Background

This policy applies to employees who are not covered by a collective bargaining agreement or for whom the agreement contains no provision regarding this subject.

In accordance with state and federal law, this policy defines the employment, leave benefits, and reemployment rights of university employees who serve in the uniformed forces [as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") and Ohio law]. Service in the uniformed services includes, but is not limited to, voluntary or involuntary service in the Armed Forces, the Ohio organized militia, the Army National Guard and the Air National Guard.

Policy

To the extent that this policy conflicts with provisions of USERRA or applicable Ohio laws, or any amendments thereto, the provisions of USERRA or Ohio law will prevail.

Military Leave With or Without Pay/Length of Leave:

1. As required by Ohio law, all permanent employees of the University of Cincinnati who are members of the Ohio organized militia or any other reserve component of the Armed Forces of the United States, including the Ohio National Guard, will be entitled to a leave of absence without loss of pay for periods per calendar year when they are performing service in the uniformed services (as defined by ORC 5923.05). As of the effective date of this policy, the amount of leave such employees are entitled to per calendar year under Ohio law is: up to one month (22 days or 176 hours).

   a. Unless required by Ohio law, which is not currently the case as of the effective date of this policy, such paid leave amounts shall not be given to individuals who request a military leave of absence without pay to enlist directly into active military duty.

   b. Any military pay or allowances received by the university employee will not affect the employee’s receipt of university wages during the leave of absence without loss of pay described in this section.
2. As required by USERRA, all permanent employees of the university who are also members of the Ohio organized militia, the Ohio National Guard or any active or reserve component of the Armed Forces of the United States, will also be entitled to periods of unpaid leave of absence during which the employee may perform active or inactive duty on a voluntary or involuntary basis in a uniformed service under competent authority.

   a. In order to remain in pay status, university employees may, but are not required, to use accrued vacation time during any period of service in the uniformed services which would otherwise be considered unpaid military leave.

   b. Employees may not use accrued sick leave (time) during such unpaid periods of military leave.

3. With limited exceptions as described in USERRA, the cumulative amount of paid and unpaid military leave a university employee receives may be limited in duration.

4. As required by Ohio law, employees entitled to a leave of absence without loss of pay pursuant to section 2 of this policy and who are called or ordered to the uniformed services for longer than one month because of the reasons outlined in ORC 5923.05 will be entitled to the difference between their gross monthly wages as university employees and the sum of their gross uniformed services pay and allowances for the periods beyond the initial month each calendar year.

   a. No supplemental pay will be due if an employee’s uniformed services pay and allowance equal or exceed the wages payable had the employee been in active employment status.

   b. As of the effective date of this policy, ORC 5923.05 allows for differential pay in the event of an executive order issued by the president of the United States, an act of congress, or an order issued by the governor to members of the Ohio National Guard or Ohio organized militia.

**Benefits During Military Leave:**

5. The university employee is entitled to any seniority and seniority-based rights and benefits (which are rights or benefits determined by an employee’s longevity in employment) that he or she had on the date that his or her uniformed service began plus any seniority and seniority-based rights and benefits that he or she would have had if he or she had remained continuously employed.

6. During the university employee’s period of service in the Armed Forces, he or she will be entitled to all non-seniority rights and benefits generally provided by
employee contracts, agreements, policy or practice to similarly situated employees (employees with similar seniority, status and pay that are on furlough or leave).

a. If the university employee provides written notice that he or she will not be returning to his or her position after service in the uniformed services, the employee waives rights to these non-seniority rights and benefits. However, other rights specified in USERRA, its regulations and Ohio Law, including the employee’s right to reemployment following his or her period of service, are not waived.

7. University employees on a Military Leave with pay will continue to accrue sick leave (time) and vacation time at the normal rate. Sick leave (time) and vacation time do not accrue during a Military Leave without pay.

8. Employees will only be allowed to continue the health and dental coverage during military leaves that would have been in effect had they remained in active employment status with the university. To continue coverage, any applicable employee premium contribution must be paid by the employee. Employees should contact the Human Resources Department concerning eligibility for and continuation of benefits prior to the start of the leave.

9. University employees on paid or unpaid Military Leave will be entitled to any additional leave entitlements or benefits allowed to them under Federal and Ohio laws.

