 U.S.C. § 12503
2. *Uniformed Services Employment and Reemployment Rights Act* (USERRA), 32 U.S.C. § 115
3. 38 U.S.C. §§ 4301–4334
4. 42 U.S.C. § 300hh–11(d)(3)
5. Tex. Gov’t Code §§ 418.004
6. Tex. Gov’t Code §§ 437.202–.310
7. Tex. Gov’t Code § 493.001
8. Tex. Gov’t Code § 493.006(b)
9. Tex. Gov’t Code §§ 613.001–.023
10. Tex. Gov’t Code §§ 657.001–.010
11. Tex. Gov’t Code §§ 661.903–.9041
12. BP-02.08, “Statement of Internal Controls”

Applicability

Texas Department of Criminal Justice

Employment At Will Clause

This directive does not constitute an employment contract or a guarantee of continued employment. The Texas Department of Criminal Justice (TDCJ) reserves the right to change the provisions of this directive at any time.

Nothing in this directive limits the executive director’s authority to establish or revise human resources policy. This directive guides the operations of the TDCJ and does not create a legally enforceable interest for employees or limit the executive director’s, deputy executive director’s, or division directors’ authority to terminate an employee at will.

Policy

The TDCJ complies with the provisions of applicable federal and state laws relating to employment and reemployment entitlements for prospective, current, and former members of the uniformed services. No employee will be subjected to harassment or retaliation for opposing or reporting an alleged violation of a federal or state law relating to such entitlements, or for associating with a person who opposed or reported an alleged violation of a federal or state law relating to such entitlements.

Definitions

The following terms are defined for the purpose of this directive and are not intended to be applicable to other policies or procedures.

"Armed Forces"

The U.S. Army, Navy, Marine Corps, Air Force, and Coast Guard, including any auxiliary service of those branches.

"Disaster"

The occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, extreme heat, cybersecurity event, other public calamity requiring emergency action, or energy emergency.

"Job Posting"

An announcement of position availability that includes basic information regarding the position's minimum qualifications and application procedures in addition to location and salary information and the corresponding military occupational specialty code.

"Leaves Management Area"

The program area within the Support Department, Human Resources Division that is responsible for ensuring the TDCJ's leave programs are in accordance with applicable federal and state laws.

"Military Employment Preference"

The preferential consideration for employment given, when all factors considered for selection are equal, to the following:

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- (a) a veteran, including a veteran with a disability, who served in the uniformed services or reserve or auxiliary service component of one of the branches and was honorably discharged;
- (b) a surviving spouse of an honorably discharged veteran who has not remarried;
- (c) an orphan of a veteran if the veteran was killed while on active duty;
- (d) the spouse of a member of the U.S. armed forces or Texas National Guard serving on active duty; and
- (e) the spouse of a veteran if the spouse is the primary source of income for the household and the veteran has a total disability rating based either on having a service-connected disability with a disability rating of at least 70% or on individual unemployability.

"Military Occupational Specialty Code"

A code used by the military to identify a specific job.

"Military Service" or "Service in the Uniformed Services"

The performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority. Includes active duty; active duty for training; initial active duty for training; inactive duty training; full-time National Guard duty; a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty; a period for which a person is absent from a position of employment for the purpose of performing funeral honors duty as authorized by 10 U.S.C. § 12503 or 32 U.S.C. § 115; and service as an intermittent disaster response appointee upon activation of the National Disaster Medical System or participation by such an appointee in an authorized training program, even if the appointee is not a member of the uniformed services.

"State Active Duty"

The performance of military or emergency service for this state at the call of the governor or the governor's designee.

"State Military Forces"

The Texas military forces, including the Texas National Guard, the Texas State Guard, and any other military force organized under state law.

"Uniformed Services"

The U.S. armed forces, the Army National Guard, the Air National Guard, the Texas National Guard, the Texas State Guard, the commissioned corps of the Public Health

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Service, and any other category of persons designated by the president in time of war or emergency.

"Uniformed Services Employment and Reemployment Rights Act" (USERRA)

Protects service members' reemployment rights when returning from a period of service in the uniformed services, including those called up from the reserves or National Guard, and prohibits employer discrimination based on military service or obligation.

"Veteran's Liaison"

An employee within the Human Resources Division who is assigned the duty of coordinating the TDCJ veteran's recruitment program.

"Workday"

A day when an employee is normally scheduled to work.

Discussion

An employee who fails to comply with the procedures within this directive, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good-faith efforts, may be subject to disciplinary action in accordance with PD-22, "General Rules of Conduct and Disciplinary Action Guidelines for Employees," or administrative separation in accordance with PD-24, "Administrative Separation."

