
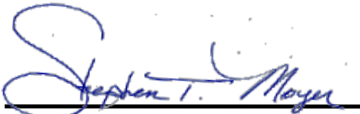


Executive Directive



Title: Uniformed Services — Employee Participation	Executive Directive Number: ADM.050.0039 REVISED
Related MD Statute/Regulations: Correctional Services Article, §2-103, Annotated Code of Maryland; 38 U.S.C. 4301 — 4334; Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994; 20 CFR Part 1002 Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994; Final Rules	Supersedes: Executive Directive ADM.050.0039 Dated April 5, 2013
Related ACA Standards: 4-4048 and 4-4051; 2-CO-1C-01 & 13; 1-CORE-7D-01; 4-ALDF-7D-06	Responsible Authority:  Executive Director Human Resources Services Division
Related MCCA Standards: N/A	Effective Date: March 14, 2016 Number of Pages: 6



Stephen T. Moyer
Secretary



William G. Stewart
Deputy Secretary
for Administration

.01 Purpose.

This directive continues policy and responsibilities for Department of Public Safety and Correctional Services (Department) employees with obligations to the uniformed services.

.02 Scope.

This directive applies to all units of the Department.

.03 Policy.

- A. The Department shall comply with federal and state law concerning employee participation in the uniformed services.
- B. The Department may not deny initial employment, reemployment, retention in employment, promotion, or any benefit of employment to an individual based on the individual's membership, application for membership, performance of service, application for service or obligation for service in the uniformed services.
- C. The Department may not retaliate against an employee based on the employee's membership, application for membership, performance of service, application for service or obligation for service in the uniformed services.

.04 Definitions.

- A. In this directive, the following terms have the meanings indicated.

B. Terms Defined.

- (1) “Appointing authority” means an employee delegated the authority to hire an individual to fill a Department job position.
- (2) “Benefit”:
 - (a) Means any advantage, profit, privilege, gain, status, account, or interest (other than wages or salary for work performed) that accrues to the employee because of an employment contract, employment agreement, or employer policy, plan, or practice.
 - (b) Includes rights related to:
 - (i) A pension plan;
 - (ii) A health plan;
 - (iii) An employee stock ownership plan;
 - (iv) Insurance coverage and awards;
 - (v) A bonus;
 - (vi) Severance pay;
 - (vii) Supplemental unemployment;
 - (viii) Vacation;
 - (ix) Work hours; and
 - (x) Employment location.
- (3) “Employee”:
 - (a) Means an individual assigned to or employed by the Department in a full-time, part-time, temporary, or contractual position.
 - (b) Includes:
 - (i) A volunteer; and
 - (ii) An intern.
- (4) “Service in the uniformed services”:
 - (a) Means duty, voluntary or involuntary, in a uniformed service under a competent authority.

- (b) Includes:
 - (i) Active duty;
 - (ii) Initial active duty for training;
 - (iii) Active and inactive duty related to training;
 - (iv) National Guard duty authorized by federal statute;
 - (v) National Guard call up for active duty by state governors or territorial adjutant general to help respond to domestic emergencies and disasters, such as hurricanes, floods, and earthquakes;
 - (vi) Time spent at fitness for duty examinations;
 - (vii) Funeral honors authorized by law; and
 - (viii) Activities as an intermittent disaster-response appointee during activation of the National Disaster Medical System or related training.
- (5) “Undue hardship” means action that imposes significant difficulty or expense related to compliance with federal and state law concerning employee service in the uniformed services when considering, individually or collectively, the following:
 - (a) The nature and the cost of the action needed under Uniformed Services Employment and Reemployment Rights Act (USERRA);
 - (b) The overall financial resources of the facility or facilities involved in the provision of the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;
 - (c) The overall financial resources of the employer; the overall size of the business of an employer with respect to the number of its employees; the number, type, and location of its facilities; and
 - (d) The type of operation or operations of the employer, including the composition, structure, and functions of the work force of such employer; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the employer.
- (6) “Uniformed services”:
 - (a) Means the Armed Forces, National Guard and related reserve units.
 - (b) Includes:
 - (i) The commissioned corps of the Public Health Service;
 - (ii) Activation and training related to an intermittent disaster-response appointee for the National Disaster Medical System; and

- (iii) Other services designated by the President during a time of war or national emergency.

