

BOX ELDER COUNTY PERSONNEL POLICIES AND PROCEDURES

18. **MILITARY LEAVE**

18-1. **Purpose**

Under the Uniformed Services Employment and Reemployment Rights Act (USERRA), Box Elder County is required to grant an unpaid military leave of absence to any employee who requests such leave in order to perform service in the uniformed services. It is the policy of Box Elder County to comply with USERRA and all other state, federal, and local laws.

18-2. **Definition**

USERRA broadly defines the term “service in the uniformed services,” as follows: The term “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, 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, and a period for which a person is absent from a position of employment for the purpose of performing funeral honors duty as authorized by section 12503 of title 10 or section 115 of title 32.

18-3. **Leave of Absence**

Any employee of Box Elder County who leaves his or her job for voluntary or involuntary service in the uniformed services will, upon giving us notice, be granted an unpaid military leave of absence. Some of our employees will perform inactive duty training in the National Guard or Reserve. Such inactive training is normally but not always performed on weekends. Those National Guard and Reserve members will also perform annual training and/or specialized training in their Reserve components.

With the two exceptions, Box Elder County is not required to pay an employee who is away from work performing service in the uniformed services. 1) An employee who is away from work performing service in the uniformed services is entitled (not required) to use and be paid for any vacation that the employee has accrued and not used prior to the period of service. Normally, Box Elder County is not required to accede to an employee’s request to take vacation at a particular time, but in this case we do not have that option. If the employee has vacation to use and requests to use that vacation during a period of service, Box Elder County is required to honor that request. We are not required to advance vacation days to an employee under these circumstances, but the employee is entitled to use any vacation days that he or she has already accrued. The choice to use vacation during service rests entirely with the employee.

The other exception related to managerial and executive employees who are exempt from overtime rules under the FLSA. 2) These employees work on a salaried rather than an hourly rate. If such an employee works part of the week here at Box Elder County but misses another part of the week while performing uniformed service, we are

not permitted to dock the employee for the hours not worked. We are permitted to consider what the employee earns from the military, and to pay the difference. If the employee is away from work for the entire week, we are not required to pay anything for that week. This is a FLSA requirement, not a USERRA requirement.

USERRA applies to employees in probationary, seasonal, or “temporary” positions. There is no requirement that the employee have been employed by Box Elder County for any minimum period before the absence for uniformed service.

USERRA is not limited to the National Guard and Reserve. An employee who leaves employment with Box Elder County for service in the regular military also can have rights under USERRA. The law also protects an employee who takes a day or two off from work for the purpose of an examination to determine fitness to join any branch of the service. After completion of such an examination, regardless of the outcome, the employee is entitled to reemployment under USERRA.

18-4. Annual Training

An employee is entitled to military leave without loss of pay or loss of annual leave, not to exceed 15 regularly scheduled working days per year, if ordered to annual training duty as a member of the National Guard or any armed forces reserve unit. Upon employee's return from military leave, the employee will submit a claim to the County if his/her military pay during the period of absence is less than the amount (s)he would have been paid by the County.

18-5. Reemployment Criteria

An employee who leaves employment with Box Elder County for service in the uniformed services will be entitled to reemployment, provided he or she meets the USERRA eligibility criteria.

- a. The employee (or an appropriate officer of the uniformed service) must have given us prior oral or written notice of the impending service.
- b. The employee's cumulative period or periods of service, relating to this company, shall not have exceeded five years.
- c. The employee must have completed the period of service without having received a punitive or other than honorable discharge or having been dismissed or dropped from the rolls of the uniformed service.
- d. The employee must have made a timely application for reemployment or have been timely in reporting back to work.

18-6. Prior Notice

We want employees to give us as much advance notice as possible, but we realize that circumstances arise where the employee does not receive notice from the service until the last minute. We would prefer that the notice be in writing, but oral notice is sufficient under the statute. Advance notice is not required in those rare cases where advance notice is precluded by military necessity or otherwise impossible or unreasonable.

