Military Leave

This policy describes Military Leave for employees who need leave for their own military service under the Uniformed Services Employment and Re-employment Rights Act (USERRA), or who need leave for the military service of a covered family member under the Family and Medical Leave Act (FMLA). This policy describes eligibility for Military Leave, leave coverage, the process for requesting leave, pay and benefits during leave, job restoration and other related topics.

Military Leave for the Employee’s Own Military Service

Eligibility and Leave Coverage

All employees are eligible for Military Leave for their own military service which includes active duty, active and inactive duty for training, National Guard duty, funeral honors duty, and any other military service authorized by law. Military leave will be granted in compliance with USERRA and any applicable state or municipal laws.

Military Leave may be taken for a total of up to five years (or longer as required by law). The employee is also entitled to a reasonable time period to prepare for or return from military service, in addition to the seven years.

Pay and Benefits During Leave

Boston Children’s Hospital (BCH) will pay the difference between the employee’s military pay and the employee’s weekly base salary plus permanent shift differential (called Military Differential Pay) for up to 17 days per calendar year for annual reserve training and up to a total of 90 days for active duty service. The employee must submit military pay documentation to receive payment.

While on Military Leave, BCH continues to pay the employer subsidy for employee medical and dental plans for the first 6 months of Military Leave. Employees remain responsible for the employee portion of the benefit(s) premiums while on Military Leave. After 6 months, the employee and any covered dependents may elect to continue medical coverage under Consolidated Omnibus Budget Reconciliation Act (COBRA). COBRA is available for up to 24 months.

Non-seniority based benefits while on military leave mirror the non-seniority based benefits of employees on FMLA. To cancel one or more benefits, submit a completed Benefit Election Form.

Seniority-based benefits, such as Earned Time and Pension, continue to accrue service credit during Military Leave; time spent in military service counts toward years of service under the Earned Time program and the BCH pension plan. Additionally, upon re-employment BCH will credit the employee’s pension with the contributions the employee would have received during the time period he or she was on military leave. Employees with specific concerns or questions about the effect of Military Leave on benefits, should contact the HR Service Center (X57780) or email the HR Service Center.

Leave Request Process

Absent military necessity, the employee must complete a Leave of Absence Request Form, obtain their manager’s signature and return the form to the HR Service Center at least 30 days before their Military Leave.
The Leave Administrator notifies the employee of the approved Military Leave within 15 calendar days of the receipt of all completed leave documentation.

Return from Leave
At the conclusion of military service, to protect the employee’s reinstatement rights, the employee must notify the Leave Administrator or the Human Resources Employee Service Center of his/her intent to return to work as follows:

- **If service is less than 31 days (or for the purpose of taking an examination to determine fitness for service):** The employee must report for work at the beginning of the first full regularly scheduled working period on the first calendar day following their return home from military service.
- **If service is for more than 30 days but less than 180 days:** The employee must contact Human Resources no later than 14 days following the completion of military service, unless there are extenuating circumstances.
- **If service is over 180 days:** The employee must contact Human Resources no later than 90 days following the completion of service.
- **If the employee is hospitalized or convalescing from a service-connected injury:** The employee must contact Human Resources at the end of the period that is necessary for the person to recover from such illness or injury. This period may extend by two years or more in appropriate circumstances under USERRA.

If the employee does not apply for reemployment within the above prescribed time limits, subject to USERRA, the employee will be considered to have resigned his/her position and given up his/her statutory re-employment rights.

Job Restoration
All employees on Military Leave have the right to job restoration, provided they have followed the above notification requirements for return to work, have not been dishonorably discharged and no USERRA provision or exception to reinstatement applies. Once the employee returns from Military Leave, the employee will be given the employment position the employee would have occupied had the employee remained continuously employed with BCH.

- For military leaves of three months duration or less, the employee will ordinarily be restored to his or her original position, provided this is the position the employee would now occupy but for the military leave.
- For military leaves longer than three months, the employee will be restored to the position the employee would now occupy but for the Military Leave.

The employee’s rate of pay will be adjusted to reflect any applicable market adjustments. The employee will also receive an adjusted merit increase. For military leaves that extend beyond the employee’s regularly scheduled review period, the average budgeted merit increase for the fiscal year will be used to determine the amount of the merit increase for each year of military leave.

