ESGR®
EMPLOYER SUPPORT OF THE GUARD AND RESERVE

EMPLOYER
RESOURCE GUIDE



WE ALL SERVE

EMPLOYER RESOURCE GUIDE

Employer Support of the Guard and Reserve (ESGR)

End State

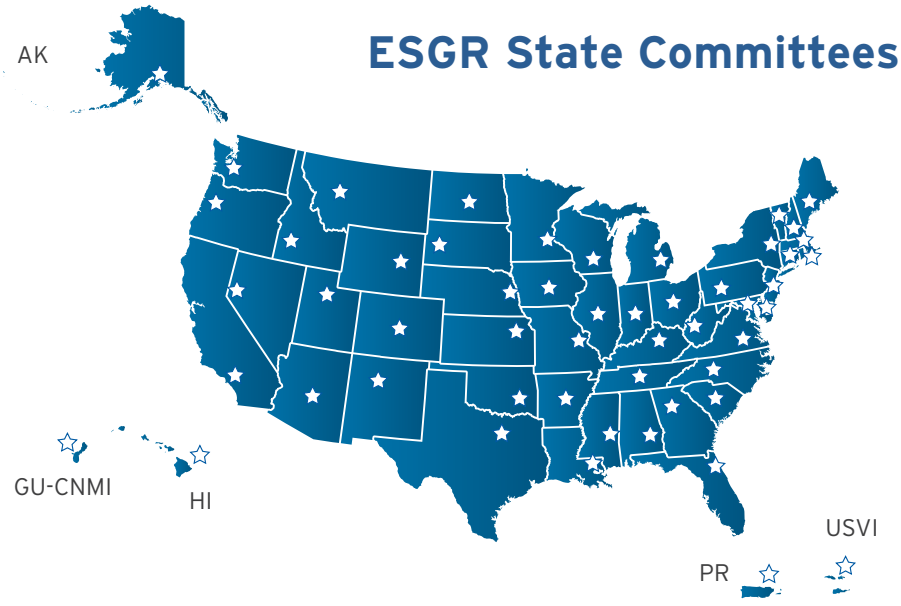
All employers support and value the employment of members of the National Guard and Reserve in the United States and its territories, thereby increasing the readiness of the Reserve Components.

Mission

Employer Support of the Guard and Reserve (ESGR) is a Department of Defense office that develops and promotes supportive work environments for Service members in the Reserve Components through outreach, recognition, and education opportunities that increase awareness of applicable laws and resolve employer conflicts between the Service members and their employers.

ESGR is in your neighborhood!

ESGR committees are in every U.S. state and territory.
Visit www.ESGR.mil to find a committee in your area.



CONTENTS

Why ESGR? 2

USERRA 3-13

ESGR Ombudsman Services 13

Tips for Employers 14

Above and Beyond the USERRA Requirements 15

Military-Civilian Transition Office and Other Resources 16

Top 10 Reasons to Hire Guard and Reserve Members 17

EMPLOYER SUPPORT OF THE GUARD AND RESERVE

Balancing work and military service brings many challenges. We're grateful for more than 50 years of ESGR helping both employers and Guard & Reserve employees meet those challenges.

WHY ESGR?

Almost half of our Nation's military strength resides in the National Guard and Reserve.

These brave Service members perform critical roles such as homeland defense, and serve around the world to ensure our freedom. This would not be possible without the support from employers like you.

The link between members of the National Guard and Reserve and their civilian employers led to the creation of ESGR. A Department of Defense (DoD) program, ESGR assists Reserve Component Service members and their civilian employers, providing information, resources, and assistance to resolve issues.

Paramount to ESGR's mission is encouraging employment of members of the Guard and Reserve who bring integrity, global perspective, and proven leadership to the civilian workforce. Established in 1972, ESGR operates via a network of thousands of volunteers and support staff within all 50 U.S. states, Guam-CNMI, Puerto Rico, the U.S. Virgin Islands, and the District of Columbia.

Through a national and local organizational structure, ESGR provides the following services to assist members of the National Guard and Reserve and their civilian employers:

FEDERAL LAW

ESGR advocates relevant initiatives on behalf of employers, Service members, and their families. We promote the importance of employer support through regular communications to military leadership, and serve as a communication link between employers and DoD.

RECOGNIZE

ESGR presents DoD awards to employers that support employee participation in the National Guard and Reserve.

INFORM

We inform and educate Service members and their civilian employers regarding their rights and responsibilities under the Uniformed Services Employment and Reemployment Rights Act (USERRA).

MEDIATE

Our trained Ombudsmen provide information, consultation and mediation concerning USERRA compliance.

ESGR volunteers, including business executives, senior government representatives, educators, and veterans enable ESGR to bring the message to all employers, large and small, in cities, towns, and rural areas. With help and resources from Headquarters ESGR in Alexandria, Virginia, the 54 ESGR State Committees conduct employer support programs, including boss lifts, briefings with the boss, mediation, and recognition of employers whose policies support or encourage participation in the National Guard and Reserve.

By explaining the mission of the Reserve Component, and by increasing public awareness of the role of the employer, volunteers develop a dialogue among employers, ESGR State Committees, and local Guard and Reserve commanders and members.



USERRA

SUPPORT

Similarly, ESGR encourages employers to sign Statements of Support, publicly demonstrating their commitment to support National Guard and Reserve members they employ.

