



# ***USERRA, Revised Missouri Statutes and ESGR***



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## ***The Importance of State Agency Support of the Guard and Reserve***

Developed by:  
**Missouri Committee for Employer Support  
of the Guard and Reserve (MC-ESGR)**





# *Agenda*



- ▶ **ESGR**
- ▶ **Importance of Employer Relations**
- ▶ **Uniformed Services Employment and Reemployment Rights Act (USERRA)**
- ▶ **Applicable State Laws (RsMO)**
- ▶ **Awards Programs**





## 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. USERRA also prohibits employers from discriminating against past and present members of the uniformed services, and applicants to the uniformed services.

### REEMPLOYMENT RIGHTS

You have the right to be reemployed in your civilian job if you leave that job to perform service in the uniformed service and:

- you ensure that your employer receives advance written or verbal notice of your service;
- you have five years or less of cumulative service in the uniformed services while with that particular employer;
- you return to work or apply for reemployment in a timely manner after completion of service; and
- you have not been separated from service with a disqualifying discharge or under other than honorable conditions.

If you are eligible to be reemployed, you must be restored to the job and benefits you would have obtained if you had not been absent due to military service or, in some cases, a comparable job.

### RIGHT TO BE FREE FROM DISCRIMINATION AND RETALIATION

If you:

- are a past or present member of the uniformed service;
- have applied for membership in the uniformed service; or
- are obligated to serve in the uniformed service;

then an employer may not deny you any of the following because of this status:

- initial employment;
- reemployment;
- restoration to employment;
- promotion; or
- any benefit of employment.

In addition, an employer may not retaliate against anyone who is acting in the enforcement of USERRA rights, including testifying or making a statement in connection with a proceeding under USERRA, even if that person has no service connection.



U.S. Department of Labor  
1-866-487-2363

### HEALTH INSURANCE PROTECTION

- If you leave your job to perform military service, you have the right to elect to continue your existing employer-based health plan coverage for you and your dependents for up to 24 months while in the military.
- 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 exclusion) except for service-connected illness or injuries.

### ENFORCEMENT

- The U.S. Department of Labor, Veterans Employment and Training Service (VETS) is authorized to investigate and resolve complaints of USERRA violations.
- For assistance in filing a complaint, or for any other information on USERRA, contact VETS at 1-866-4-USA-881 or visit its website at <http://www.dol.gov/vets>. An interactive online USERRA Advisor can be viewed at <http://www.dol.gov/vets/userradvice.htm>.
- 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, depending on the employer, for representation.
- You may also bypass the VETS process and bring a civil action against an employer for violations of USERRA.

The rights listed here may vary depending on the circumstances. This notice was prepared by VETS, and may be viewed on the Internet at this address: <http://www.dol.gov/vets/programs/userradvice.pdf>. Federal law requires employers to notify employees of their rights under USERRA, and employers may meet this requirement by displaying this notice where they customarily place notices for employees.



1-800-336-4380

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# Employer Support of the Guard and Reserve





# ***ESGR***



## ▶ **Overview**

- ▶ A DoD agency established in 1972 by Presidential decree
- ▶ Mission is to gain and maintain support from all public and private employers
- ▶ Provide education, consultation and if necessary, mediation to employers and Reserve Component members





# ***ESGR***



## ▶ **Structure**

- ▶ **National Defense Advisory Board (OSD-RA)**
  - ▶ Provides guidance, direction and oversight
- ▶ **National Committee/Staff (Arlington, VA)**
  - ▶ Develops programs and services and provides support to the State Committees
- ▶ **State Committees**
  - ▶ Implements programs, over 3,500 volunteers in every State, Territory and Europe





# ***ESGR***



- ▶ **Programs and Services**
  - ▶ Employer Awards
  - ▶ Statement of Support Program
  - ▶ Reserve/Guard unit employer outreach
  - ▶ Increase awareness as a sponsor of employer visits to military sites.
  - ▶ Ombudsman Program
  - ▶ Military Liaison Program





