

# ESGR / USERA Briefing

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## USERRA Training

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# Background

- 1,000,000+ reservists activated since 9/11
- 40% of military is in National Guard / Reserves



# ESGR

Mission is to foster a culture in which all employers support and appreciate the military service and employment of their employees in the National Guard / Reserves



## ESGR

- Employer outreach
- Military outreach
- Mediation



# USERRA

Uniformed Services Employment  
and Reemployment Rights Act



# Rights of Service Members

Free from discriminatory adverse personnel actions based on military membership.



# Did Raniyah's employer violate USERRA?

Raniyah was turned down for a job at McDonald's because her weekend drills with the National Guard conflicted with mandatory weekend work at the restaurant.



## Did Jake's employer violate USERRA?

Jake's employer found out Jake was volunteering for military activities without being called up. Jake was subsequently told by his employer to stop volunteering.



## Did Vicki's employer violate USERRA?

While Vicki was deployed with the National Guard she was laid off from her job with the Acme Corporation because of a company reorganization.



## Did Dave's employer violate USERRA?

Dave requested time off from work for 2 months of military duty. Since this is during the company's busy season the supervisor said he would approve the request, but with the following stipulations:

- a. If he finds someone to cover his shifts.
- b. If he uses his vacation time prior to going on LWOP like all other employees are required to do for extended absences.
- c. If he agrees to respond to work emails while on military duty.



# Did Landen's employer violate USERRA?

Landen was fired after notifying his employer of an upcoming deployment. Landen was told he has no recourse because his employer has less than 10 employees which is a requirement to be covered by USERRA.



# Did Brian's employer violate USERRA?

Brian was fired shortly after returning from a deployment for sealing a computer. Brian feels he's protected from discharge under 38 USC 4316(c).



# Discrimination Prohibited

- **Shall not be denied** initial employment, reemployment, promotion, benefit, retention
  - Because of service, application to perform service, membership, etc.
  - Military service only has to be **a motivating factor**, not the sole reason for the action
  - Employer has burden to prove military was not a factor in the adverse personnel action
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# Rights of Service Members



Prompt reemployment  
following military service

# Did Tate's employer violate USERRA?

- Tate returned from a 9-month deployment. When he submitted a request for reemployment, it was denied.



# Did Greg's employer violate USERRA?

Greg was working the day shift prior to being deployed. When he returned from a year long deployment he was assigned to the night shift.



# Did Jennifer's employer violate USERRA?

Jennifer, a Sioux City police officer, was reemployed at the same rate of pay, same seniority, and same shift she had prior to her 4 years of service in the Army.



# Prompt Reinstatement

- Escalator Principle – Returning service member is reemployed in the position they would have occupied had they remained continuously employed
  - Service member returns as if continuously employed based on:
    - The rate of pay
    - The amount of seniority
    - Status (i.e. working conditions, job duties, shift assignment, job location, opportunities for advancement)
  - Refresher Training/Retraining must be provided
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# Gates to Prompt Reemployment

- Be an employee of that organization
- Leave to perform military duty
- Provided advanced notice
- Cumulative service of less than 5 years
- Separate under honorable conditions
- Report back to work or request reemployment within the required time limits



# Employee Definition

- Includes positions of employment held prior to military service
- Includes full-time, part-time, seasonal, probationary, temporary
- Includes both public & private sector employers, regardless of size
- Does not include brief & non-recurrent jobs



# Did Matt's employer violate USERRA?

Matt is not in the military, but he's considering joining the National Guard. He requested time-off to take the ASVAB, the aptitude exam to get in the military. His request was denied.



# Examples of covered military duty:

- Active Duty, weekend drills, 2-week annual training
- Military Training
- Voluntary or involuntary duty
- Initial enlistment testing includes fitness exams
- Full-time National Guard Duty
- Peace time or war time
- Funeral Honors
- State active duty:
  - Less than 14 days: Iowa Code
  - 14 days or more: USERRA



# Prior Noticer

- Advanced verbal or written notice to employer provided prior to service
- There's no minimum notice requirement, but we recommend at least 2 months



# Duration of Service

5-year **cumulative** limit on military duty (with each employer)

## **Exceptions**

- Service required beyond 5 years
- Person is unable to obtain release due to no fault of their own (stop loss)
- Required training for Guard/Reservists
  - 2-week training, drills, developmental training
- Ordered to involuntary service or retained to active duty due to domestic or national security
- Contingency operations i.e. Operation Iraqi Freedom

# Character of Discharge

Military service that disqualifies the service member from asserting USERRA Rights:

- Dishonorable
- Bad conduct
- Other than honorable



# Did Taniqua's employer violate USERRA?

Taniqua returned from a 9-month deployment a week ago. While grocery shopping she ran into her boss who told her they've been holding her job open, which has been a burden on her co-workers, but now that she's back she needs to be a work Monday morning or she's fired.



# Deadline of Return

- Depends on **DURATION** of service
- Less than 31 days – report for work the first fully scheduled shift after the completion of travel time & 8 hours of rest
  - Include fitness-for-service exams.
- 31-180 days – apply within 14 days
- 181 days or more – apply within 90 days
- Hospitalization or convalescence (2 yrs.)

\*\* Reporting back to civilian employer:

If gone over 30 days can take the full 14 or 90 days \*\*

\*\*Must be reemployed in a reasonable amount of time – 2 weeks or less \*\*

# Reporting for Military Duty

Service members have a right to an authorized absence prior to military duty to:

- Report for duty in a rested condition
- Get personal affairs in order prior to extended duty



# Health Insurance

- Continued health insurance coverage through civilian job (if elected)
    - If service is less than 31 days: no additional cost
    - If service is over 31 days or more: up to 102 % of full premium
  - Right to reinstatement of coverage upon reemployment (no waiting periods)
  - Get decision to continue or discontinue health insurance in writing
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# Additional Rights

- Vacation time: Service members can or not use at their discretion
  - Finding a replacement: Employer is solely responsible for this
  - Permission required: Service member does not need the employer's permission for military service
  - Requesting a change: Civilian employers can request a change to the military duty
  - Employer changing service member's days off to coincide with monthly drills: Not permitted.
  - Doing civilian work while on military duty: An arrangement can be made with approval of all involved
  - Statute of Limitations: None on USERRA allegations
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# Example



# Options for service members who feel their rights were violated:

- Let it go
- Hire a lawyer (only option that costs the service member money)
- Submit an inquiry to an ombudsman
- Request mediation from an ombudsman
- File a complaint with the Department of Labor



# Guidance to Employers

- Stay in contact with service member
  - Aware of timing and duration of service
  - Care packages / cards are appreciated
- Stay in contact with service member's family
  - Help with stuff like snow removal
- Support employees who are spouses of service members
- Recognize employees in reserves
  - Military holidays, newsletter articles, sendoff and welcome home ceremonies for deployments
- Consider establishing a military support group

# Guidance to Employers

- Reservists make outstanding employees. They
  - Are leaders, understand diversity, are physically fit, have can do attitude, stay calm under pressure,....
  - Must maintain the same high standards as their full-time, active-duty counter-parts
- Don't hesitate to contact ESGR
- The guidance is free & confidential



# Volunteering with ESGR

- Currently about 70 volunteers statewide
- Good mix of veterans and non-veterans
- ESGR.MIL > volunteer
- Criteria for volunteering:
  - A desire to serve our great country
  - A passion for helping people
  - A willingness for doing it for free

What else you should know about volunteering

- Prior military service not required
- 4 hours a year minimum of your time



# Questions

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