18-7. Five-Year Limit

The five-year limit is measured from the date of commencement of the individual's employment relationship with Box Elder County. Uniformed service performed before the individual's hire date is irrelevant for the purposes of the individual's USERRA rights for Box Elder County. Reserve and National Guard training and involuntary call-ups do not count toward the individual's five-year limit. Some voluntary service is also excluded in computing the five-year limit. Please check with the personnel office before denying reemployment on the basis of the five-year limit.

18-8. Release From Service Under Honorable Conditions

An individual does not have reemployment rights with Box Elder County if he or she has received a punitive (by Court martial) or other-than-honorable discharge or if he or she has been "dropped from the rolls" of the uniformed service.

18-9. Timely Application For Reemployment

a. Period of 1-30 Days of Service

After a period of less than 31 days of service, the employee is required to report for work at the start of the first full regularly scheduled work period on the first day after the completion of the period of service, the time reasonable required for safe transportation from the place of service to the individual's residence, and a period of eight hours (for rest). If reporting that next day is impossible or unreasonable because of factors beyond the individual's control (like an accident on the return trip), the individual is required to report for work as soon as reasonably possible thereafter.

b. Period of 31 Days of Service or More

If the period of service is greater than 30 days but less than 181 days, the individual is required to submit an application for reemployment within 14 days. If the period of service is 181 days or more, the individual must submit an application for reemployment within 90 days. No particular form is required for the application for reemployment, and Box Elder County will not try to deny reemployment based on quibbling with the wording. If the individual communicates with us, within the 14 days or 90 days, and tells us that he or she is available to return to work after service, we will offer reemployment to the individual.

c. Effect of Tardiness in Reporting Back to Work

If the individual misses the relevant deadline by a day or two, he or she is entitled to reemployment, but he or she is subject to our usual policy regarding explanations or sanctions for absence from scheduled work. For example, assume that the employee is returning from a period of 179 days of service and has 14 days to submit the application for reemployment. The employee submits the application on day 15. She has the right to reemployment, but she may be subject to a two-week suspension without pay for one day of unexcused absence.

18-10. Entitlements After Return From Service

1. Prompt Reinstatement

After a period of less than 31 days of service, the employee is required to report for work on the next workday, as explained above. The employee will be considered to be back on the payroll as of the time he or she reports for work.

After a period of 31 days or more of service, the employee is required to submit an application for reemployment. If the employee submits a timely application and meets the other eligibility criteria, we will act promptly on that application. We will not make the returning service member wait for a vacancy, and if training or retraining is needed we will offer it to the employee "on the clock." We will offer reemployment to the individual no later than the start of the second two-week pay period after the pay period when the individual submits the application for reemployment.

2. Continuous Accumulation of Longevity For Seniority Purposes

A person who returns to employment with Box Elder County after service in the uniformed services, and who meets the eligibility criteria under USERRA, is entitled to continuous company longevity for the entire period of the military related absence. This includes the period between leaving the job and the start of the service, the period of service, (up to 90 days) during which the individual waited to submit the application for reemployment, and the period between the application for reemployment and returning to work.

3. Continuous Accumulation of Longevity for Pension Purposes

According to federal law, under a defined benefit or defined contribution pension plan, individuals whose employment is interrupted by military service must be given benefit accruals for the period of military leave. The manner in which it is handled is controlled by Utah Code Ann 49-11-402. Full-time United States military service is eligible for service credit when appropriate payments, as determined by the Retirement Office, are made by the member, the participating employer, or the member and participating employer jointly, in accordance with the law governing the system in which the member is participating at the time of the official call.

Payments must be made before the member's retirement date, either during the period of full-time United States military service, or payments, including interest, may be made within a period not to exceed three times the period of military service, up to a maximum of five years.

If employees are members of a noncontributory retirement system, employers must pay the entire contribution, as well as any 401(k) contributions that would have been paid, had employees not left employment.

4. Status

If the employee's period of service was less than 91 days, he or she is entitled, upon reemployment, to the exact job that he or she would have attained if he or she had been continuously employed. In most cases, that will be the same as the pre-service job.