USERRA

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) is the Federal law that establishes rights and responsibilities for members of the National Guard and Reserve and their civilian employers. USERRA covers employment, reemployment and retention rights when employees serve in the uniformed Services.

Congress provided the statutory authority for investigating alleged violations of USERRA to the Department of Labor (DOL). If DOL finds that an employer has likely violated USERRA, DOL may refer the case to the Department of Justice or Office of Special Counsel for legal action against the employer.

Need more USERRA information? ESGR's website, **www.ESGR.mil**, has a whole section dedicated to USERRA. Another source for USERRA Frequently Asked Questions is 20 CFR Part 1002. The Federal regulation can be found online at **www.dol.gov/agencies/vets/programs/userra**.

ESGR AND USERRA

ESGR informs and educates Service members and their civilian employers regarding their rights and responsibilities governed by USERRA. ESGR does not enforce USERRA, but serves as a neutral, free resource for employers and Service members. ESGR's trained Ombudsmen provide mediation for issues relating to compliance with USERRA. The law applies to all public and private employers in the United States to include Federal, state, territory and local governments, regardless of size. Providing that the Service member met all criteria, employers must provide the following:

- Prompt job reinstatement
- Accumulation of seniority, including pension plan benefits
- Reinstatement of health insurance
- Training/retraining of job skills, including accommodations for the disabled
- Protection against discrimination



QUESTIONS ABOUT USERRA?

To assist with understanding USERRA, ESGR partnered with DOL to create a list of frequently asked USERRA questions and answers.

WHAT CRITERIA MUST THE EMPLOYEE MEET TO BE ELIGIBLE UNDER USERRA FOR REEMPLOYMENT AFTER MILITARY SERVICE?

In general, if the employee has been absent from a position of civilian employment by reason of service in the uniformed Services, they will be eligible for reemployment under USERRA by meeting the following criteria:

- The employer had advance notice of the employee's military obligation;
- The employee has been away from this employer five years or less due to military obligations (excluding exemptions);
- The employee returns to work in a timely manner as defined under USERRA; and,
- The employee has not been separated from uniformed Services with a disqualifying discharge.

USERRA

WHAT ARE THE GUIDELINES USERRA PROVIDES FOR THE EMPLOYEE TO RETURN TO WORK AFTER COMPLETION OF MILITARY SERVICE?

To be eligible for protection under USERRA, the Service member must report back to work or apply for reemployment within the following guidelines:

- 1-30 days of service: Report next scheduled work day after safe travel and 8 hours rest
- 31-180 days of service: Apply within 14 days after completion of service
- 181+ days of service: Apply within 90 days after completion of service

WHAT TYPES OF MILITARY SERVICE ARE COVERED BY USERRA?

USERRA's definition of "service in the uniformed Services" covers all categories of military training and service, including duty performed on a voluntary or involuntary basis, in time of peace or war. Although most often understood as applying to Guard and Reserve military personnel, USERRA also applies to persons serving in the active components of the Armed Forces and other services.

CAN AN EMPLOYER DISCRIMINATE BASED ON PAST OR PRESENT MILITARY SERVICE?

No. An employer must not deny initial employment, reemployment, retention in employment, promotion or any benefit of employment to an individual on the basis of their military service. Additionally, an employer cannot retaliate against an individual by taking any adverse employment action against him or her because the individual has taken an action to enforce a protection afforded any person under USERRA, testified or otherwise made a statement in or in connection with a proceeding under USERRA, assisted or participated in a USERRA investigation or exercised a right provided for by USERRA.



WHAT TYPES OF DISCHARGE OR SEPARATION FROM UNIFORMED SERVICE WILL MAKE THE EMPLOYEE INELIGIBLE FOR REEMPLOYMENT RIGHTS UNDER USERRA?

Reemployment rights are terminated if the employee is:

- Separated from uniformed service with a dishonorable or bad conduct discharge;
- Separated from uniformed service under other than honorable conditions, as characterized by regulations of the uniformed service;
- A commissioned officer dismissed by sentence of a general court-martial; in commutation of a sentence of a general court-martial; or, in time of war, by order of the President;
- A commissioned officer dropped from the rolls due to absence without authority for at least three months; separation by reason of a sentence to confinement adjudged by a court-martial; or, a sentence to confinement in a Federal or state penitentiary or correctional institution.

USERRA

WHAT POSITION IS THE EMPLOYEE ENTITLED TO UPON REEMPLOYMENT?

As a general rule, the employee is entitled to re-employment in the job position that they would have attained with reasonable certainty if not for the absence due to military service. This position is known as the escalator position.

The principle behind the escalator position is that, if not for the period of military service, the employee could have been promoted (or, alternatively, demoted, transferred, or laid off) due to intervening events. The escalator principle requires that the employee be reemployed in a position that reflects, with reasonable certainty, the pay, benefits, seniority, and other job perks they would have attained if not for the period of service.

DOES THE REEMPLOYMENT POSITION INCLUDE ELEMENTS SUCH AS SENIORITY, STATUS AND RATE OF PAY?

Yes. The reemployment position includes the seniority, status and rate of pay that an employee would ordinarily have attained in that position given their job history, including prospects for future earnings and advancement. The employer must determine the seniority rights, status and rate of pay as though the employee had been continuously employed during the period of service.

