

## **Employer Support of the Guard and Reserve (ESGR)**

As the Concho Valley reads my column today, I will not be in my office on the ASU campus. Instead, I'll be performing my Air Force reserve duty at Goodfellow AFB. As I have begun performing my reserve duty, it occurred to me many employers do not know much about Employer Support of the Guard and Reserve and the associated laws.

Most civilian employers do not expect themselves to be considered such an integral part of our national defense. But you are! Recently our local Army National Guard unit was deployed to Iraq for a year. These soldiers must have some comfort to know their jobs will still be here when they return. Otherwise, why would anyone even consider joining the guard or reserve?

The **Uniformed Services Employment and Reemployment Rights Act (USERRA)** applies to employers in the United States, regardless of the size of their business. It protects part-time positions, unless the employment is for a brief, non-recurring period and is not expected to last indefinitely or for a significant period. USERRA does not protect independent contractors and others considered to be self-employed.

According to the USERRA, employers must reemploy guard and reservists when they return. Employees returning from military service must be reemployed in the job that they would have attained had they not been absent for military service and with the same seniority, status and pay, as well as other rights and benefits determined by seniority. Employees who are disabled during their military service must also be accommodated in a position most nearly approximating the original position.

The service a military member performs may not be considered a break in civilian employment and the military service must be considered service with an employer for vesting and benefit accrual purposes. The law provides for a five year CUMULATIVE limit on the time an employee is away from the job. However, this time limit can be extended for several reasons. If an employee was hospitalized for or is convalescing from an illness or injury incurred in, or aggravated during military service, the limit may be extended up to an additional two years. Weekend drills (inactive duty training), annual training, involuntary active duty extensions (including training certified as necessary by your service), and recalls due to a war or national emergency are not counted in the five-year cumulative total.

The law does not differentiate between voluntary duty and involuntary recall or between active duty and "inactive duty." Actually, the employee does not even have to "request" permission to be absent for military leave, but rather simply provide notification of pending service. There is no requirement for this notification to be in advance of the service, nor does notification have to be in writing. It is hoped that the employee could provide some notification, however this is sometimes not possible due to the nature of some military operations.

The term "inactive duty" refers to the weekend duty or drills that most unit reservists and guardsmen perform. It should be noted, however, there is another category of reservist called Individual Mobilization Augmentee (IMA). These service members usually perform work with an active duty unit and therefore cannot perform duty on a weekend. These people may need to

take days out during the week and sometimes this can be difficult to deal with, but this category often provides much more flexibility in scheduling.

Much of my article has stated the responsibilities of the employer. But what about the employee? Reservists and guardsmen must do their best to help their employer understand the system in which we work. Help your employer understand what is happening with your military career. Sometimes it's tough to tell your boss that you will need to leave for 6 months, but the sooner he or she learns of this, the quicker they can find a temporary replacement. What else can you do? Did you know that there are awards for employers? Employers and supervisors who go above and beyond the requirements of the USERRA law can be nominated for the Patriot's Award. Reward your boss with public recognition.

When both employers and employees understand their rights and responsibilities, the military member is then free to go do the work they need to do without worry of not having a job when they return.

All employers of guard/reservists should go to [www.esgr.org](http://www.esgr.org) or call 1-800-336-4590; there are trained people there to answer your specific questions. There is so much more information on the website pertaining to this USERRA and ESGR.

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