

# ESGR/USERRA VIRTUAL BRIEFING

September 6, 2023

Puerto Rico State Committee



**We All  
Serve**

**Luis Vilaro**  
Ombudsman Director

**Ruben Sanchez**  
Employer Outreach Director/Ombudsman

**DSSC**

Defense Support Service Center

[www.ESGR.mil](http://www.ESGR.mil)

## Welcome Remarks



**50 YEARS**  
1972-2022  
**ESGR**<sup>®</sup>  
EMPLOYER SUPPORT OF  
THE GUARD AND RESERVE



## Administrative

- ESGR is not recording this presentation in any way or manner
- ESGR is volunteer centric and mission-driven



## Agenda

- **Ron Bogle, National Chair Video**
- **Importance of Reserve Components (RC)**
- **Who is ESGR?**
- **Employer Outreach (EO) Mission**
- **Uniformed Services Employment & Re-employment Rights Act (USERRA)**
- **Employer and Military Rights and Responsibilities**
- **Frequently Asked Questions**





Ron Bogle  
National Chair, ESGR

<https://www.dvidshub.net/video/766889/esgr-mission-video>

## Who is ESGR?

Department of Defense Program, established in 1972 to promote cooperation and understanding between Reserve Component Service members and their Civilian Employers.

~ 3,200 volunteers in 54 committees in states and territories

- Volunteers from all sectors – public and private
- Join us!



**Volunteer Centric**  
**Mission Driven**





## EMPLOYER OUTREACH

Promote a culture where all employers support and value military service through education, recognition, and mediation



## MILITARY OUTREACH

Make Service members aware of their rights and responsibilities under the law and the value of employer support and recognition



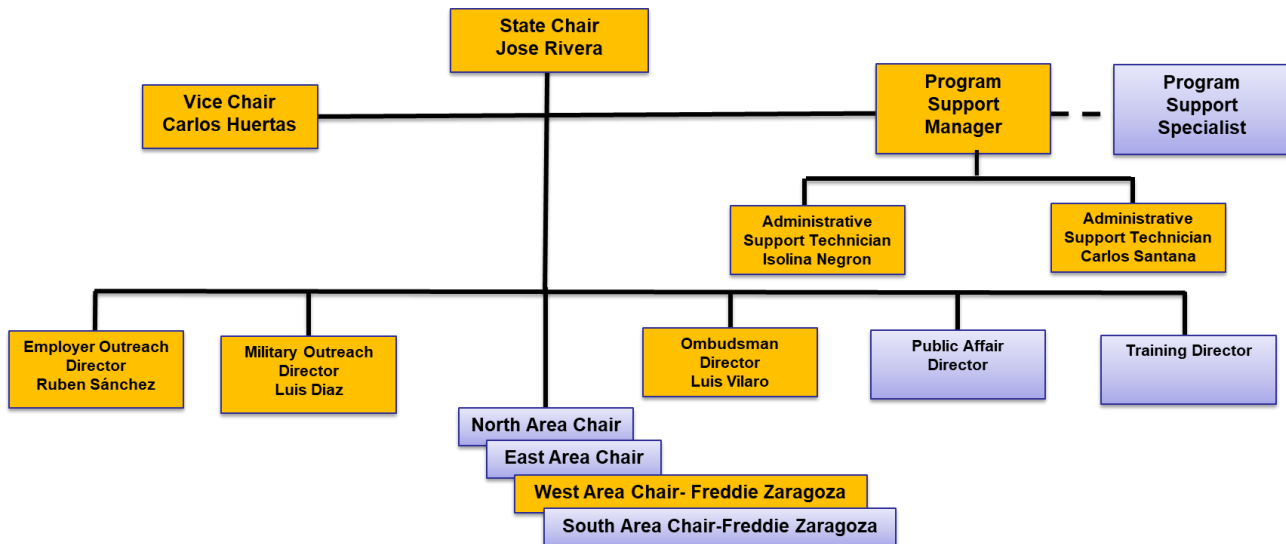
## OMBUDSMAN SERVICES

Provide information and informal, neutral mediation for issues or conflicts between employers and Service members

## State/Territory Committees & Volunteers



# PR ESGR COMMITTEE STRUCTURE



Legend:

Vacant



# Importance of the Reserve Component

Seven RCs – **over 800,000 members** – 38% of our military force  
**Army and Air National Guard**

## Reserve

(Army, US Marine Corps, Navy, Air Force, and Coast Guard)

Major portions of military capability are in RC:

- Army National Guard & Army Reserve - 28 Brigade Combat Teams (47% capability);
- 75% of key support units – logistics, civil affairs...
- In Air National Guard & Air Force Reserve - 65% of airlift and tanker capability
- National emergency response (floods, hurricanes, fires, etc.)
- Over 1 million RC members activated since Sept 11, 2001
- Reserves cost approximately 30% of the Active Duty personnel



**Our National Defense relies on the National Guard & Reserve**



# The United States Armed Forces Structure

## Active Branches



## National Guard and Reserve Components (Seven Seals)



## Educating employers on USERRA:

- Briefings to employers, Human Resources (Area-Briefing with the Boss)
- Trade/Association events (i.e. SHRM, Nat'l Sheriffs Assn.)
- Bosslifts
- Statements of Support signings
- Employer Recognition Programs, from individual to corporate level awards



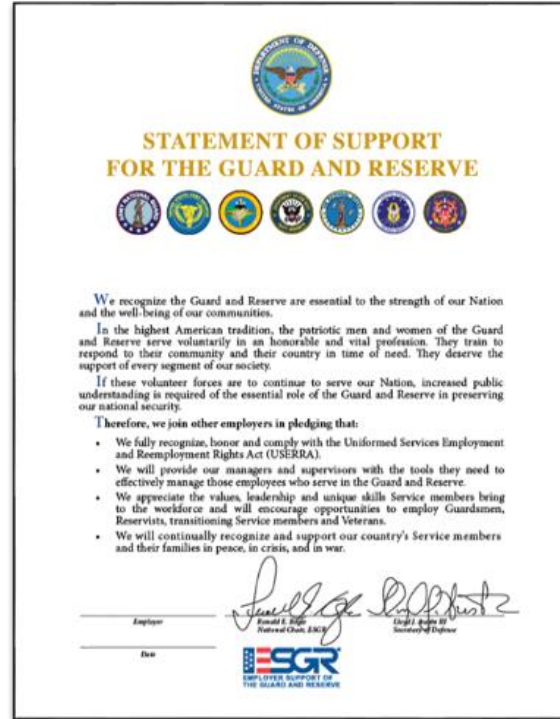
# Employer Awards

1. Patriot Award
2. Spouse Patriot Award
3. Seven Seals Award
4. Above and Beyond Award
5. Pro Patria Award
6. Extraordinary Employer Support Award
7. Secretary of Defense Employer Support Freedom Award



# Statement of Support

- A statement signed by the employer highlighting their support for the Guard and Reserve
- Presented by ESGR representatives
- Form available for review at <http://www.esgr.mil>



# Employer Information

## Employer Compliance Poster



### YOUR RIGHTS UNDER USERRA THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

USERRA protects the job rights of individuals who voluntarily or involuntarily leave employment positions to undertake military service or certain types of service in the National Disaster Medical System. USERRA also prohibits employers from discriminating against past and present members of the uniformed services, and applicants to the uniformed services.