**Return to Position**

10. Provided that the university employee returning from paid or unpaid Military Leave has met and complied with all necessary eligibility requirements and procedures promulgated by USERRA (including the timelines for returning to work), that employee shall be eligible for reemployment with the university.

a. The university will not delay or deny employment if the employee is unable to provide proper military documentation to support the elements listed in the preceding section because the documentation either does not yet exist or is not readily available to the employee. If, following reemployment, documentation is received by the university which shows that the employee was not entitled to reemployment, the university may terminate the employee’s employment as well as any rights or benefits the employee received upon reemployment.

11. Subject to the requirements of USERRA an employee seeking to return to work with the university following a Military Leave shall be employed in the following manner:
a. University employees who are eligible for reemployment and whose period of service in the uniformed services lasted less than 91 days shall be promptly reemployed in the position of employment that the employee would have held had he or she been continuously employed at the university during the employee’s time of service, so long as the employee is qualified to perform the duties of that position after reasonable efforts by the university to qualify that person.

   i. If, after reasonable attempts to qualify the employee for the position the employee would have held had his or her employment not been interrupted through service, the employee is not qualified to hold that position, the employee will be reemployed in the position that the employee held when his or her period of service commenced.

b. University employees who are eligible for reemployment and whose period of service in the uniformed services lasted more than 90 days shall be promptly reemployed in the position of employment that the employee would have held had he or she been continuously employed at the university during the employee’s time of service, or an equivalent position, provided that the employee is qualified to perform the duties of that position after reasonable efforts by the university to qualify that person.

   i. If, after reasonable attempts to qualify the employee for the position the employee would have held (or an equivalent position), the employee is not qualified to hold the position that he or she would have held if he or she would have been continuously employed with the university, the employee will be reemployed in the position that the employee held when his or her period of service commenced (or an equivalent position).

c. Any employee, regardless of the length of his or her period of service, who either incurred or aggravated a disability during his or her period of service and, because of that disability, is not qualified to be employed in the position he or she would have held if continuously employed by the university, despite the university’s reasonable attempts to accommodate the disability, the employee shall be reemployed in the following manner:

   i. In any other position which is equivalent in seniority, status and pay, the duties of which the employee is qualified to perform or would be qualified to perform with reasonable efforts by the university; and

   ii. Consistent with the employee’s situation, in a position which is the nearest approximation to the position described above in terms of seniority, status or pay.
12. Following the employee’s restoration to employment, the employee may not be discharged from employment, except for cause (which includes legitimate nondiscriminatory reasons such as the elimination of the employee’s position or placing the employee on layoff status), in accordance with the following time lines:

a. University employees whose period of service before reemployment was for more than 180 days shall not be discharged from employment, without cause, for one year following the date of reemployment.

b. University employees whose period of service before reemployment was for more than 30, but less than 181 days shall not be discharged from employment, without cause, for 180 days following their date of reemployment.

13. Any person employed to replace an employee on Military Leave with or without pay must be appointed with the understanding that the employee on Military Leave has the right to return to the position formerly held; further, the person replacing an employee on Military Leave shall sign a statement to that effect at the time of employment.

14. The requirement that the university employee must be placed in the position of employment that he or she would have held had the employee been continuously employed at the university will be followed even if the position that the employee would have been employed in is one which would have been subject to lay off or elimination. Furthermore, if the employee is laid off before or during the service in the uniformed services, and the employer would not have recalled him or her during that period of service, the employee is not entitled to reemployment following the period of service simply because he or she is a covered employee. Reemployment rights under USERRA cannot put the employee in a better position than if he or she had remained in the civilian employment position.

**Discrimination and/or Retaliation Prohibited**

15. Denial of initial employment, reemployment, retention in employment, promotion or any other benefit of employment to a prospective or current university employee based on that individual’s membership, application for membership, performance of service, application for service or obligation for service in the uniformed services is strictly prohibited.

16. The university will not discriminate against or take any adverse employment action against any person who has taken any action to enforce a protection offered under USERRA, has testified or made a statement in any proceeding involving a protection offered under USERRA, has assisted with an investigation under USERRA or who has exercised any right provided by USERRA.
Procedure

1. Employees must complete and submit the appropriate Time Off From Work Form or other form (electronic or otherwise) as designated by their organizational unit to their administrative authority for approval as soon as possible.

2. Follow university leave of absence administration processes.