

## Supporting our troops and our employees

The Workforce Institute's November editorial is devoted to America's armed forces - over 1.4 million brave men and women serving domestically and overseas. This includes full time active duty personnel, and a large contingent of part time reservists and those serving in the National Guard.

In fact, almost half of our national defense is dependent upon permanent part-time military personnel who also hold full-time civilian jobs. In the largest deployment of the Military Reserves and National Guard since World War II, they contributed over 41 million duty days in 2002, 62 million in 2003, 65 million in 2004, and 68 million in 2005.

As these numbers suggest, many employers have been affected as Guard and Reserve members participate in monthly training sessions and military exercises as well as yearly training camps. As an employer, you are legally required to support an employee's commitment to military service, even when reservists are called up for active duty with little warning.

This article will provide:

- A glimpse of your legal obligations
- Where to learn about USERRA
- Getting the work done in spite of absences
- Coping with re-entry
- Is offering a hero's welcome a good idea?
- What can you do now?
- Best practices – what the best companies are doing

### ***Your legal obligations***

As an employer, you have legal obligations which are spelled out in the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).

The act provides reemployment protection and other benefits for veterans and employees who perform military service. Under USERRA, if a military member leaves a civilian job for service in the uniformed services, he is entitled to return to the job, with accrued seniority, provided he meets the law's eligibility criteria. USERRA applies to voluntary as well as involuntary service, in peacetime as well as wartime, and the law applies to virtually all civilian employers, including the Federal Government, State and local governments, and private employers, *regardless of size*.

Requirements under USERRA are typically interpreted in a light most favorable to the veteran and the employer has the burden of proof. There is no statute of limitations on USERRA violations.

Most of the complaints or problems arising between employers and employees have been due to a lack of information or a misunderstanding of the rights and benefits. However, according to Kenneth Jordan, executive director of the National Committee for Employer Support for the Guard and Reserve (NCESGR), the good news is that 90% of the inquiries that come into ESGR committees are resolved by that body and do not get escalated to the Department of Labor .

### ***Where to learn about USERRA***

This article is intended to be for informational purposes only. Its contents should not be considered a substitute for legal advice. To read the statute and learn about which employees are covered, the prohibitions against discrimination and retaliation, rights and benefits while on duty and upon re-employment, notice requirements, enforcement, and remedies, go to <http://www.dol.gov/elaws/userra.htm>.

The Department of Labor's Veterans' Employment and Training Service (VETS) is dedicated to helping veterans and service members succeed in the workforce. Their website, <http://www.dol.gov/vets> provides a fact sheet, a workplace poster, frequently asked questions, and a resource guide for employers.

ESGR offers an excellent booklet, "Employer Resource Guide for Business Leaders" that contains information about the rights, responsibilities and benefits of employing a member of the Reserve. See <http://www.esgr.org/employers2/default.asp> for employers' awards and recognition, small business assistance, other resources, and answers to frequently asked questions. Also on this site, you can download USERRA in PDF format at <http://esgr.org/userrathelaw.asp>.

### ***Getting the work done in spite of sudden absences***

Usually, employees know months in advance when they're going on training, but they might not be able to predict or schedule when they get called up for active duty. ESGR encourages the employee's frontline supervisor to speak to the employee's military supervisors and ask for advance notice of the duty schedules in order to prepare for the employee's absences.

The employee is not responsible for altering the work schedule or finding a replacement, so when they are absent, companies have to find ways to "pick up the slack". The first line supervisor is the usually the person who is left trying to manage the absence. In some cases and depending on the nature of the work, companies can hire temporary or agency workers. In other cases, the supervisor will off-load work to existing staff or will postpone projects. Most will refrain from hiring a full-time, permanent replacement because the employee is entitled to the same or a similar job upon return from military service.

## ***Coping with the re-entry***

USERRA specifies that returning military employees are entitled to the same or similar jobs upon their return, plus returning employees are subject to the “escalator principle”. This means that the returning employee must be treated as if he or she had been continuously employed. For example, they must be re-employed in the job that they would have attained if they had not been absent, and they are entitled to the seniority, status, pay and other benefits to which they would have been entitled had they not gone on leave.

If the employee returns with a disability, employers must comply with USERRA, ADA and state disability discrimination laws.

## ***Is offering a hero’s welcome a good idea?***

When the military-employee returns, there is a delicate balance to be achieved – you must respect his or her privacy and yet let the person know that the lines of communication are open.

Some employees will enjoy public hero’s welcome that puts them squarely in the spotlight and, and others might need a quiet re-entry and time to adjust. Don’t assume – ask the employee to express his or her preferences.

Recognize when to enlist the employee assistance program or professional help. Military chaplains can provide guidance and suggestions on how to help soldiers with their re-entry into civilian life. About 30 percent of individuals who spend time in a war zone develop post-traumatic stress disorder (PTSD), and the odds are over twice as high for those who were in high-risk situations. Although the signs may not appear for several weeks after veterans return, common responses include anger, depression, increased use of alcohol or drugs, and difficulty with interpersonal relationships.