<p><b>REEMPLOYMENT RIGHTS</b></p> <p>You have the right to be reemployed in your civilian job if you leave that job to perform service in the uniformed services and:</p> <ul style="list-style-type: none"> <li>• you ensure that your employer receives advance written or verbal notice of your service;</li> <li>• you have five years or less of cumulative service in the uniformed services with that particular employer;</li> <li>• you return to work or apply for reemployment in a timely manner after conclusion of service; and</li> <li>• you have not been separated from service with a disqualifying discharge or under other than honorable conditions.</li> </ul> <p>If you are eligible to be reemployed, you must be restored to the job and benefits you would have attained if you had not been absent due to military service or, in some cases, a comparable job.</p> <p><b>RIGHT TO BE FREE FROM DISCRIMINATION AND RETALIATION</b></p> <p>If you:</p> <ul style="list-style-type: none"> <li>• are a past or present member of the uniformed services; or</li> <li>• have applied for membership in the uniformed services; or</li> <li>• are obligated to serve in the uniformed services;</li> </ul> <p>then an employer may not deny you:</p> <ul style="list-style-type: none"> <li>• initial employment;</li> <li>• reemployment;</li> <li>• retention in employment;</li> <li>• promotion; or</li> <li>• any benefit of employment</li> </ul> <p>because of this status.</p> <p>In addition, an employer may not retaliate against anyone assisting in the enforcement of USERRA's rights, including testifying or making a statement in connection with a proceeding under USERRA, even if that person has no service connection.</p> <p>The rights listed here may vary depending on the circumstances. The text of this notice was prepared by VETS, and may be viewed on the internet at this address: <a href="http://www.dhs.gov/eis/vets/usa/usaerrra.html">http://www.dhs.gov/eis/vets/usa/usaerrra.html</a>. Federal law requires employers to notify employers of their rights under USERRA, and employers may meet this requirement by displaying this notice where they customarily place notices for employees.</p>	<p><b>HEALTH INSURANCE PROTECTION</b></p> <ul style="list-style-type: none"> <li>• If you leave your job to perform military service, you have the right to elect to continue your existing employer-provided health plan coverage for you and your dependents for up to 24 months while in the military.</li> <li>• Even if you don't elect to continue coverage during your military service, you have the right to be reinstated in your employer's health plan when you are reemployed, generally without any waiting periods or exclusions (e.g., pre-existing condition exclusions) except for service-connected illnesses or injuries.</li> </ul> <p><b>ENFORCEMENT</b></p> <ul style="list-style-type: none"> <li>• The U.S. Department of Labor, Veterans Employment and Training Service (VETS) is authorized to investigate and resolve complaints of USERRA violations.</li> <li>• For assistance in filing a complaint, or for any other information on USERRA, contact VETS at 1-866-4-USA-000, or visit its website at <a href="http://www.dhs.gov/eis/vets/usa/usaerrra.html">http://www.dhs.gov/eis/vets/usa/usaerrra.html</a>. An interactive online USERRA Advisor can be viewed at <a href="http://www.dhs.gov/eis/vets/usaerrra.htm">http://www.dhs.gov/eis/vets/usaerrra.htm</a>.</li> <li>• If you file a complaint with VETS and VETS is unable to resolve it, you may request that your case be referred to the Department of Justice or the Office of Special Counsel, as applicable, for representation.</li> <li>• You may also bypass the VETS process and bring a civil action against an employer for violations of USERRA.</li> </ul>
--	---

U.S. Department of Labor 1-866-487-2365 | U.S. Department of Justice Office of Special Counsel 1-800-336-4600 | ESGR Publication Date - April 2017



## Trained ESGR volunteers (Ombudsmen)

- Provide mediation services at no cost
- Help resolve employment-related USERRA issues
- Resolve ~ 75% of issues referred
- Service member initiates process by calling 1-800-336-4590
- Employers can also call for advice and to ask USERRA related questions



# USERRA Overview

## Uniformed Services Employment and Reemployment Rights Act

- Enacted in 1994. Roots date back to 1940.
- Covers virtually every US private and public employer, regardless of size
- Does not apply to self-employed individuals, independent contractors, or non-recurrent employees
- Applies to voluntary as well as involuntary Military Service in times of war and peace
- Provides 3 tenets of protection:
  - Protection from discrimination
  - Protection from retaliation
  - Reemployment following military service



USERRA: 38 U.S.C. §§ 4301-4335; 20 C.F.R. Part 1002



# USERRA Protection from Discrimination and Retaliation

An employer must not deny:

- initial employment
- reemployment
- retention in employment
- promotion
- or any benefit of employment to an individual on the basis of his or her membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services

38 U.S.C. 4311 (a)



# Responsibilities

## Employee Responsibilities

- Provide prior notice to employer (verbal or written)
- Serve for no more than 5 cumulative years away from the workplace\*
- Serve under honorable conditions
- Return to work in accordance with USERRA guidelines
- Perform protected service

## Employer Responsibilities

- Allow excused leave of absence
- Prompt reinstatement of employee
- Restore seniority
- Reinstatement of employment benefits
- Training or refreshing of skills
- No discrimination or retaliation

\* There are some exemptions and exceptions. Ask an Ombudsman for details.



# Return to Work Schedule



**To be eligible for protection under USERRA, Service Members must report back to work or apply for reemployment within the following guidelines:**

- 1-30 days** of service: REPORT to work on the next scheduled work day after 8 hours of rest and adequate travel time
- 31-180 days** of service: APPLY\* for reinstatement within 14 calendar days following the completion of service
- 181+ days** of service: APPLY\* for reinstatement within 90 calendar days following completion of service

\* APPLY for reinstatement means informing the employer of the SM's intent to return to work. Can be done in person, verbally or in writing.