The military leave procedures in Section II of this directive do not apply to employees who enlist for full-time duty in the U.S. armed forces. Such employees will not be placed on administrative leave for military service or leave without pay-military (LWOP-Military).

Sections III, IV, and V of this directive relating to separation from employment and reemployment are applicable to employees who separate to perform service in the uniformed services.

Procedures

- I. Employment
 - A. Access to Job Postings and Other Employment Information
 1. A veteran applicant may access job postings and other employment information through the TDCJ website at

www.tdcj.texas.gov or the Texas Workforce Commission's (TWC) Work in Texas website at www.workintexas.com on any personal computer with Internet access or through terminals located at the Human Resources Division headquarters.

2. A veteran applicant shall submit an application and other required documents in accordance with PD-71, "Selection System Procedures."
3. Additional questions from veteran applicants regarding the application process may be directed to the TDCJ veteran's liaison.

B. Correctional Officer Applicants with Two Years' Active Military Service

A veteran correctional officer (CO) applicant will be hired as a CO IV, pay level 4, if the applicant has at least two years of active military service and:

1. Was released from military service under honorable conditions; or
2. Is a current member of a reserve component of the uniformed services but is not on active duty, unless on terminal leave.

II. Leave for Military Service

A. Authorized Training or Duty

An employee who is a member of the state military forces, National Guard, or a member of reserve components of the U.S. armed forces will be granted administrative leave for up to 15 workdays per fiscal year, for the purpose of engaging in authorized military training or active duty. An eligible employee is entitled to 15 workdays of such administrative leave at the beginning of each fiscal year, September 1, regardless of the employee's status at the end of the previous fiscal year. For example, if an employee was on LWOP-Military or was already on administrative leave - military on August 31, the employee would be entitled to another 15 workdays of administrative leave - military training on September 1. Any unused portion of the 15 workdays of administrative leave can carry forward into the next fiscal year up to a maximum of 45 workdays.

In addition, an employee who is called to state active duty by the governor or another appropriate authority in response to a disaster is entitled to administrative leave for each day the person is called to

active duty during the disaster not to exceed seven workdays in a fiscal year.

After an employee has exhausted the 15 workdays of administrative leave entitlement within a fiscal year for authorized military training or active duty and/or the seven workdays of administrative leave entitlement within a fiscal year for state active duty during a disaster declared by the governor, the employee will be placed on leave in accordance with the following guidelines.

1. If the employee has accrued leave balances, the employee shall elect one of the following:
 - a. Use all accrued leave, other than sick leave, and then be placed in an LWOP-Military status;
 - b. Freeze all accrued leave and immediately be placed in an LWOP-Military status;
 - c. Identify a specific number of accrued leave hours for use, other than sick leave, freeze the remaining balances of accrued leave hours, and be placed in an LWOP-Military status upon exhaustion of the leave hours identified for use. Compensatory and holiday leave shall be used prior to overtime and vacation leave; or
 - d. Use accruals in whole or part to maintain benefits for the employee or their dependents while on military leave.
2. If the employee freezes all or part of the employee's accrued compensatory and holiday leave before being placed in an LWOP-Military status, the employee shall be allowed to use the balance of such leave before it expires. Frozen vacation leave and overtime shall not be used until after the employee returns to work from an LWOP-Military status.
3. If the employee does not have any accrued leave balances, the employee will immediately be placed in an LWOP-Military status.
4. An employee may remain in an LWOP-Military status for the entire period of service in the uniformed services.
5. Annually, the Leaves Management area shall provide employees written notice of available military administrative leave. If an

employee is in a leave status, such as using accrued leave or LWOP-Military because of authorized military training or active duty:

- a. The employee may elect when to use the available administrative leave; or
- b. The employee may elect to continue using their available accrued leave or remain in an LWOP-Military status.

B. State Active Duty – State Military Forces

An employee called to state active duty as a member of the state military forces by the governor in response to a disaster will be granted administrative leave for the term of the emergency without loss of military or annual leave.

The administrative leave granted for state active duty will not count against the 15 workdays of administrative leave allowed per fiscal year for authorized military training or active duty or the seven workdays of administrative leave allowed per fiscal year for state active duty during a disaster declared by the governor.

C. Federal Active Duty – State Military Forces

If an employee is called to federal active duty for the purpose of providing assistance to civil authorities in a declared emergency or for training for that purpose, the employee is entitled to receive paid emergency leave for no more than 22 workdays per calendar year without loss of military leave or annual leave. Any unused balance of the 22 workdays will not carry forward into the next calendar year.