If returning personnel exhibit PTSD, managers and HR executives must take an individualized approach, and find ways to manage the impact on attendance and job performance.

## ***What can you do now?***

If you have military-employees, ESGR is a great place to jump-start your effort to support them. This group is dedicated to promoting cooperation and understanding between the military-employee and his or her employer. As mentioned earlier, ESGR recommends that you get to know your employee’s military supervisors and ask for advance notice of the duty schedules so that you can be prepared for the employee’s absences. Also, if you have a serious conflict, the supervisor may be able to accommodate your business’s needs.

It makes sense to examine your personnel policies to make sure that they support participation in the National Guard or Reserve. Naturally, you will want to make sure that your policies are compliant with USERRA regulations. ESGR has ombudsmen who can help you understand your company’s rights and responsibilities. For example,

service members must be permitted to use any vacation that had accrued before the beginning of their service instead of unpaid leave. However, they cannot be forced to use vacation time for military service.

Be sure to communicate your company's policies and obligations to the front line supervisors who manage these employees.

### ***Best practices: What the best companies are doing***

*G.I. Jobs*, a magazine that links military transitioners to hiring companies, compiles a list of the top fifty "military friendly" companies every year. The list recognizes companies that excel at recruiting and retaining veterans and military personnel as they transition into the private sector. An alphabetical listing of the 50 companies is in the appendix.

Their ranking is based on primarily on the amount of assets dedicated to military hiring. Other considerations include policies, the percent of new hires who are veterans, the recruiting/training/promotional/programs, and veteran community involvement and outreach. To learn more about the ratings, visit [www.gijobs.net](http://www.gijobs.net).

The companies that top the list go "above and beyond" to help returning service men and women. They participate in community efforts to support the active, returning, injured and retired military. They engage in practices that support the troops while on duty and the families left behind. Some of these practices include:

#### **While on duty**

- Exceeding USERRA requirements
- Making up the difference between reserve duty pay and salary the reservist would have earned at work for annual training and drill duty and for deployments
- Extending and enhancing leave-of-absence benefits for deployed associates

#### **Supporting the families left behind**

- Maintaining medical benefits for employees on reserve duty and their families.
- Helping family members of employees who are called to service with information, support, benefits, and even lawn mowing and home maintenance

#### **Upon return**

- Funding employees' welcome home celebrations
- Providing training to young ex-military employees
- Assigning a mentor who can help service member through the transition from military life to business
- Allowing a flexible work schedule in order to re-acclimate to civilian life and get one's personal life back in order
- Providing a welcome home package of benefits for military returning from extended periods of active duty

- Notifying other employees, clients, and vendors that the employee is returning, so that they can send “welcome home” cards if they wish
- Spending time to bring the employee up to speed on what has transpired in his/her absence

### **Community and on-going efforts**

- Matching employee donations to local USOs
- Offering discounts to veterans on Memorial Day and Veterans Day in retail outlets
- Donating money to help military families at home while their spouses were deployed
- Donating tools and supplies to support troops overseas
- Making grants to the associations and funds, such as the Marine for Life, Transition Assistance Program (TAP), Army Career and Alumni Program (ACAP), World War II and Vietnam Memorial Funds, USOs, Family Support Centers
- Sending goodie bags and care packages to troops overseas
- Providing phone cards for the troops
- Conducting blood drives

### **Summary**

Since half of our national defense effort is dependent upon permanent military personnel who also hold civilian jobs, it's very likely that your company has been affected by their participation in the Guard and Reserve. USERRA clearly spells out your company's obligations.

For guidance on how to manage when employees are on military leave and when they return, you can turn to many organizations and associations that are devoted to helping both employers and employees cope. You can also emulate the companies that have gone above and beyond the call of duty to support their employees in uniform.

## **Appendix**

G.I. Jobs' List of Top 50 Military Friendly Companies (alphabetical order)

7-Eleven	Kellogg, Brown and Root
Allstate Insurance Company	Lockheed Martin
American Electric Power	ManTech International Corporation
American Express	Merck & Company, Inc.
Applied Materials	Merrill Lynch
AT&T	Morgan Stanley
Bank of America	Norfolk Southern
BellSouth	NVR, Inc. (NV Homes/Ryan Homes)
BNSF Railway	Phelps Dodge
Booz Allen Hamilton	Progress Energy
Brinks	Schneider National
CDW Corporation	Sears Holdings
Cintas	Smurfit-Stone Container
Coca-Cola Enterprises	Southern California Edison
Correction Corporation of America	Southern Company
CSX Transportation	Southwest Airlines
ExxonMobil	Sprint Nextel
Fluor Corporation	State Farm
FMC Technologies	Sunbelt Rentals
General Electric	The Home Depot
Georgia-Pacific	The Vanguard Group
Honeywell	Union Pacific
ITT Corporation	USAA
J.B. Hunt Transport, Inc.	Werner Enterprises
Johnson Controls	Westinghouse