# Five Year Limit



Maximum period of cumulative military service you can serve with continued reemployment rights under USERRA

- **38 U.S.C. 4312(c); 20 CFR § 1002.100**
- Applies for each employer – get a new employer, get a new 5-year limit

## Exemptions from 5 year limit include:

- Annual Training, weekend drills
- Involuntary service during domestic emergency or national security situations (e.g., 9/11)
- Voluntary service supporting operational missions
- Service periods deemed exempt by Service Secretary
- Professional Development
- Initial active service obligation (basic)
- ESGR can assist in understanding the 5 year limit. Specific Reserve Component service information can be found on our website



# Reemployment: Documentation

If the employee is absent for more than 30 days, the employer can request documentation to show:

- the employee performed military service
- the application for reemployment is timely
- the five year service limitation has not been exceeded
- and that the employee did not leave the service for a disqualifying reason, such as dishonorable discharge, being AWOL, or being incarcerated



Employer cannot deny reemployment solely because the necessary documentation is not readily available - but can legally terminate the employee if subsequent documentation shows member ineligible for reinstatement



## DD FORM 214

CAUTION: NOT TO BE USED FOR IDENTIFICATION PURPOSES. THIS IS AN IMPORTANT RECORD. ANY ALTERATIONS IN SHADED AREAS RENDER FORM VOID.

**CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY**  
This Report Contains Information Subject to the Privacy Act of 1974, As Amended.

1. NAME (Last, first, middle initial) [REDACTED]	2. DEPARTMENT, COMPONENT AND BRANCH ARMY/ISA	3. SOCIAL SECURITY NUMBER [REDACTED]
4a. GRADE, RATE OR RANK PFC	4b. PAY GRADE R03	5. DATE OF BIRTH (YYYYMMDD) [REDACTED]
6. PLACE OF ENTRY INTO ACTIVE DUTY [REDACTED]	7. HOME OF RECORD AT TIME OF ENTRY (City and state, or complete address if known) [REDACTED]	8. RESERVE OBLIGATION TERMINATION DATE (YYYYMMDD) 20150830
9a. LAST DUTY ASSIGNMENT AND MAJOR COMMAND [REDACTED]	9b. STATION WHERE SEPARATED CAMP CASSY TC, KOREA, AP 96224-0018	10. BOLI COVERAGE AMOUNT: \$ 400,000.00
11. PRIMARY SPECIALTY (Last number, 8th and 9th years and months in specialty. List additional specialty numbers and dates involving periods of one or more years.) WORLD WAR ADJUTANT CHEWMAN - 7 YRS 1 MOS// NOTHING FOLLOWS	12. RECORD OF SERVICE A. DATE ENTERED AD THIS PERIOD 2007 05 07 B. SEPARATION DATE THIS PERIOD 2015 01 13 C. NET ACTIVE SERVICE THIS PERIOD 0007 04 07 D. TOTAL PRIOR ACTIVE SERVICE 0000 00 00 E. TOTAL PRIOR INACTIVE SERVICE 0000 00 00 F. FOREIGN SERVICE 0002 11 15 G. SEA SERVICE 0000 00 00 H. INITIAL ENTRY TRAINING 0000 03 12 I. EFFECTIVE DATE OF PAY GRADE 2014 07 07	13. DECORATIONS, MEDALS, BADGES, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED (All periods of service) ARMY COMMENDATION MEDAL (2ND AWARD) // ARMY ACHIEVEMENT MEDAL (2ND AWARD) // MERITORIOUS UNIT COMMENDATION // ARMY GOOD CONDUCT MEDAL (2ND AWARD) // NATIONAL DEFENSE SERVICE MEDAL // GLOBAL WAR ON TERRORISM SERVICE MEDAL // KOREA DEFENSE SERVICE MEDAL // IRAQ CAMPAIGN MEDAL W/ CAMPAIGN STAR // CONT IN BLOCK 1B
14. COMMISSIONED THROUGH SERVICE ACADEMY A. YES X NO B. COMMISSIONED THROUGH ROTC SCHOLARSHIP (10 USC Chap. 2167b) YES X NO C. ENLISTED UNDER LOAN REPAYMENT PROGRAM (10 USC Chap. 100) (If yes, years of commitment: NA) YES X NO	15. DAYS ACCRUED LEAVE PAID 0	16. MEMBER WAS PROVIDED COMPLETE DENTAL EXAMINATION AND ALL APPROPRIATE DENTAL SERVICES AND TREATMENT WITHIN 90 DAYS PRIOR TO SEPARATION YES X NO
17. MEMBER REQUESTS COPY 4 BE SENT TO (Specify address) [REDACTED]	18. MEMBER REQUESTS COPY 4 BE SENT TO THE CENTRAL OFFICE OF THE DEPARTMENT OF VETERANS AFFAIRS X YES NO	19. MEMBER SIGNATURE [REDACTED]
20. MAILING ADDRESS AFTER SEPARATION (Include ZIP Code) [REDACTED]	21. MEMBER REQUESTS COPY 4 BE SENT TO THE CENTRAL OFFICE OF THE DEPARTMENT OF VETERANS AFFAIRS X YES NO	22. MEMBER REQUESTS COPY 4 BE SENT TO THE CENTRAL OFFICE OF THE DEPARTMENT OF VETERANS AFFAIRS X YES NO
23. TYPE OF SEPARATION AR 635-200, CHAPTER 4	24. SEPARATION AUTHORITY [REDACTED]	25. SEPARATION CODE [REDACTED]
26. REASON FOR SEPARATION COMPLETION OF REQUIRED ACTIVE SERVICE	27. REENTRY CODE [REDACTED]	28. MEMBER REQUESTS COPY 4 (Initial) [REDACTED]