The seniority rights, status and pay of an employment position include those established (or changed) by a collective bargaining agreement, employer policy or employment practice. In particular, the employee's status in the reemployment position could include opportunities for advancement, general working conditions, job location, shift assignment, rank, responsibility, and geographical location. If an opportunity for promotion, or eligibility for promotion the employee missed during service, is based on a skills test or examination, then the employer should give them a reasonable amount of time to adjust to the employment position and then give a skills test or examination.



CAN THE APPLICATION OF THE ESCALATOR PRINCIPLE RESULT IN ADVERSE CONSEQUENCES WHEN THE EMPLOYEE IS REEMPLOYED?

Yes. USERRA does not prohibit lawful adverse job consequences that result from the employee's restoration on the seniority ladder. Depending on the circumstances, the escalator principle may cause an employee to be reemployed in a higher or lower position, laid off or even terminated. For example, if an employee's seniority or job classification would have resulted in the employee being laid off during the period of service, and the layoff continued after the date of reemployment, then reemployment would reinstate the employee to layoff status. Similarly, the status of the reemployment position requires the employer to assess what would have happened to such factors as the employee's opportunities for advancement, working conditions, job location, shift assignment, rank, responsibility, and geographical location if they had remained continuously employed. The reemployment position may involve transfer to another shift or location, more or less strenuous working conditions or changed opportunities for advancement, depending upon the application of the escalator principle.

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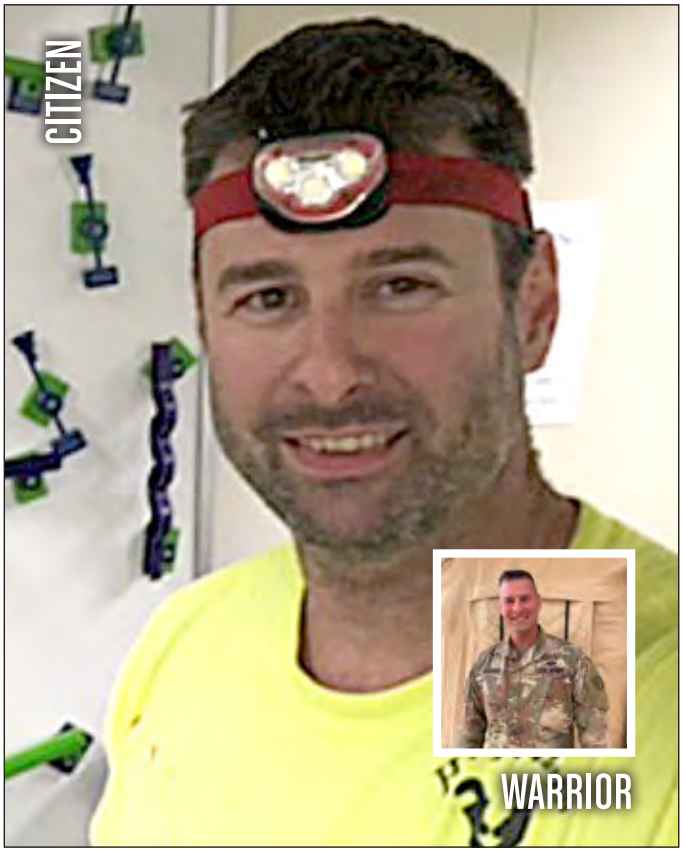

DOES USERRA COVER INDEPENDENT CONTRACTORS?

No. USERRA does not provide protections for independent contractors. In deciding whether an individual is an independent contractor, the following factors need to be considered:

- The extent of the employer's right to control the manner in which the individual's work is to be performed;
- The opportunity for profit or loss that depends upon the individual's managerial skill;
- Any investment in equipment or materials required for the individual's tasks, or their employment of helpers;
- Whether the service the individual performs requires a special skill;
- The permanence of the individual's working relationship; and,
1. Whether the service the individual performs is an integral part of the employer's business.
2. No single one of these factors is controlling, but all are relevant to determining whether an individual is an employee or an independent contractor.

IS THERE A LIMIT ON THE TOTAL AMOUNT OF SERVICE IN THE UNIFORMED SERVICES THAT AN EMPLOYEE MAY PERFORM AND STILL RETAIN REEMPLOYMENT RIGHTS WITH THE EMPLOYER?

Yes. In general, the employee may perform service in the uniformed Services for a cumulative period of up to five years, under the current statute, and retain reemployment rights with the employer.

ARE THERE ANY EXCEPTIONS TO USERRA'S FIVE-YEAR SERVICE LIMIT?

USERRA creates the following exceptions to the five-year limit on service in the uniformed Services:

- Service that is required beyond five years to complete an initial period of obligated service. Some military specialties require an individual to serve more than five years because of the amount of time or expense involved in training. If the employee works in one of those specialties, they have reemployment rights when the initial period of obligated service is completed.
- If the employee was unable to obtain orders releasing them from service in the uniformed Services before the expiration of the five-year period, and the inability was not the employee's fault.
- Service performed to fulfill periodic Guard and Reserve training requirements and includes service performed to fulfill additional training requirements determined and certified by a proper military authority as necessary for the employee's professional development, or to complete skill training or retraining. This includes weekend drills and annual training.

USERRA

- Service performed in a uniformed Service if they were ordered to or retained on active duty under the following circumstances:
  - Involuntary active duty of a military retiree;
  - Involuntary active duty in wartime;
  - Retention on active duty while in captive status;
  - Involuntary active duty during a national emergency;
  - Involuntary active duty for an operational mission;
  - Involuntary retention on active duty of a critical person during time of crisis or other specific conditions;
  - Involuntary active duty by the Coast Guard Reserve for natural or man-made disasters;
- Service performed in a uniformed Service if the employee was ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary concerned.