The administrative leave for an employee called to federal active duty for a declared emergency will not be counted against the 15 workdays of administrative leave allowed per fiscal year for authorized military training or active duty or the seven workdays of administrative leave allowed per fiscal year for state active duty during a disaster declared by the governor for an employee who is also a member of the National Guard.

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D. National Emergency Duty under 10 U.S.C. or 32 U.S.C.

1. Leave Status

If an employee is called to active duty during a national emergency to serve in a reserve component of the U.S. armed forces under 10 U.S.C. or 32 U.S.C., the employee will be placed in a leave status in accordance with Section II.A of this directive.

2. Differential Pay Leave

If an employee is in LWOP-Military status and the employee's monthly military gross pay, as defined by state statute, is less than the employee's monthly state gross pay, which is: monthly state base pay + monthly longevity pay + monthly hazardous duty pay + monthly benefit replacement pay + monthly Schedule C salary stipend, the employee will receive sufficient administrative leave as differential pay. The combination of such leave and military pay may not exceed the employee's actual state gross pay.

3. One Hour Leave for State Service Credit

If the employee is in LWOP-Military status and is not receiving any other paid leave entitlement, the employee will be granted one hour of paid administrative leave during each month of active military service for the purpose of receiving service credit in the Employees Retirement System of Texas (ERS).

The chart below is provided as a quick reference for the amount of administrative leave allowed for the different types of military leave.

Military Leave	Administrative Leave
Authorized Training or Duty	15 workdays per fiscal year
State Disaster Declaration	15 workdays per fiscal year and seven workdays per fiscal year
State Active Duty	Paid leave for the term Does not count against the 15 workdays or seven workdays per fiscal year
Federal Active Duty	22 workdays per calendar year Does not count against the 15 workdays or seven workdays per fiscal year

National Emergency Duty	15 workdays per fiscal year plus one hour each month
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E. Leave Request

1. When an employee is provided advance notice of required military duty, the employee shall complete a PERS 24, TDCJ Leave Request, for the entire period of requested leave and submit the PERS 24 along with the employee's military orders to the employee's supervisor in advance of the requested leave. The employee's supervisor shall submit the PERS 24 and the military orders to the warden or department head for signature.
2. In the event of an emergency call to duty, or if an employee is engaging in military training and the training or call to duty is extended or changed, the employee shall:
 - (a) Contact the warden or department head or highest-ranking supervisor on duty to provide verbal notice; and
 - (b) Submit a completed PERS 24 and the employee's military orders no later than the date the employee returns to work.

F. Return to Work

Upon completion of service in the uniformed services, an employee shall notify the human resources representative of the intent to report to the employee's unit or department of assignment within the following appropriate timeframe. If the employee cannot report to work within the appropriate timeframe due to reasons beyond the employee's control the Leaves Management area may make an exception.

1. Less than 31 Calendar Days of Service

The employee is not required to report to work until the employee has a period of eight hours to rest following safe transportation to the employee's residence. The employee shall report to work no later than the beginning of the employee's first full regularly scheduled work period on the first full calendar day following the end of the eight-hour period of rest. If the eight-hour period ended on Monday, Tuesday would be considered the first full calendar day.

2. 31 - 180 Calendar Days of Service

The employee shall report to work no later than 14 calendar days after the completion of service.

3. 181+ Calendar Days of Service

The employee shall report to work no later than 90 calendar days after the completion of service.

4. Deadline Extensions

The deadlines shall be extended for up to two years for returning service members who are hospitalized or recovering from an injury or illness incurred or aggravated by military service.

5. Position Placement Entitlement

The position placement entitlement for an employee returning from service in the uniformed services shall be in accordance with Section IV.D.2 of this directive. The entitlement is the same regardless of whether the employee is returning from a leave status or after a separation in employment that was due to service in the uniformed services.

G. Benefit Entitlements

1. An employee will earn monthly vacation and sick leave for each calendar month of Military Emergency Leave (ME) or Military Leave (ML). The accrued vacation and sick leave will be credited to the employee's leave balances when the employee returns to active state employment.

2. An employee in ME status will be credited with the months of state service for the period of time the employee was in such a status for ERS credit.

3. When an employee who was in leave designated as ME or ML status applies for another position within the TDCJ, participants in the selection process shall count the period of such leave status as state service that was accrued while in the employee's prior position. The provisions below are applicable:

- a. When considering job-related experience for the purpose of conducting minimum qualifications screening, document screening, or selecting a final applicant in accordance with PD-71; and
- b. Regardless of the type of uniformed service performed.