# *Importance of Employer Relations*

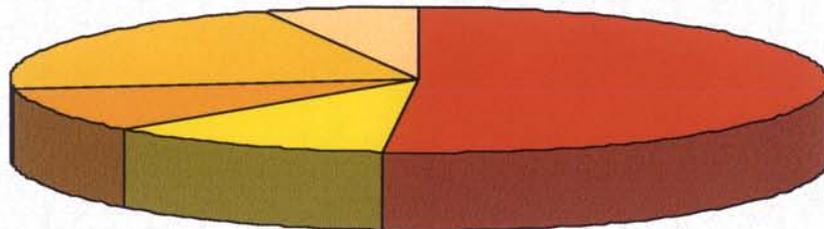


- ▶ **Impacts Recruiting and Retention**
  - ▶ Reserve components comprise nearly 50 percent of the total military force.
  - ▶ Job related conflicts are a top reason people won't join or will leave the Reserve Component
  - ▶ Increased deployments and use of the Reserve Components causes strain on employers
  - ▶ Good employer relations helps to educate employers, build partnerships and reduce conflicts





# Importance of Employer Relations



- **Small, Mid-Size Businesses 51%**
- **State and Local Governments 12%**
- **Federal Government 10%**
- **Other 21%**
- **Self Employed 6%**

**Nearly half of all Guard and Reserve Members work for companies of 1,000 or fewer employees**



# *Importance of Employer Relations*

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Missouri is home to over

**28,000**

**Reserve Component Members  
(June 2005)**





# *Ombudsman Services*



- ▶ **The Ombudsmen Services Program was established in 1974 to provide information, counseling, and informal mediation of issues relating to compliance with USERRA.**
- ▶ **The Ombudsmen Services Program provides information, informal mediation, and referral service to resolve employer conflicts.**
- ▶ **ESGR is not an enforcement agency and does not offer legal counsel.**
- ▶ **More than 95 percent of all requests for assistance are resolved in this informal process, without requiring referral to the Department of Labor for formal investigation.**





# ***USERRA***



## ▶ **Overview**

- ▶ **Uniformed Services Employment and Reemployment Rights Act (Title 38, Chapter 43, United States Code)**
- ▶ **Provides employment and reemployment rights for service members. DOL is enforcement agency**
- ▶ **Applies to all members of the uniformed services in a federally funded status**
- ▶ **Does not apply to Guardmembers on State active duty, self-employed individuals, partners or students**





# ***USERRA***



- ▶ **Protection Against Discrimination**
  - ▶ Applies to past and current members and those who apply to be a member of a uniformed service
  - ▶ Includes discrimination regarding employment, reemployment, termination, promotion and benefits
  - ▶ Burden of proof is on the employer if military service is a motivating factor in terminations





# USERRA



## ▶ Service Member Rights

- ▶ Military leave of absence
- ▶ Prompt reinstatement back into position
- ▶ Accumulation of seniority as if individual never left
- ▶ Receive all pay and cost of living raises
- ▶ Immediate reinstatement of health insurance
- ▶ Training or retraining of skills as necessary
- ▶ Protection against discharge





## Service Member Rights While on State Emergency Duty (SED)



### **RSMo 40.490**

### **Only applies to members of the National Guard**

**40.490. Members of the state military forces of this state who are ordered to active state duty by the governor shall, upon being relieved from such duty, be entitled to the same reemployment rights provided by Title 38 of the United States Code, the Revised Statutes of Missouri, and all amendments thereto. The attorney general shall enforce the reemployment rights contained in this section for members of the state military forces who are ordered to active state duty by the governor.**





# Missouri Revised Statutes

## Which Affect Reserve Component Members Employed by Missouri's State Agencies

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## Chapter 105

### Public Officers and Employees-- Miscellaneous Provisions

### Section *105.270*

August 28, 2004





# RSMo 105.270



1. All officers and employees of this state, or of any department or agency thereof, or of any county, municipality, school district, or other political subdivision, and all other public employees of this state who are or may become members of the national guard or of any reserve component of the armed forces of the United States, shall be entitled to leave of absence from their respective duties, without loss of time, pay, regular leave, impairment of efficiency rating, or of any other rights or benefits, to which otherwise entitled, for all periods of military services during which they are engaged in the performance of duty or training in the service of this state at the call of the governor and as ordered by the adjutant general without regard to length of time , **and for all periods of military services during which they are engaged in the performance of duty in the service of the United States under competent orders for a period not to exceed a total of one hundred twenty hours in any federal fiscal year**