WHAT IS THE EMPLOYEE'S STATUS WITH THEIR CIVILIAN EMPLOYER WHILE PERFORMING MILITARY SERVICE?

The employee is deemed to be on furlough or leave of absence from the civilian employer while performing military duty. In this status, the employee is entitled to the non-seniority rights and benefits generally provided by the employer to other employees with similar seniority, status and pay that are on furlough or leave of absence. Entitlement to these non-seniority rights and benefits is not dependent on how the employer characterizes the employee's status during a period of service. For example, if the employer characterizes the employee as "terminated" while performing military service, this characterization cannot be used to avoid USERRA's requirement that the employee be deemed on furlough or leave of absence, and therefore entitled to the non-seniority rights and benefits generally provided to employees on furlough or leave of absence.



WHICH NON-SENIORITY RIGHTS AND BENEFITS IS THE EMPLOYEE ENTITLED TO DURING A PERIOD OF SERVICE?

The non-seniority rights and benefits to which an employee is entitled during a period of service are those that the employer provides to similarly situated employees by an employment contract, agreement, policy, practice or plan in effect at the employee's workplace. These rights and benefits include those in effect at the beginning of employment and those established after employment began. They also include those rights and benefits that become effective during the employee's period of service and that are provided to similarly situated employees on furlough or leave of absence.

If the non-seniority benefits to which employees on furlough or leave of absence are entitled vary according

USERRA

to the type of leave, the employee must be given the most favorable treatment accorded to any comparable form of leave when they perform military service. As a general matter, accrual of vacation leave is considered to be a non-seniority benefit that must be provided by an employer to an employee on a military leave of absence only if the employer provides that benefit to similarly situated employees on comparable leaves of absence.

WHAT HEALTH PLAN COVERAGE MUST THE EMPLOYER PROVIDE FOR THE EMPLOYEE UNDER USERRA?

If the employee has coverage under a health plan in connection with their employment, the plan must permit the employee to elect to continue the coverage for a certain period of time as described below:

- When the employee is performing military service, they are entitled to continuing coverage for himself or herself (and dependents if the plan offers dependent coverage) under a health plan provided in connection with the employment.
- The plan must allow the employee to elect to continue coverage for a period of time that is the lesser of:
  1. The 24-month period beginning on the date on which the employee's absence for the purpose of performing service begins; or,
  2. The period beginning on the date on which the employee's absence for the purpose of performing service begins, and ending on the date on which they fail to return from service or apply for a position of reemployment.
- USERRA does not require the employer to establish a health plan if there is no health plan coverage in connection with the employment, or, where there is a plan, to provide any particular type of coverage.
- USERRA does not require the employer to permit the employee to initiate new health plan coverage at the beginning of a period of service if they did not previously have such coverage.

IN A MULTI-EMPLOYER HEALTH PLAN, HOW IS LIABILITY ALLOCATED FOR EMPLOYER CONTRIBUTIONS AND BENEFITS ARISING UNDER USERRA'S HEALTH PLAN PROVISIONS?

Liability under a multi-employer plan for employer contributions and benefits in connection with USERRA's health plan provisions must be allocated either as the plan sponsor provides, or, if the sponsor does not provide, to the employee's last employer before their service. If the last employer is no longer functional, liability for continuing coverage is allocated to the health plan.



HOW DOES USERRA PROTECT AN EMPLOYEE'S PENSION BENEFITS?

On reemployment, the employee is treated as not having a break in service with the employer or employers maintaining a pension plan, for purposes of participation, vesting and accrual of benefits, by reason of the period of absence from employment due to or necessitated by service in the uniformed Services.

IF THE EMPLOYEE IS EMPLOYED WITH THEIR PRE-SERVICE EMPLOYER, IS THE EMPLOYEE'S PENSION BENEFIT THE SAME AS IF THEY HAD REMAINED CONTINUOUSLY EMPLOYED?

In a non-contributory defined benefit plan, where the amount of the pension benefit is determined according to a specific formula, the employee's benefit will be

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the same as though they had remained continuously employed during the period of service. In a contributory defined benefit plan, the employee is allowed to make up contributions in order to have the same benefit as if they had remained continuously employed during the period of service.

In a defined contribution plan, the benefit may not be the same as if the employee had remained continuously employed, even though the employee and the employer make up any contributions or elective deferrals attributable to the period of service, because the employee is not entitled to forfeitures and earnings or required to experience losses that accrued during the period, or periods, of service.

IS THE EMPLOYEE ENTITLED TO ANY SPECIFIC REEMPLOYMENT BENEFITS IF THEY HAVE A DISABILITY THAT WAS INCURRED IN, OR AGGRAVATED DURING, THE PERIOD OF SERVICE?

Yes. A disabled Service member is entitled, to the same extent as any other individual, to the escalator position they would have attained if not for military service. If the employee has a disability incurred in, or aggravated during, the period of service, the employer must make reasonable efforts to accommodate that disability and to help the employee become qualified to perform the duties of their reemployment position.

