

Protection of Military Leave

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The recently-announced deployment of National Guard troops to the Texas border (see <https://gov.texas.gov/news/post/governor-abbott-visits-national-guard-troops-deployed-to-border>) is an important reminder of the laws protecting the employment rights of military service members and veterans. The main law governing the employment rights of employees on military duty is the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), found in Title 38 of the United States Code starting at Section 4301. The law does several things:

1. Employers must hold open the jobs of employees on military duty and may not otherwise discriminate against them because of their military service. Generally, a job must be held open for up to five years, but during times of a declared national emergency, the time for holding the job open must be extended until the emergency declaration is revoked. This is relevant because the national emergency declared on September 14, 2001 is still in effect.

2. The law gives that protection to every type and variety of employee.

3. Upon return from military duty, a veteran or employee who is still in the military is entitled to whatever position he or she would have attained with reasonable certainty if the military service had not occurred. In narrowly-defined situations, a veteran may be given a comparable position as long as the seniority, pay, and status remain the same.

4. If a replacement employee is laid off due to the rehiring of a

veteran and files an unemployment claim, Texas law allows the employer to obtain protection from chargeback of such unemployment benefits.

5. A veteran may not be discharged or subjected to adverse employment action for one year after the date of reinstatement, except for cause; the same rule applies to service in the reserves or National Guard.

6. Employers must provide up to 24 months of health plan coverage to employees when they are absent on military leave. When the veteran returns, the employer must immediately cover the veteran under the employer's health plan, assuming the veteran was covered prior to the leave.

7. Seniority under an employer's pension plan must continue to accrue while the employee is on military duty. To the extent that the employer funds the plan, the employer must continue to fund the employee's participation in the plan.

8. In general, if a benefit having to do with length of service would have accrued with reasonable certainty, had the veteran been continuously employed by the employer, the employer must award the benefit as if the veteran had been continuously employed.

"Employer Support of the Guard and Reserve (ESGR) understands the unique talents and skill set Guard and Reserve Service members can bring to the civilian workforce," said Raette Hearne, ESGR Texas Employer Outreach Director. "To make this arrangement work, both parties must be aware of their rights and responsibilities under USERRA."

One can see that the overall

thrust of the law is to guarantee the veteran's job during the military duty and to make military-related absences irrelevant for most intents and purposes. In general, the employee who returns from military duty must be in the position that he or she would have been in, had there been no military service.

The U.S. Department of Labor has a very detailed fact sheet on employers' responsibilities under USERRA on its website at http://www.dol.gov/vets/programs/userra/userra_fs.htm. Employers may also call the Veterans' Employment and Training Service for Texas at 512-463-2814 for assistance with USERRA issues. Another very useful resource for employers is the website of the ESGR – that website is at <https://esgr.mil/>. This article is excerpted from the article "Legal Issues for Military Leave" in the book *Especially for Texas Employers* – for the full article, see http://www.twc.state.tx.us/news/efte/legal_issues_for_military_leave.html online. 

