

Presbytery of San Jose

POLICY: EMPLOYMENT BENEFITS & REEMPLOYMENT RIGHTS FOR MINISTERS SERVING AS CHAPLAINS

Policy Statement

It is the policy of San Jose Presbytery to ensure that Ministers serving within the Presbytery who are Chaplains in the Reserves and National Guard are afforded all the rights and benefits that are identified in the *Uniformed Services Employment and Reemployment Rights Act (USERRA)*. This act was enacted by the Federal Government in October 1994 and subsequently updated in 1996 and 1998.

Rationale

USERRA applies to all employers, private and public alike, regardless of the number of employees employed. Church employers and church plans are not exempt from the obligations of USERRA (see Attachment One).

In addition to the requirements of law, the Presbytery wishes to alleviate the hardships associated with extended reserve service for both the Chaplain and his/her family and the home church.

The following rights are provided by USERRA:

- Non-Discrimination- USERRA prohibits discrimination and retaliation on the basis of uniformed service or application for military service in hiring, reemployment, retention in employment, promotion or any other benefit of employment. If an organization has a leave of absence policy, an individual seeking leave for military service must be afforded the same rights and privileges as those on leave for other reasons.
- Job Reinstatement- Under USERRA, a person who is absent from employment due to military service and who is released from active duty and/or honorably discharged is entitled to job reinstatement if the employee returns within five (5) years.

USERRA's right of reinstatement means that for leaves of absence of less than 90 days, the employee must be returned to the same position he/ she would have attained by remaining continuously employed. Leaves of more than 90 days must result in reinstatement to the position that would have been

attained by remaining continuously employed, or to a position of like seniority, pay and status. If the returning employee is unable to perform the essential duties of the job, the employer must make reasonable efforts to refresh the skills of the employee.

There is a general five-year limit on the right of reinstatement. This right is generally conditioned upon the individual providing advance notice of the need for military leave of absence and upon a timely re-application for employment after discharge from uniformed service.

A reinstated employee under USERRA is job-protected and cannot be discharged other than for cause during the first year of reemployment (or the first 180 days if the previous period of service was less than 181 days).

There are limited circumstances when an employer is not required to reemploy a person because circumstances have so changed as to make reemployment impossible or unreasonable.

- Resumption of Benefits upon Reinstatement- Upon return to employment, USERRA requires that the employee and his/ her dependents are permitted to resume participation in those employment-related benefits in which they participated when the military service began.

The benefits that are protected under USERRA are benefits for which the employee was eligible prior to leave or would have become eligible during the leave of absence period. The term "benefit" is broadly defined to include any advantage or interest that accrues by reason of an employment contract or employer policy. These include a pension plan; health plan; other insurance coverage; awards; vacations; and, the opportunity to select work hours or location of employment. For example, vacation time tied to length of service must be calculated as though the Employee had remained employed during the military leave of absence. Attachment One presents additional information on health care coverage.

- Pension Coverage during Military Leave- Upon return to employment, USERRA requires that the employee receive pension credit or retirement savings contributions for the entire period of the military leave.

Under USERRA, an Employee reinstated following military leave of absence shall have his/ her leave of absence counted for accrual of benefits and vesting. Therefore, the employing organization must provide pension

coverage to a returning Employee equivalent to that which he/ she would have earned if continuously employed during the military leave period.

If an Employee returns to church employment, the last employing organization prior to the leave is responsible for paying 12% pension dues for the period of the leave. The Board of Pensions will offer installment payment arrangements for employing organizations that cannot afford to pay dues for past service in a lump sum.

The Chaplains Deposit Fund (CDF) is only responsible for payment of pension dues for certain individuals who serve in the military and do not return to work for a Presbyterian Church (U.S.A) organization within five years. *(Note: The CDF is a pension insurance program administered by the Presbyterian Council for Chaplains and Military Personnel for career chaplains who fail for some reason to earn a military pension.)*

Committee on Ministry Responsibilities

1. **Consultation with Chaplain:** In the event of a Chaplain requesting extended military leave of absence, a COM-designated representative shall meet with the Minister who is serving as Chaplain as well as the home church in order to determine that the Chaplain is being afforded all the rights identified in USERRA.
2. **Consultation with Session:** COM, through its liaison or designated representative, shall consult with the Session to assist, as necessary, in the development of an interim staffing plan during the Minister's military leave of absence.
3. **PNC and Selection of Candidates:** COM, through its PNC liaison, shall advise the PNC and Session of the non-discriminatory language identified within USERRA to ensure that potential candidates are not rejected based upon the fact that they are in reserve duty.
4. **Terms of Call:** COM, through its PNC liaison shall work with the PNC and Session to ensure, to the extent possible, that personnel issues directly related to serving as a Chaplain in the Reserves and National Guard are adequately addressed within the Terms of Call including, but not limited to the following issues: compensation during the one weekend drill

period and the active duty training (ADT) period; costs of pulpit supply or substitute clergy during the times of weekend and ADT call; additional vacation time (with or without pay) for the extra time taken off for ADT; the development and approval of a Mobilization Agreement with the Minister to address provisions during longer periods of service. The church/ employer may wish to include some period of continued medical coverage during the initial period of extended military leave of absence *however such continued payment of medical coverage is not required by USERRA.*

Minister Responsibilities

1. **Terms of Call and Mobilization Agreement:** Minister will work with the PNC and COM PNC liaison to ensure that church responsibility and minister responsibilities are adequately addressed in the Terms of Call and Mobilization Agreement.