If the employee is not qualified for reemployment in the escalator position because of a disability after reasonable efforts by the employer to accommodate the disability, and to help the employee to become qualified, the employee must be reemployed in a position according to the following priority. The employer must make reasonable efforts to accommodate the employee's disability and to help them to become qualified to perform the duties of one of these positions:

1. A position that is equivalent in seniority, status, and pay to the escalator position;
2. A position that is the nearest approximation to the equivalent position, consistent with the circumstances of the employee's case, in terms of seniority, status and pay.

Note that a position that is the nearest approximation to the equivalent position may be a higher or lower position, depending on the circumstances.



DOES USERRA PROVIDE THE EMPLOYEE WITH PROTECTION AGAINST DISCHARGE?

Yes. If the employee's most recent period of service in the military was more than 30 days, they must not be discharged, except for cause, for:

- 180 days after the employee's date of reemployment if their most recent period of uniformed service was more than 30 days, but less than 181 days; or for,
- One year after the date of reemployment if the employee's most recent period of uniformed service was more than 180 days.

WHAT CONSTITUTES CAUSE FOR DISCHARGE UNDER USERRA?

The employee may be discharged for cause based either on conduct or, in some circumstances, because of the application of other legitimate nondiscriminatory reasons. In a discharge action based on conduct, the employer bears the burden of proving that it is reasonable to discharge the employee for the conduct in question, and that they had notice, which was expressed or can be fairly implied, that the conduct would constitute cause for discharge. If, based on the application of other legitimate nondiscriminatory reasons, the employee's job position is eliminated, or the employee is placed on layoff status, either of these situations would constitute cause for purposes of USERRA.

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The employer bears the burden of proving that the employee's job would have been eliminated or that they would have been laid off.

WHAT OPTIONS ARE AVAILABLE FOR CONFLICT RESOLUTION ISSUES CONCERNING EMPLOYMENT, REEMPLOYMENT OR OTHER RIGHTS AND BENEFITS UNDER USERRA?

In the event a conflict arises that an employee and employer are unable to resolve, ESGR's trained Ombudsmen can provide informal mediation. Call ESGR's customer service center at 1-800-336-4590 "option 1" to reach one of our trained Ombudsmen, or email us at OSD.USERRA@mail.mil.

If the Service member or employer chooses to open a formal investigation regarding a USERRA violation, they may do so by contacting DOL.

Another option available would be to hire a private attorney.

DOES USERRA REQUIRE THE EMPLOYER TO USE A SENIORITY SYSTEM?

No. USERRA does not require the employer to adopt a formal seniority system. USERRA defines seniority as longevity in employment together with any employment benefits that accrue with, or are determined by, longevity in employment. In the absence of a formal seniority system, such as one established through collective bargaining, USERRA looks to the custom and practice in the place of employment to determine the employee's entitlement.

DOES AN INDIVIDUAL HAVE RIGHTS UNDER USERRA EVEN IF THEY ARE AN EXECUTIVE, MANAGERIAL OR PROFESSIONAL EMPLOYEE?

Yes. USERRA applies to all employees. There is no exclusion for executive, managerial or professional employees.



WHICH EMPLOYEES ARE COVERED BY USERRA?

USERRA applies to all public, private and government employers in the United States, large and small.USERRA applies to foreign employers doing business in the United States and American companies operating in foreign countries, unless compliance would violate the law of the foreign country in which the workplace is located.

DOES USERRA PROTECT AGAINST DISCRIMINATION IN INITIAL HIRING DECISIONS?

Yes. A person, institution, organization or other entity that has denied initial employment to an individual is in violation of USERRA's anti-discrimination provisions. Under the act, an employer need not actually employ an individual to be their "employer," if initial employment was denied on the basis of the individual's military affiliation, application for membership, performance of service, application for service, or obligation for service in the uniformed Services. For example, if the individual has been denied initial employment because of their obligations as a member of the Guard or Reserve, the company or entity denying employment is an employer for purposes of USERRA. Similarly, if an entity withdraws an offer of employment because the individual is called upon to fulfill an obligation in the uniformed Services, the entity withdrawing the employment offer is an employer for purposes of USERRA.

USERRA

IS AN APPLICATION FOR REEMPLOYMENT REQUIRED TO BE IN ANY PARTICULAR FORM?

An application for reemployment need not follow any particular format. The employee may apply verbally or in writing to the pre-service employer or to an agent or representative of the employer who has apparent responsibility for receiving employment applications. The application should indicate that the employee is returning from service in the uniformed Services and that they seek reemployment with the pre-service employer. The employee is permitted, but not required to identify a particular reemployment position in which they are interested.

IS THE EMPLOYEE REQUIRED TO SUBMIT DOCUMENTATION TO THE EMPLOYER IN CONNECTION WITH THE APPLICATION FOR REEMPLOYMENT?

Yes, if the period of service exceeds 30 days and if requested by the employer to do so. If the employee submits an application for reemployment after completion of a period of service of more than 30 days, they must, upon the request of the employer, provide documentation to establish that:

- The reemployment application is timely;
- The employee has not exceeded the total time limit, currently five years, on the duration of service;
- The employee's separation or dismissal from service was not disqualifying.

WHAT DOCUMENTS SATISFY THE REQUIREMENT THAT THE EMPLOYEE ESTABLISH ELIGIBILITY FOR REEMPLOYMENT AFTER MORE THAN 30 DAYS OF SERVICE?

