

## **TERRORISM: Reservists Called to Active Duty and the Effect on Human Resource Management<sup>1</sup>**

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### **Introduction**

Consider a manager's worst nightmare, where he came to work one morning to find that several of his employees may be absent from their positions for up to two years. Following the September 11, 2001 terrorist attacks, this nightmare has become reality. In the aftermath of these terrorist attacks, President Bush has called up 35,000 reservists to active duty. Additionally, the Department of Defense has been given the authorization to call up to one million reservists to active duty (Burlas, 2001). Most of these reservists are full-time employees, and may be required to stay in active duty for up to two years. This absence of reservist employees is a challenge for Human Resource Managers.

Fortunately, since October 1994, there are Federal guidelines for managers and reservist employees to handle the issue of military leave of absence. This paper will discuss the federal guidelines, the "in's and out's" of the Uniformed Services Employment and Reemployment Rights Act, and management recommendations for a smooth

transition during times of reservists being called to active duty.

### **Federal Guidelines**

In October 1994, the Uniformed Services Employment and Reemployment Rights Act (USERRA), a federal statute, was signed into law, "which clarifies uniformed service military-leave rights for employees" (Broadwater and Robinson, 2002). "Uniformed services" are defined as follows:

- Army, Navy, Marine Corps, Air Force, or Coast Guard, and their Reserves;
- Army National Guard or Air National Guard;
- Commissioned Corps of the Public Health Service;
- Any other category of persons designated by the President in time of war or emergency.

"Service" constitutes such military duties on a non-commission or commission base, and on an

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involuntary or voluntary status, which includes the following:

- Active duty;
- Active duty for training;
- Initial active duty for training;
- Inactive duty training;
- Full-time National Guard duty;
- Absence from work for an examination to determine a person's fitness for any of the above forms of duty;
- Funeral honors duty by National Guard or reserve members.

USERRA makes it “unlawful for an employer to deny initial employment, reemployment, retention in employment, promotion, or any benefit of employment” with respect to a person who is a member of, or performs duty in, a uniformed service (Ogletree, 2001). In essence, this statute gives guidelines to managers to handle human resource management transitions between reservist employees, remaining employees, and temporary replacements. This statute also outlines the rights of reservist employees concerning job and benefit security while on “military leave of absence.”

### **The Uniformed Services Employment and Reemployment Rights Act (USERRA)**

After the September 11th terrorist attack, many managers are now faced with the uncertainty of their rights as an employer of reservist employees. Managers of reservist employees, and the reservist employees, must be aware of the following facts (SHRM, 2001):

- For reservist employees to be eligible for reemployment rights they may be absent for voluntary military leave for no more than five years; involuntary leave has no time frame.
- The reservist employee is required to give advanced notice (as soon as possible after receiving orders), oral or written, to the

employer for military duty leave of absence. If advanced notice is not given, then the reservist employee risks losing USERRA protection.

- If a reservist employee is called to active duty for more than 30 days, the employer has the right to ask for formal documentation of military orders for leave of absence.
- A reservist employee is not responsible for finding a replacement for his position in the work place. The task of finding a temporary replacement is the responsibility of the employer.
- An employer cannot require a reservist employee to reschedule military duty obligations, but the employer can contact the military commander to determine if the duty could be rescheduled. If a reschedule cannot be made, the employer must permit the reservist employee to perform his military duty.
- An employer is not required to pay a reservist employee who leaves for active military duty while he is absent. Individual employers may offer differential pay or a specific number of military leave days. Reservist employees are entitled to the request of compensation for personal, sick, and/or vacation days.
- If a reservist employee is absent over 30 days, the employer must continue his health insurance coverage for up to 18 months if requested. However, the reservist employee may have to pay up to 102 percent of the premium. If the reservist is absent less than 31 days, the employer must continue the health insurance coverage as if the reservist were still employed.
- Upon the reservist's end of duty, the reservist must apply for reinstatement to his former employer. The reinstatement is for the reservist's former position. If the position is not still available, the reservist must be offered an approximate position. An exception to reinstatement will only be applied if the reservist employee was dishonorably discharged from military service.

- The time limit for reinstatement is divided into three formats based on the duration of military leave. For one to 30 days of service, no application form is necessary, but the reservist must be available to return to work on the eighth hour after returning home from duty (within a reasonable commuting time). For 31 to 180 days of service, application for reinstatement must be made within 14 days of completion of military duty. For 181 or more days of service, application must be made for reinstatement no more than 90 days after completion of military duties.
- If a reservist employee incurs a disability during military service, he has up to two years to apply for reinstatement. The employer must reinstate the employee, and also make reasonable accommodations for the disability if necessary.

These are the in's and out's of the USERRA regulations that must be followed by all reservist employees and management, according to Federal statute. These regulations can also help managers who are now, or possibly in the future will be, faced with the uncertainty of their rights as an employer of reservist employees. In turn, these regulations can also help reservist employees know their own legal rights as a reservist employee.

### **Management Recommendations for a Smooth Transition**

The first step for a smooth transition is for managers to be aware of USERRA regulations/policies and have a copy on file. The manager should also be aware of how many reservists employees are in the organization and have a backup plan for hiring temporary employees until the reservist return to work. Kathleen Edmond (2001), senior consultant for Employment Practices Solutions, has organized a list of actions managers can implement when events dictate reservists be called to active duty, as follows:

- Speak to your employees as a group;
- Acknowledge that the world is different now and that individuals will respond and recover at different paces;

- You may choose to bring professional counselors on-site for a day or longer;
- Employ a chat room where employees can share their experiences, feelings, and have a place to vent;
- Allow people to talk periodically during the day;
- Consider allowing employees additional time off for memorial services, blood donations, or other community-focused recovery events;
- Organize a list of telephone numbers of outside counselors to give to employees;
- Talk about the impact on your specific business and what effect, if any, it has on your company;
- Assure your employers that business will go on while recognizing that people will be scared, angry, sad, and confused for a period of time;
- Remind your employers to take care of themselves and their family and friends.

In addition to this list, managers should also have information sessions with reservist employees to review the rights of the reservist employee and how the company supports the USERRA. To show appreciation, and if time allows, the company may elect to give the reservist employees additional time off prior to leave of military duty to spend time with their families. The company may also elect to compensate the reservist employee with military leave pay. Once the reservists have left, there may be a need to hire temporary employees. After the implementation of the new temporary employees, managers should elect to meet with all employees to reassure them of the stability of the company and ask for questions or comments.

### **Conclusion**

Although only 35,000 reservists have recently been called up due to the September 11, 2001 terrorist attacks, during Desert Storm in 1991, approximately 265,322 reservists were called to active duty (Burlas, 2001). According to Captain Chuck Miller (Miller, 2002), as of August 2001, there are a total of 864,000

reservists that could be called to action. Undoubtedly, if all reservists were called to active duty, this would have an immense effect on human resources in the workplace.

Prior to 1994, when there was no USERRA, managers did not have clear guidelines to address reservist employees called to active duty. Now, managers have the USERRA, which provide Federal guidelines for managers and reservist employees to handle the issue of "military leave of absence." In essence, if a manager's worst nightmare of some of his employees being absent from work for an extended period of time has unfortunately come true, he now has the tools to efficiently bring the company through the time of crisis.

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