DD FORM 214, AUG 2009 PREVIOUS EDITION IS OBSOLETE. MEMBER - 4

TYPE OF SEPARATION

SEPARATION AUTHORITY

REASON FOR SEPARATION

PERIODS OF SERVICE

CHARACTER OF SERVICE



# Reemployment Position



## Military Service of 90 days or less

- Entitled to return to the positions in which they were employed or would have been employed if their employment had not been interrupted

## Military Service for more than 90 days

- Entitled to return to the positions in which they were employed, would have been employed, or a position of “like seniority, status and pay, the duties of which the person is qualified to perform” after reasonable efforts to qualify
- If employee cannot become qualified for the above, place in a position that most closely approximates the above positions the employee is qualified to perform, with full seniority

**Escalator:** “What position would have been occupied with reasonable certainty, if the person had remained continuously employed, with full seniority?”



# Reemployment - Disabilities

## Special reemployment rules for employees who have incurred or aggravated a disability during military service:

- Employers must make reasonable efforts to accommodate the disability so that the employee can perform the job he or she would have held but for military service (“escalator” position)
- If, after reasonable accommodations have been made, the employee cannot become qualified for the job, they must be placed in the following priority:
  - a job equivalent with equal seniority, status, and pay that the employee is qualified to perform, or
  - a position that is the nearest approximation to the equivalent position with reasonable accommodations

**Reemployment timelines may be extended up to 2 years to accommodate service-connected injuries or illness**



## Healthcare Benefits

- Healthcare coverage for military service of less than 31 days shall be continued on employer plan as if he or she had remained employed
- If serving more than 30 days, may elect to continue employer health care for up to 24 months (similar to Consolidated Omnibus Budget Reconciliation Act (COBRA)) but may be required to pay up to 102 % of the full premium
- On re-employment, can be reinstated in health plan w/o exclusion or waiting period



## Termination Protection

**USERRA also provides that an individual cannot be discharged, except for cause:**

- For 1 year after being reemployed if that employee served in the military for more than 180 days
- For 180 days if the period of service was for less than 180 days but more than 30 days



# Employer Considerations

- Differential Pay (possible tax credit) – [irs.gov/pub/irs-access/f8932\\_accessible.pdf](https://irs.gov/pub/irs-access/f8932_accessible.pdf)
- Paid Military Leave
- Extend Health Benefits
- Recognition around Armed Forces Day and/or Veterans Day
- Welcome Back from deployment in company newsletters
- Be Patient!



# Employment Issue Resolution

## Service members:

- Contact company Human Resources office.
- Go to the chain of command (strongly encouraged).
- Contact ESGR for no cost Ombudsman mediation, 800-336-4590, [www.esgr.mil](http://www.esgr.mil)
- Contact US DOL for no cost: 866-4-USA-DOL, [www.dol.gov](http://www.dol.gov)
- Contact a private attorney at personal expense.



## Employers:

- Contact ESGR 800-336-4590, [www.esgr.mil](http://www.esgr.mil)
- Call service member's unit to confirm service performed or seek relief from a duty assignment

## VETERANS' READMISSION. Final Regulations

October 29, 2009

Citation: 34 CFR § 668.18.

Federal Register/ Vol. 74, No. 208/ Thursday, October 29, 2009

## Protections for Service Members' Education Rights

USDE's 34 CFR Parts 600, 668, and 675.