A copy of the signed Mobilization Agreement should be sent to the Presbyterian Council for Chaplains and Military Personnel (PCCMP), in Washington, D.C.

2. **Request to Presbytery for Laboring Outside the Bounds:** Minister should request approval to serve and to occasionally labor outside the bounds.
3. **Updates:** Chaplains should keep presbytery informed of active duty location and prospect for duration of employment.
4. **Mobilization Notification:** The PCCMP is to be notified by a Chaplain when they are mobilized. Activated chaplains are to report on a quarterly basis to PCCMP and presbytery using a form provided by PCCMP.
5. **Request for Reinstatement:** The activated chaplain is required to apply to the presbytery for reinstatement to the position held prior to activation of military leave of absence. The activated chaplain shall adhere to the following protocol for reinstatement to their position at their church:
If military leave of absence service period is between 1 and 30 days:
Chaplain shall apply for reinstatement no later than the beginning of the next regularly scheduled work period;

If military leave of absence service period is between 31 and 180 days: the chaplain shall apply for reinstatement no later than 14 days after the termination of the service;

If military leave of absence service period is 181 days or more: the chaplain shall apply for reinstatement no later than 90 days after the termination of service.

Session Responsibilities

1. **Review of Terms of Call:** The session shall review the terms of call and shall ensure that the original Terms of Call and any subsequent modifications be heard and voted upon by the Congregation. The Terms of Call shall include reference to any provisions that relate to USERRA.
2. **Review of Mobilization Agreement:** The session shall review and approve the Mobilization Agreement either separately or as an attachment to the Terms of Call. The session shall ensure that the terms and conditions of the Mobilization Agreement are heard and voted upon by the Congregation.

Additional Responsibilities/ Information

Presbytery shall concur with a call by a church for pastor or associate pastor only when COM has assured presbytery that the details associated with a chaplain and related USERRA requirements, have been adequately identified and addressed in Terms of Call and a Mobilization Agreement. Additional rights or benefits for employees on military leave may be mandated in California Labor Law.

ATTACHMENT ONE

Health Care Coverage Options & Additional Benefits

1. Health Care Coverage Options While Employee is on Leave

The Employee or Employing Organization can choose one of the following:

For traditional Benefits Plan Members:

- Coverage from Military;
- Medical coverage only on a leave of absence basis with dues paid on the minimum medical participation basis for a period of up to five years;
- Medical coverage only through the Medical Continuation program with payment of the required subscription dues for a period of up to five years; and/or,
- Medical, death and Disability coverage on a leave of absence basis with dues paid on the last effective salary for a period of up to five years.

For Affiliated Benefits Plan (ABP) Members:

- Coverage from the military only;
- Medical coverage only through the Medical Continuation program with payment of the required subscription dues for a period of up to five years;
- Members of the ABP who leave employment for a period of uniformed service will receive at least 31 days of free medical coverage. The employing organization will pay for this coverage. No Death & Disability coverage is available.
- Members who have two years of service in the traditional Benefits Plan will receive 60 days of coverage for Medical, Death & Disability. Members who have three or more years of Plan participation will receive 90 days of coverage. There is no charge to the employing organization or the Plan Member for this coverage. Effective January 1, 2003, the free coverage period for Medical Benefits is reduced from 60 or 90 days to 30 days. After January 1, 2003 all Members will be provided with only 31 days of free medical coverage.
- Members who have less than two years of participation in the traditional Benefits Plan will receive 31 days of coverage for Medical, Death & Disability. There is no charge to the employing organization or the Plan Member for this coverage.

2. Additional Benefits- 403(b) Plans

- For 403(b) plans and other defined contribution plans there are special rules. An employee returning from military leave must be given the opportunity to participate through "make-up" salary reduction contributions to the plan.

Upon reemployment, that employment organization must make up any scheduled employer contributions, which were not made during the period of uniformed service. Finally, USERRA also permits the suspension of a loan plan during a period of military service. The Board's plans do not permit loans but other church plans may.

- For any optional coverages, the Members and/ or employing organization may elect to continue these coverages while in active military service but not beyond five years. If the Member desires too pay the dues directly, the Member must notify the Board of Pensions. The Member will have the same open enrollment options as any other active Plan Member.

ATTACHMENT TWO

SAMPLE MOBILIZATION AGREEMENT

*(To be added upon receipt from Presbyterian
Council for Chaplains & Military Personnel)*