Documents that satisfy the requirements of USERRA include the following:

- DoD Form 214, Certificate of Release or Discharge from Active Duty;



- Copy of duty orders prepared by the facility where the orders were fulfilled and carrying an endorsement indicating completion of the described service;
- Letter from the commanding officer of a Personnel Support Activity or someone of comparable authority;
- Certificate of completion from military training school;
- Discharge certificate showing character of service; and;
- Copy of extracts from payroll documents showing periods of service.

The types of documents necessary to establish eligibility for reemployment will vary from case to case. Not all of these documents are available or necessary in every instance to establish reemployment eligibility.

USERRA

WHEN IS AN EMPLOYEE ENTITLED TO BE REEMPLOYED BY THEIR CIVILIAN EMPLOYER?

The employer must promptly reemploy the employee when they return from a period of service if the employee meets USERRA's eligibility criteria. "Prompt reemployment" means as soon as practical under the circumstances of each case. Absent unusual circum-stances, reemployment must occur within two weeks of the employee's application for reemployment. For example, prompt reinstatement after weekend Guard duty generally means the next regularly scheduled working day. On the other hand, prompt reinstatement following several years of active duty may require more time, because the employer may have to reassign or give notice to another employee who occupied the returning employee's position.

WHAT SENIORITY RIGHTS DOES AN EMPLOYEE HAVE WHEN REEMPLOYED FOLLOWING A PERIOD OF MILITARY SERVICE?

The employee is entitled to the seniority and seniority-based rights and benefits that they had on the date military service began, plus any seniority and seniority-based rights and benefits the employee would have attained if they had remained continuously employed.

ARE FEDERAL EMPLOYEES PROTECTED BY USERRA?

Yes. Federal employees have the same USERRA rights and responsibilities as non-Federal employees. They can request DOL assistance through ESGR or the DOL/Veterans' Employment and Training Service (VETS). When appropriate, DOL VETS can refer a case to OSC, for OSC to provide representation and/or litigation before the Merit Systems Protection Board (MSPB), or VETS can inform them of their private right to appeal to the MSPB.

MUST THE EMPLOYEE GIVE ADVANCE NOTICE TO THEIR EMPLOYER FOR A LEAVE OF ABSENCE DUE TO MILITARY SERVICE?

Yes. The employee, or an appropriate officer of the uniformed Service in which their service is to be performed, must notify the employer that the employee intends to leave the employment position to perform military service. If the employee has more than one employer, each employer must be notified of the impending leave of absence due to military service.

USERRA regulations provide that an "appropriate officer" can give notice on the employee's behalf. An "appropriate officer" is a commissioned, warrant, or non-commissioned officer authorized to give such notice by the military branch concerned. The employee's notice to the employer may be either verbal or written. The notice may be informal and does not need to follow any particular format.

Although USERRA does not state how far in advance notice must be given to the employer, an employee should provide notice as far in advance as is reasonable under the circumstances. DoD "strongly recommends advance notice to civilian employers be provided at least 30 days prior to departure for uniformed Service when it is feasible to do so."

IS THE EMPLOYEE REQUIRED TO GET PERMISSION FROM THEIR EMPLOYER BEFORE LEAVING TO PERFORM MILITARY SERVICE?

No. The employee is not required to ask for or get their employer's permission to leave to perform military service. The employee is only required to give the employer notice of pending service.

USERRA

MUST THE EMPLOYEE TELL THEIR EMPLOYER PRIOR TO LEAVING THAT THEY WILL SEEK REEMPLOYMENT UPON COMPLETION OF MILITARY SERVICE?

No. When the employee leaves the employment position to begin a period of service, they are not required to tell the civilian employer that they intend to seek reemployment after completing uniformed service.

Even if the employee tells the employer before entering or completing uniformed Service that they do not intend to seek reemployment after completing the uniformed service, the employee does not forfeit the right to reemployment. The employee is not required to decide in advance of leaving the civilian employment position whether they will seek reemployment after completing uniformed Service.

HOW MUCH MUST THE EMPLOYEE PAY IN ORDER TO CONTINUE HEALTH PLAN COVERAGE?

If the employee performs service in the uniformed Service for fewer than 31 days, they cannot be required to pay more than the regular employee share, if any, for health plan coverage. If the employee performs service in the uniformed Service for 31 or more days, they may be required to pay no more than 102% of the full premium under the plan, which represents the employer's share plus the employee's share, plus 2% for administrative costs. USERRA does not specify requirements for methods of paying for continuing coverage.

Health plan administrators may develop reasonable procedures for payment, consistent with the terms of the plan.

ESGR OMBUDSMAN SERVICES

INFORMATION AND MEDIATION

ESGR is not an enforcement agency and does not offer legal counsel or advice. The ESGR Ombudsman Services Program provides information and mediation of issues relating to compliance with USERRA. ESGR ombudsmen are neutral parties in resolving disputes between civilian employers and their employees serving in the uniformed Services. They work to resolve issues to the satisfaction of all parties.

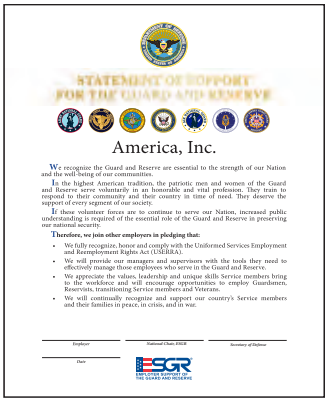
Hundreds of trained ombudsmen, located in all states and territories, are available to promptly respond to inquiries and conflicts presented by employees or their civilian employers. Most problems result from poor communication between employers and their employees or from a lack of familiarization with the rights and responsibilities of each as defined by law.