USDE adopted USERRA-like protections under (Part 668 - Student Assistance General

## AUSENCIA PARA FAMILIAS DE MILITARES (FMLA)

SECCIÓN DE HORAS Y SUELDOS

DEPARTAMENTO DE TRABAJO DE LOS ESTADOS UNIDOS

Guía del empleado para la de conformidad con la Ley de Ausencia Familiar y Médica



# How Service Member File a Mediation Assistance



- Go to: ESGR.MIL
- Click on: Request Assistance (Red Tap, White Letters)
- Go to: "I am Service Member", and will like to request Mediation Service
- Go to USERRA Support Request
- Fill all the blanks:     Part I- SM information  
                                  Part II- EMP information ( HR contact work phone and  
                                  extension, and HR electronic address)  
                                  Part III- **EXPLAIN YOUR CLAIM IN DETAIL, Limit 500 characters**  
                                  **(5 Ws: Who, What, When, Where, and Why)**
- Click on: Submit- this goes directly to ESGR National Case Manager at ESGR HQ, Virginia.



# How Employer Request for Assistance

- Go to: ESGR.MIL
- Click on: Request Assistance (Red F Tap, White Letters)
- Go to: “I am an EMPLOYER with...” block and click on: “To learn more about an employee’s Military Service...”
- From the “Military Service Requirement Support” select the one you are interested.
- If need more detailed information you may call PR-ESGR Committee Employer Outreach Director at:

Ruben Sánchez Burgos, 787-614-7982, [esgrid-pr1@hotmail.com](mailto:esgrid-pr1@hotmail.com)

Or

Customer Service Center to speak with a representative at

800-336-4590, Option 1, or email [OSD.USERRA@mail.mil](mailto:OSD.USERRA@mail.mil).

Mail: Employer Support of the Guard and Reserve,

4800 Mark Center Drive, Suite 05E22, Alexandria, VA 22350-1200

# Suggestions for Employers

**Be familiar with the law – know your responsibilities**

**Communicate:**

- Maintain open communications with your employee regarding military obligations
- Contact employee’s unit with any questions or concerns about timing, frequency, or duration of service.

**Appreciate:**

- Show appreciation for employee’s service.
- If possible, keep in touch with Service members or their families during absences.
- Be flexible.



**For questions about USERRA, call ESGR 800-336-4590, option 1 or go to ESGR.mil**



# State Active Duty Service and USERRA

- Effective January 5, 2021, National Guard\* serving on state-funded orders have protections under the USERRA when one of the following conditions is met:
  - Service is for 14 days or more.
  - In support of a national emergency declared by the President under the National Emergencies Act, **or**
  - In support of a major disaster declared by the President under Section 401 of the Stafford Act.
- Because orders are state-funded, contact National Guard or the US DOL Veterans Employment and Training Service for mediation or enforcement assistance.
- ESGR can answer general questions related to State Active Duty

\*National Guard Service members called to duty on State Active Duty orders (for floods, fires, etc.) addressed above may be protected under state statutes, not Federal USERRA protections. Important reference material regarding the new USERRA legislation can be found at link below or at ESGR.mil/Resource Library:

[New Coverage for Certain State Active Duty](#) (In your in-box)



## FAQs

**Does USERRA protect Service member if service was voluntary?**

- **Yes**, USERRA protects voluntary and involuntary service

**Is Service member required to provide written orders for active duty?**

- **No**, advanced notice can be verbal or written in no particular format

**Does the Service member have to find a replacement for their absence?**

- **No**, the Service member does not need to find a replacement or rearrange his/her schedule to accommodate his/her military leave

**Does a Service member have to use vacation for military service?**

- **No**, but the Service member can choose to do so

**How much time does an employer have to reemploy me upon my return?**

- Prompt reemployment is usually 14 calendar days



# Top 10 Reasons to Hire Guard/Reserve Members

1. Ability to learn new skills and concepts
2. Strong leadership qualities
3. Can work in teams, or independently
4. Diversity and strong interpersonal skills
5. Can work efficiently & diligently in fast paced environment
6. Respect for procedures and accountability
7. Hands on experience with technology and globalization
8. Strong personal integrity
9. Strong sense of health, safety and property standards
10. Triumph over adversity



Q  
u  
e  
s  
t  
i  
o  
n  
s  
?



“We All Serve”

[www.ESGR.mil](http://www.ESGR.mil)  
[www.Facebook.com/GoESGR](https://www.facebook.com/GoESGR)  
[www.Twitter.com/ESGR](https://www.twitter.com/ESGR)  
[www.YouTube.com/EmployerSupport](https://www.youtube.com/EmployerSupport)  
[www.Linkedin.com/company/1577298/](https://www.linkedin.com/company/1577298/)

