

Reservists Called to Active Duty and the Effect on Human Resource Management¹

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Introduction

Consider a manager's nightmare, where he or she comes to work one morning to find that several employees may be absent from their positions for up to two years. Following events such as the September 11, 2001 terrorist attacks, this nightmare became reality. In the aftermath of these terrorist attacks, President Bush called up 35,000 reservists to active duty. The US Department of Defense was given the authorization to call up to one million reservists to active duty. Most of these reservists were full-time employees, and could be required to stay in active duty for up to two years. This absence of reservist employees was a challenge for Human Resource Managers then and continues to be a potential risk.

Fortunately, since October 1994, there are Federal guidelines for managers and reservist employees to handle the issue of military leave of absence. This article discusses federal guidelines, the Uniformed Services Employment and Reemployment Rights Act, and management recommendations for a smooth transition during times of reservists being called to active duty.



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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 (Hirschman 2007). *Uniformed services* are defined as:

- 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 US President in time of war or emergency

Service constitutes such military duties on a non-commission or commission base, and on an involuntary or voluntary status, which includes:

- 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. 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)

Following the terrorist attack in 2001, many US managers were 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 oral or written notice (as soon as possible after receiving orders) to the employer for military duty leave of absence. If advanced notice is not given, 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.
- 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 request compensation for personal, sick, and vacation days.
- If a reservist employee is absent over 30 days, the employer must continue the reservist employee's health insurance coverage for up to 18 months if requested. In return, 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 no longer 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 1 to 30 days of service, no application form is necessary, but the reservist must be available to return to work immediately after returning home from duty. 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.

According to federal statute, these are the USERRA regulations that must be followed by all reservist employees and management. These regulations are useful for both reservist employees and management to understand their legal rights and duties

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 be aware of how many reservist employees are in the organization and have a backup plan for hiring temporary employees until the reservist returns to work.

Managers should hold information sessions with reservist employees to review the rights of the reservist employees and how the company supports the USERRA. If time allows, the company may elect to give the reservist employee 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 discuss the situation and answer questions.

Conclusions

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 provides federal guidelines for managers and reservist employees to handle the issue of military leave of absence. In essence, if reservist employees are absent from work for an extended period of time, managers have the tools to efficiently bring the company through that type of crisis.

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