CONTACT A USERRA EXPERT

ESGR's customer service center is available during business hours to provide answers to common USERRA questions or refer cases to a trained ombudsman. The customer service center is open Monday through Friday from 0800-1800 EST, excluding Federal holidays. To reach the customer service center do one of the following:

- Call 1-800-336-4590, option 1.
- Use the ESGR Request Assistance Tab located at **www.ESGR.mil**
- Email questions to **OSD.USERRA@mail.mil**

TIPS FOR EMPLOYERS


STATEMENT OF SUPPORT
FOR THE GUARD AND RESERVE

America, Inc.

We recognize the Guard and Reserve are essential to the strength of our Nation and the well-being of our communities.

In the highest American tradition, the patriotic men and women of the Guard and Reserve serve voluntarily in an honorable and vital profession. They train to respond to their community and their country in time of need. They deserve the support of every segment of our society.

If these volunteer forces are to continue to serve our Nation, increased public understanding is required of the essential role of the Guard and Reserve in preserving our national security.

Therefore, we join other employers in pledging that:

- We fully recognize, honor and comply with the Uniformed Services Employment and Reemployment Rights Act (USERRA).
- We will provide our managers and supervisors with the tools they need to effectively manage those employees who serve in the Guard and Reserve.
- We appreciate the values, leadership and unique skills Service members bring to the workforce and will encourage opportunities to employ Guardsmen, Reservists, transitioning Service members and Veterans.
- We will continually recognize and support our country's Service members and their families in peace, in crisis, and in war.

Employer

Date

National Chair, ESGR

Secretary of Defense

ESGR
EMPLOYER SUPPORT OF THE GUARD AND RESERVE

The National Guard and Reserve are an integral part of our military.

As an employer, you are vital in enabling your employees who are members of the National Guard and Reserve to serve our country. Moreover, your active support and encouragement are critical to their success.

HERE ARE SOME SUGGESTIONS ON HOW YOU CAN HELP:

- Learn more about the role of the National Guard and Reserve. Attend open houses and public functions at local military units. Talk about the National Guard and Reserve with military and civilian leaders in your community. Ask your employees what they do and how they fit into the "big picture" of national defense.
- Get to know your employees' military commanders and supervisors. Ask them to provide you with advance notice of your employees' annual military duty schedule and work out conflicts as early as possible.
- Examine your personnel policies to see how they accommodate and support participation in the National Guard or Reserve. For example, do they include provisions for military leave of absence exclusive of earned vacation time? Do they ensure job opportunities and benefits equivalent to those of other employees?
- Get your entire organization to promote your support of the National Guard and Reserve. Explain your position and address concerns as they may arise.
- Encourage employee participation in the National Guard and Reserve. Recognize and publicize their dedication and commitment to your business and the Nation. Apply the training they receive from military duty. Your employees' service in the National Guard and Reserve enhances their job performance and value within your organization.
- Discuss with your employees their service requirements before problem situations arise and keep an open dialogue to prevent further issues.
- Seek assistance from ESGR. Call 1-800-336-4590 to speak with an ombudsman. Ombudsmen serve as confidential, neutral liaisons for employers and employees who seek assistance or clarification regarding their rights and responsibilities.
- For more detailed information about specific employment rights and responsibilities, **www.ESGR.mil** is a great resource and includes a link to USERRA.
- Don't hesitate to call upon your employee's military commander or supervisor if you have a question or concern. They face some of the same challenges you do in their business and know that it is in everyone's best interest to work together. By taking a more active role in supporting the members of the National Guard and Reserve who work for you, you'll improve the quality of life for all your employees, you'll directly enhance the success of your organization, and you'll provide an invaluable service to the Nation.
- Become an ESGR volunteer! Many ESGR volunteers are employers just like you. Volunteering with ESGR is a great way to show your support for your National Guard and Reserve employees while benefiting other employers like yourself.
- Join thousands of employers by signing a Statement of Support for the National Guard and Reserve. Display it prominently for all your employees and visitors to see.

ABOVE AND BEYOND USERRA

Many employers do not stop at the requirements of the law, but instead go "above and beyond" in assisting and supporting their Service member employees. Employer support is critical to our national security. ESGR's award program was created to recognize employers who take extra steps to support their National Guard and Reserve Service members.

There are many ways an employer, large or small, public or private, can support military employees. As you consider ways to further enhance support of your military employees, take a look at some examples of award winning support employers like you have provided. Some of these "best practices" might be easily adopted and implemented in your workplace.

Employers provide paid military leave to employees who are members of the National Guard and Reserve.

- Beyond paid leave, some employers offer differential pay to make up the difference in salary when a military employee is activated.
- Employers often continue benefits, such as health insurance, to family members while an employee is deployed.
- Employers host care package drives, bringing together employees to prepare and mail packages to deployed employees and other members of their military units, especially during holidays.
- Employers of all sizes have established formal military support groups, often championed by a senior leader within the company, to provide consistent support before, during and after periods of military service.
- Employers mentor other businesses to help establish military-friendly policies and support programs.
- Employers keep employees up-to-date on company activities through internal online forums, company newsletters and other means of communication.
- Employers, large and small, collect donations and volunteer time to support the wide array of military support organizations benefiting military members and their families across the Nation.
- Employers often host farewell and welcome home ceremonies.
- Employers recognize military service at company events around significant military holidays, such as Veterans Day, Memorial Day, and Independence Day.
- Employers provide home and car repair services, along with lawn and yard maintenance.
- Employers assist with childcare needs and employ spouses of deployed members.
- Employers extend holiday cheer to the families of deployed members by inviting them to company functions geared toward families.