H. Separation from Employment - Expiration of LWOP-Military

1. If the employee does not return to work within the time approved for LWOP-Military status, the human resources representative shall notify the Leaves Management area. An employee who has been on LWOP-Military status will not be separated from employment before the Leaves Management area reviews the circumstances.
2. Upon the Leaves Management area concurring that separation is an appropriate action, the human resources representative shall enter a payroll status change (PSC) in the PSC Update (PSCUPD) screen in the TDCJ Payroll/Personnel System (PPS) indicating "Expiration of LWOP-Military" in the description (DESC) field.
3. After the PSC has been approved by the warden or department head, the human resources representative shall forward a copy of the PSC to the employee accompanied by the Separation Guide and a PERS 302, Expiration of Leave Without Pay Notification, advising the employee of reemployment procedures and possible health coverage continuation rights through provisions set by the *Consolidated Omnibus Budget Reconciliation Act (COBRA)*.

III. Separation from Employment Due to Service

If separation from employment is necessitated by the employee's service in the uniformed services, the employee shall provide verbal or written notification to the employee's supervisor that the employee intends to separate employment for this reason. The employee shall provide such notification as far in advance as possible under the circumstances. Such notification will assist the TDCJ in determining whether the employee may be eligible for reemployment under the provisions of this directive.

When entering the PSC in the PSCUPD screen in the PPS, the human resources representative shall indicate "Separated to Perform Service in the Uniformed Services" in the DESC field.

IV. Reemployment

A. General Provisions

An eligible former employee who separated from employment with the TDCJ to perform service in the uniformed services is entitled to be reemployed by the TDCJ in accordance with the provisions within this directive. However, nothing in this directive requires the TDCJ to reemploy a person if reemployment is impossible, unreasonable, or such reemployment would impose an undue hardship on the TDCJ.

B. Eligibility for Reemployment

1. To be eligible for reemployment, the most recent PSC should indicate "Separated to Perform Service in the Uniformed Services" in the DESC field.

2. Honorable Discharge Conditions

To be eligible for reemployment, a former employee shall have been honorably discharged, with the status of either honorable, general, or under honorable conditions, or released from military service under honorable conditions. Uncharacterized entry level discharges are considered honorable for the purpose of reemployment.

3. Maximum Separation Period

To be eligible for reemployment, generally the maximum period of separation from employment with the TDCJ to perform service in the uniformed services will not exceed a cumulative period of five years. The five-year period includes only the time the former employee spent performing services in the uniformed services. A period of absence from employment before or after the performance of service in the uniformed services does not count against the five-year limit, for example, time spent preparing for departure or time between discharge and application for reemployment. The TDCJ will allow the exceptions to this five-year limit as specified within the USERRA.

C. Former Employee Responsibilities

1. Timely Application

Upon completion of a period of service in the uniformed services, the former employee shall submit an application for reemployment to the Compliance Department, Human Resources Division, no later than the 90th day after the completion of service. Exceptions for applying for reemployment within the appropriate time frame may be granted for factors beyond the former employee's control as specified within the USERRA, for example, hospitalization for or convalescence from an injury or illness incurred in or aggravated during the performance of service in the uniformed services.

If a former employee fails to timely report for, or apply for, reemployment for a reason other than a factor beyond the former employee's control as specified within the USERRA, the former employee does not automatically forfeit entitlement to reemployment and other rights and benefits. In such cases, the human resources director shall be contacted to ensure compliance with reemployment entitlements.

2. Notification of Entitlement to USERRA Protection

Upon reporting or applying for reemployment, the former employee should ensure that the Compliance Department is aware that the reason for separation from employment was to perform service in the uniformed services. The former employee should:

- a. Clearly mark at the top of the State of Texas Application for Employment form "Reemployment - Member of Uniformed Services";
- b. Clearly indicate in the Employment History section of the form that separation to perform service in the uniformed services was the reason for separation from TDCJ employment; and
- c. Check "Veteran's Reinstatement" on the top of the TDCJ Employment Application Supplement.

3. Documentation

Upon application for reemployment, a former employee should provide the "Member 4 copy" of the DD 214, Certificate of Release or Discharge from Active Duty, or other evidence of release from military service under honorable conditions. However, the former employee will be reemployed even if such documentation does not exist or is not readily available at the time of application for reemployment. If documentation becomes available that establishes the employee did not meet the eligibility requirements for reemployment, the employee may be separated from employment with the TDCJ.