After BCH receives notice of re-employment from the employee, the employee will be re-employed as soon as practicable under the circumstances. Absent unusual circumstances, re-employment will occur within two weeks. The employee will receive the training necessary to assist with re-employment and will be afforded any special terms and conditions of employment provided by USERRA. Managers and employees should contact their Human Resources Consultant for assistance with re-employment in any case of military leave that is longer than 30 days.
Non-Discrimination

BCH is committed to protecting the employment rights of employees who serve in the Uniformed Services and must take leave from BCH to do so. In accordance with all applicable municipal, state and federal laws, it is the BCH policy that no employee or prospective employee will be subjected to any form of discrimination on the basis of that person’s membership in, or obligation to perform military service. No person will be denied employment, reemployment, promotion, or other benefit of employment on the basis of such membership. Furthermore, no person will be subjected to discrimination, retaliation or adverse employment action because such person has exercised his or her rights under this policy. If any employee believes that he or she has been subjected to discrimination in violation of this policy, the employee should immediately contact the Human Resources Service Center.

FMLA Leave for the Military Service of a Covered Family Member

This section of the Military Leave Policy describes leave under the Family and Medical Leave Act (FMLA) where leave is related to the military service of a covered family member. For more detailed information about FMLA leave, refer to the Personnel Manual: Family and Medical Leave Act Leave or contact the Leave Administrator.

Eligibility

All employees who are eligible for leave under the Personnel Manual: Family and Medical Leave Act Leave are covered under this section of the Military Leave Policy. Generally, to be eligible for FMLA leave, the employee must have (1) worked for BCH for at least 12 months (the months need not be consecutive); and (2) have worked at least 1,250 hours in the 12 months preceding the leave.

Leave Coverage, Leave Use and Calculation of Leave

In addition to other FMLA covered purposes described in the FMLA Policy, FMLA leave may be taken for:

- A “qualifying exigency” arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation; or
- To care for a spouse, son, daughter, parent, or next of kin (defined as the nearest blood relative) who is a Covered Service Member. A Covered Service Member is a member of the Armed Forces, including the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list and who has incurred an injury or illness incurred in line of duty on active duty in the Armed Forces that may render the Member medically unfit to perform the duties of the Member’s office, grade, rank or rating.

When FMLA leave is because of a “Qualifying Exigency,” related to the active military duty of an employee’s spouse, child or parent, the eligible employee may take up to 12 weeks of leave during any 12-month period.

If the FMLA leave is to care for an employee’s spouse, son, daughter, parent, or next of kin who is a seriously injured or ill Covered Service Member, an eligible employee may take up to 26 weeks of leave during a single 12-month period to care for the Service Member.
Service Member-related FMLA runs concurrent with other FMLA leave and other leave entitlements provided under federal, state and local law. Leave to care for a seriously injured or ill Covered Service Member, when combined with other FMLA-qualifying leave, may not exceed 26 weeks in a single 12-month period. FMLA leave due to a “Qualifying Exigency” related to military leave is limited to 12 weeks and runs concurrently with other types of FMLA leave.

**Process for Leave Requests, Pay and Benefits during Leave, and Job Restoration**

Any eligible employee needing a leave must complete a [*Leave of Absence Request Form*]. The process for leave requests, pay and benefits during leave and job restoration are the same as they are under the Personnel Manual: [*General Policy for Leaves of Absence*]. In appropriate circumstances, the requirement to submit a medical certification may be waived if documentation from the Armed Forces and/or the Veterans’ Administration is submitted that demonstrates the need for FMLA leave, as described above.

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**Related Content**

- **Human Resources Manual**
  - [*General Policy for Leaves of Absence*]
  - [*Family and Medical Leave Act Policy*]
  - [*Medical Leave Policy for Non-FMLA Leaves*]
  - [*Fitness for Work Health Assessments*]
  - [*Earned Time*]

- **Employee Benefits and Services Guide**
  - [*Personal Support Services*]
  - [*Short-Term Disability Insurance*]

- **Tools**
  - [*Benefit Election Form*]
  - [*Filing a Short-Term Disability Claim*]
  - [*Leave of Absence – Benefits Outline*]
  - [*Leave of Absence Request Form*]
  - [*Medical Certification Form*]
  - US Department of Labor [*Medical Certification Form*]