.05 Responsibility.

- A. Consistent with federal and state law, an appointing authority, or a designee, based on an individual's service in the uniformed services:
 - (1) May not:
 - (i) Deny an individual employment, re-employment, retention (unless the person has been released from uniformed service under dishonorable or other punitive conditions);
 - (ii) Deny an employee benefits; or
 - (iii) Retaliate against an employee; and
 - (2) Shall make reasonable:
 - (i) Efforts to train or re-train a returning employee; and
 - (ii) Accommodation for a disability incurred or aggravated during uniformed service.
- B. Consistent with federal and state law, an appointing authority, or a designee, shall authorize an employee leave for service in the uniformed services.
 - (1) An appointing authority, or a designee, may authorize an employee up to 15 days of military leave during a calendar year for service in the uniformed services.
 - (2) An employee may be granted military administrative leave as outlined under State Personnel and Pension Article, §9-1107, Annotated Code of Maryland.
 - (3) If an employee's service in the uniformed service exceeds the 15 days of military leave, an appointing authority, or a designee, may, except for sick leave, authorize other forms of accumulated paid leave available to the employee to perform service in the uniformed services.
 - (4) If an employee's service in the uniformed services exceeds all forms of accumulated paid leave, an appointing authority, or a designee, may authorize:
 - (a) An employee to use leave without pay; or
 - (b) Changes to the work schedule.
 - (5) If an employee requests leave to volunteer for service in the uniformed services that is over and above the employee's involuntary service in the uniformed services, an appointing authority, or a designee, shall work with the employee and the uniformed services to prevent an undue hardship for the unit because of the employee's absence.
- C. An employee applying for membership in or who is a member of the National Guard or a military reserve unit shall comply with Department policy and procedures for secondary employment.

- D. An employee unavailable for work because of service in the uniformed services shall:
- (1) Request leave as far in advance as possible of the start of the period the employee will be unavailable for work;
 - (2) If possible, provide written orders from the uniformed services supporting the employee's service in the uniformed services that includes the start and end dates of the period the employee will be unavailable for work;
 - (3) Return to work on the employee's next scheduled shift following the conclusion of the employee's service in the uniformed services or in accordance with USERRA; and
 - (4) Comply with Department requirements for documenting and submitting work and leave records.
- E. In order to facilitate scheduling and avoid undue hardship for the Department, a unit head, or a designee, shall maintain information on employees who have an obligation for service in the uniformed services.
- (1) By the end of January of each calendar year, a unit head, or a designee, shall compile a list of subordinate employees with obligations for service in the uniformed services.
 - (2) A unit head, or a designee, shall include the following information on the list required under §.05E(1) of this directive:
 - (a) The employee's:
 - (i) Full name;
 - (ii) Social security number; and
 - (iii) Job classification;
 - (b) The branch or unit of the uniformed services of which the employee is a member; and
 - (c) The amount of time of voluntary or involuntary service, or both, in the uniformed services the employee has during the current calendar year and, if possible, the dates of the service in the uniformed services that the employee will be unavailable for work.
 - (3) A unit head, or a designee, shall forward a copy of the list required under §.05E(1) of this directive to the Executive Director of Human Resources Services Division no later than March 1st of each calendar year.
- F. If a unit head encounters an undue hardship when attempting to honor employee service in the uniformed services, the unit head and the unit head's appointing authority shall attempt to resolve the issue by communicating with the:
- (1) Secretary of the Maryland Department of Veterans' Affairs; or
 - (2) U.S. Department of Labor, Office of the Assistant Secretary for Veterans' Employment and Training Services.

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- G. An employee returning to work after completing service in the uniformed services is entitled to benefits to the same extent as if the employee had not been unavailable for work due to service in the uniformed services.

.06 Attachment(s).

There are no attachments to this directive.

.07 History.

- A. This directive replaces Executive Directive ADM.050.0039, Uniformed Services – Employee Participation, issued April 5, 2013 with federal law.
- B. This directive supersedes provisions of any other prior existing Department or unit communication with which it may be in conflict.

.08 Correctional Facility Distribution Code.

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S Human Resources Staff