4. Acceptance or Rejection of Offered Position

A former employee may accept or reject an offered position. Acceptance or rejection of a position similar to the position held at the time of separation will satisfy requirements relating to reemployment entitlements of members of the uniformed services. If the former employee rejects an offered position, the former employee may apply and be considered for other positions within the TDCJ and will receive military employment preference.

D. TDCJ Responsibilities

1. General Provisions

If a human resources representative is advised by a former employee who separated employment to perform service in the uniformed services that the former employee is electing to return to employment, the human resources representative shall contact the Compliance Department, Human Resources Division. The Compliance Department shall perform the clearance for the former employee to return to work. An eligible former employee will be reemployed as soon as practicable.

2. Returning to Pre-Service Position

Except as provided in paragraphs a and b below, an eligible employee will be reinstated in the position the employee would have attained with reasonable certainty if the employment of the employee had not been interrupted by service in the uniformed services. This position is known as the employee's escalated

position. Therefore, if the employee's previous position was in an established career ladder, the months of service in the uniformed services will count as months of active satisfactory service accrued towards a career ladder adjustment. If the employee's pre-service position was not in an established career ladder, the employee will be reinstated in the employee's pre-service position. In addition, the employee will have seniority status restored, for example, the employee's position on a transfer list or shift change list.

- a. If the employee requests a workplace accommodation because of a permanent or long-term medical condition incurred in or aggravated during such service, the human resources representative shall contact the accommodation coordinator. Requests for a workplace accommodation will be processed in accordance with PD-14, "Americans with Disabilities Act and Employment of Persons with a Disability." The employee is required to be qualified to perform the duties of a position in which the employee is entitled to be placed. The TDCJ will make reasonable efforts to help the former employee become qualified to perform the duties of such a position through training or retraining.
 - (1) If the employee was in a career ladder position, the employee is entitled to reinstatement in the employee's escalated position or nearest approximation in terms of seniority, status, and pay of the employee's escalated position.
 - (2) If the employee was not in a career ladder position or is not qualified for a position described in subsection (1), the employee is entitled to reinstatement in the employee's pre-service position or a position of nearest approximation in terms of seniority, status, and pay.
 - (3) If, after reasonable efforts by the TDCJ, the employee is not qualified to perform the duties of the employee's escalated or pre-service position, or a like position, the employee will be employed in any other position that is the nearest approximation first to the escalated position, if applicable, then to the pre-service position.

- b. If the employee's escalated or pre-service position no longer exists or has been restructured to require skills the employee does not have, the employee is entitled to reinstatement in another position for which the employee is qualified and which is the nearest approximation in terms of seniority, status, pay, and benefits of the escalated or pre-service position. The human resources director will make a determination regarding job assignment, location of assignment, and the applicable salary group and rate for the employee.
3. TDCJ Service Entitlement When Competing for Another Position

Upon an eligible employee's application for another position, participants in the selection process will count the time period the employee was separated from TDCJ employment and performing uniformed services duties as accrued state service time. This provision:

- a. Relates to an initial application for reemployment or an application submitted after reemployment, for example, applying for promotion to a posted vacancy;
- b. Is applicable when considering job-related experience for the purpose of conducting minimum qualifications screening, conducting document screening, or selecting a final applicant in accordance with PD-71; and
- c. Is applicable regardless of the type of uniformed service performed.

If all factors taken into consideration are equal when selecting a final applicant, and more than one applicant is eligible for the military employment preference, the applicants will be selected in the following order of priority:

- (1) a veteran, including a veteran with a disability;
- (2) a surviving spouse of an honorably discharged veteran who has not remarried;
- (3) an orphan of a veteran if the veteran was killed while on active duty;

- (4) the spouse of a member of the U.S. armed forces or Texas National Guard serving on active duty; and
- (5) the spouse of a veteran if the spouse is the primary source of income for the household and the veteran has a total disability rating based either on having a service-connected disability with a disability rating of at least 70% or on individual unemployability.

4. Benefit Entitlements

An employee who has been reemployed under this directive is entitled to:

- a. Crediting of sick leave accrued prior to service in the uniformed services;
- b. Crediting of months of service in the uniformed services;
- c. Immediate reinstatement of membership in the ERS; and
- d. Immediate reinstatement of health insurance benefits.

V. Protection Against Separation Without Cause

If an employee has returned from leave or been reemployed under the provisions of this directive, the TDCJ may not separate the employee from employment without cause, for example, reduction in force, before the first anniversary of the date of the employee's return or reemployment.

VI. Forms / Documents

The related forms and documents listed below are available by following the hyperlink.

[PERS 302, Expiration of Leave Without Pay Notification](#)

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