For more information on ESGR and all of our resources, please visit **www.ESGR.mil** Additionally, to learn more about the DoD awards program noted above, go to: **www.ESGR.mil/Employer-Awards**





MILITARY-CIVILIAN TRANSITION OFFICE (MCTO) – OTHER RESOURCES

RESOURCES FOR SERVICE MEMBERS AND FAMILIES

The DoD Military-Civilian Transition Office (MCTO) harmonizes oversight of transition assistance and reintegration, and employment services of the Transition Assistance Program (TAP) and the Yellow Ribbon Reintegration Program (YRRP), and the DOD SkillBridge Program for the active and reserve components. MCTO ensures transitioning Service members are able to successfully return to their civilian life, while also addressing the challenges National Guard, and Reserve Service members and their families face as they prepare, and return from deployment or mobilization.

TRANSITION ASSISTANCE PROGRAM (TAP)

DoD TAP is an outcome-based statutory program (10 USC, Ch. 58) that bolsters opportunities, services, and training for transitioning Service members in their preparation to meet post-military goals.

The mandatory components of TAP are applicable for all Service members who have at least 180 continuous days or more on active duty, including the National Guard and Reserve.

During TAP, transitioning Service members are provided information on their benefits and entitlements including ESGR support and USERRA. This ensures Reserve Component members, and those considering continuing their military service in the Reserve or National Guard, are equipped with the information and resources to protect their employment rights.

The entire TAP curricula and additional Military Life Cycle (MLC) modules are available to access by transitioning Service members (including Reserve and Guard members regardless of their active duty time), veterans, family members, caregivers, and interested members of the public at: **https://tapevents.mil/courses**

YELLOW RIBBON REINTEGRATION PROGRAM (YRRP):

The Yellow Ribbon Reintegration Program (YRRP) is a Department of Defense-wide effort to promote the well-being of National Guard and Reserve members, their families and communities, by connecting them with resources throughout the deployment cycle. Through Yellow Ribbon events, Service members and loved ones connect with local resources before, during, and after deployments. Reintegration during post-deployment is a critical time for members of the National Guard and Reserve, as they often live far from military installations and other members of their units. Commanders and leaders play a critical role in assuring that Reserve Service members and their families attend Yellow Ribbon events where they can access information on health care, education and training opportunities, financial, and legal benefits. We work with government partners, including the Small Business Administration and Departments of Labor and Veterans Affairs, to provide up-to-date and relevant information to the members of the All-Volunteer force and their families.

Website: **www.YellowRibbon.mil**

Email: **osd.yrrp@mail.mil**

DOD SKILLBRIDGE

The DoD SkillBridge Program bridges industry employment skills training, apprenticeships, or internship opportunities with employer partners during the last 180 days of service; connecting Service members with real-world civilian work experiences and on-the-job employment opportunities prior to their military-to-civilian transition.

Website: **skillbridge.osd.mil**

ADDITIONAL RESOURCES

Department of Labor (DOL) Veterans' Employment and Training Service (VETS)
Website: **www.DOL.gov/vets**
Phone: **1-866-4-USA-DOL**
DOL VETS, Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

Small Business Administration (SBA)
Website: **www.SBA.gov/vets**
Phone: **1-800-U-ASK-SBA**
SBA
409 Third Street, SW
Washington, DC 20416



TOP TEN REASONS TO HIRE MEMBERS OF THE GUARD AND RESERVE

WHY MEMBERS OF THE NATIONAL GUARD AND RESERVE MAKE GOOD EMPLOYEES

10. GLOBAL PERSPECTIVE
Military employees have experiences that directly relate to current world events.

9. ON-TIME, ALL THE TIME
Military employees know that every second counts.

8. FIRST CLASS IMAGE
Military employees understand a professional appearance is a must.

7. CALM UNDER PRESSURE
Military employees are resilient and know how to handle stress, both on and off the job.

6. "CAN-DO ATTITUDE"
Military employees possess critical skills and understand that nothing is impossible.

5. PHYSICAL CONDITIONING
Military employees are in top physical condition, resilient, and drug-free.

4. UNDERSTAND DIVERSITY
Military employees have succeeded in a very diverse workplace.

3. RESPONSIBILITY
Military employees know how to make decisions and take responsibility for meeting objectives.

2. PROFESSIONALISM
Military employees have a high degree of integrity, an air of self-respect, and a sense of honor.

1. LEADERSHIP
Military employees are excellent leaders and outstanding followers: loyal, dedicated, and highly motivated.

ESGR DEVELOPS AND PROMOTES A CULTURE IN
WHICH ALL AMERICAN EMPLOYERS
SUPPORT AND VALUE
THE MILITARY SERVICE OF THEIR EMPLOYEES.

WWW.ESGR.MIL 1-800-336-4590



THANK YOU
FOR YOUR SUPPORT!

Employer Support of the Guard and Reserve

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Alexandria, VA 22350

1-800-336-4590 | www.ESGR.mil

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