If the period of service was 91 days or more, Box Elder County has the option to reemploy the returning veteran either in the position that he/she would have attained or, alternatively, in another position of like seniority, status, and rate of pay. Offering the returning veteran reemployment in a position that is not of like status is not a sufficient compliance with USERRA.

If we offer the returning veteran reemployment in alternative position, it must be a position for which the employee is qualified. Putting an employee in a position for which he or she is not qualified is a recipe for failure and would not be a sufficient compliance with USERRA.

5. Training or Retraining

The returning veteran is entitled to the training or retraining that he or she would have received if continuously employed.

6. Special Protection against Discharge, Except For Cause

The returning veteran who meets the USERRA eligibility criteria may not be discharged, except for cause, within one year after reemployment, if the veteran's period of service was 181 days or more. If the period of service was 31-180 days, the period of special protection is 180 days. If the employee is discharged during the special protection period, Box Elder County has a heavy burden of proof, to show that the employee was discharged for cause.

This special protection provision applies even if the employee was in an at-will or probationary status before leaving for service. The special protection provision is intended to protect the veteran from a bad faith reinstatement. Please do not try to discharge a returning veteran during the special protection period without first checking with the personnel office.

18-11. Entitlements Of Returning Disabled Veterans

Some of our employees who have been called to service will return with temporary or permanent physical limitations, resulting from service-connected injuries or illnesses. In such a situation, we are required to make reasonable accommodations in equipment, scheduling, etc. in order to enable the employee to perform the duties of his or her escalated reinstatement position (the position that he or she would have attained if continuously employed). Of course, some disabilities cannot be accommodated. If the employee cannot be reinstated in the escalated reinstatement position, he or she is entitled to reinstatement in some other position, the duties of which he or she can perform despite the limitations. The employee is entitled to the position that comes as close as possible (in terms of seniority, status, and pay) to the position to which he or she would be entitled but for the disability.

1. Reinstatement of Health Insurance Coverage

An employee returning from service, and who meets the USERRA eligibility criteria, is entitled to immediate reinstatement of Box Elder County health insurance coverage upon reemployment. This applies to coverage for the employee and for family members who would have been covered if the employee had been continuously employed. This includes children born or adopted during the employee's military-related absence from work. There must

be no waiting period, and no exclusion of “pre-existing conditions” except for conditions that the U.S. Department of Veterans Affairs has determined to be service-connected.

18-12. Entitlements during Service

1. Furlough or Leave Of Absence Clause

An employee who is away from work performing service in the uniformed services is entitled to non-seniority benefits, during the military-related absence, if and to the extent that Box Elder County offers such benefits to employees on some other form of leave, like jury leave, educational leave, or maternity/paternity leave.

2. Continuation of Health Insurance Coverage during Service

An employee who notifies us that he or she will be away from work performing service is entitled to elect continued health insurance coverage, through Box Elder County, during the military-related absence from work. If the period of service (as called for in the individual’s military orders) is for less than 31 days, Box Elder County is permitted to charge only the employee share of the cost of the coverage. If the period of service is greater than 30 days, Box Elder County is permitted (but not required) to charge up to 102% of the entire premium, including the part that the employer normally pays in the case of active employees. We are required to make this continuing coverage available to the employee who is away from work for service until the first of the following occurs:

- a. The employee returns to work after service.
- b. The employee allows the deadline for an application for reemployment to pass without having made such an application.
- c. Eighteen (18) months has passed since the employee left his or her civilian job for service.

The right to reinstated coverage after service is not contingent on continuing coverage during service. Most of our employees who leave for service of more than 30 days will not elect continued coverage during service, because during their service they are entitled to use the military health care system for themselves and their families.

18-13. Protection Against Discrimination

It would be unlawful for Box Elder County to deny an individual initial employment, or to deny an existing employee any benefit, or to fire an employee because of the person’s membership in a uniformed service, obligation to perform future service, etc. It is our policy to obey this law. We will not consider military status or service when making hiring, promotion, or firing decisions.