# RSMo 105.270



**2. Before any payment of salary is made covering the period of the leave the officer or the employee shall file with the appointing authority or supervising agency an official order from the appropriate military authority as evidence of such duty for which military leave pay is granted which order shall contain the certification of the officer or employee's commanding officer of performance of duty in accordance with the terms of such order.**





# RSMo 105.270



**3. No member of the organized militia shall be discharged from employment by any of the aforementioned agencies because of being a member of the organized militia, nor shall he be hindered or prevented from performing any militia service he may be called upon to perform by proper authority nor otherwise be discriminated against or dissuaded from enlisting or continuing his service in the militia by threat or injury to him in respect to his employment. Any officer or agent of the aforementioned agencies violating any of the provisions of this section is guilty of a misdemeanor.**





# Drilling Reservists FAQ



- ▶ Do I have to work on my day off? Employer Schedules my days off on drill weekends.
- ▶ Do I have to find my own replacement for days I am gone for drill?
- ▶ Do I have to use vacation days or compensatory time for military leave?
- ▶ Does USERRA apply to voluntary service?





# Drilling Reservists FAQ



- ▶ Can an employer ask me if I am in the Guard or Reserves on an employment application?
- ▶ I think I got fired for being in the Reserves. What should I do?



# Employer Awards



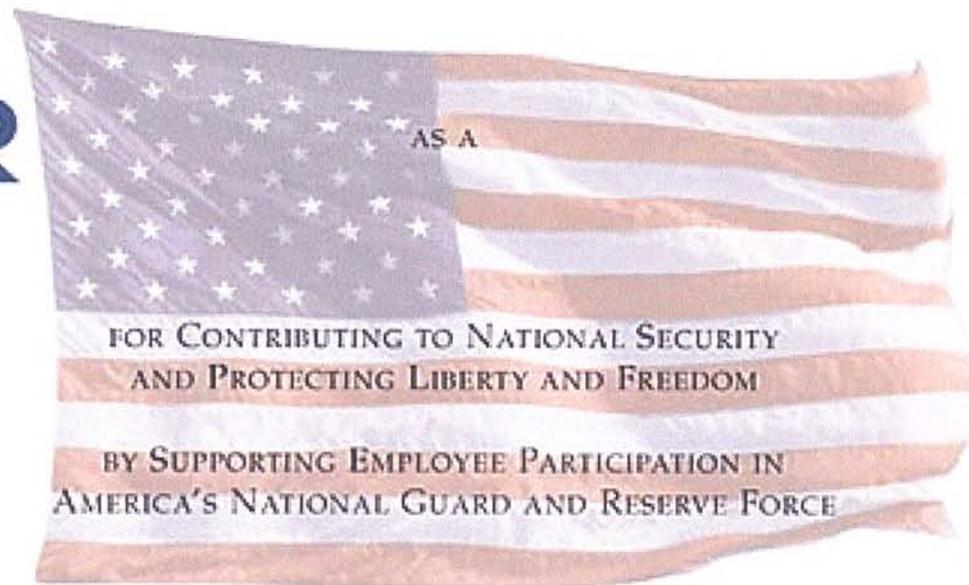
## ▶ Patriot Award

- ▶ Awarded to an employer who has been supportive of the Guard and Reserve
- ▶ Award is comprised of a DoD certificate and a lapel pin
- ▶ RC members can nominate their employer for this award on line at [www.esgr.org](http://www.esgr.org)



# THE NATIONAL COMMITTEE FOR EMPLOYER SUPPORT OF THE GUARD AND RESERVE

RECOGNIZES



A handwritten signature in black ink, appearing to read 'David A. Janes', written over a horizontal line.

DAVID A. JANES  
ACTING CHAIRMAN  
NATIONAL COMMITTEE FOR  
EMPLOYER SUPPORT OF THE GUARD AND RESERVE

A handwritten signature in black ink, appearing to read 'Bob Hollingsworth', written over a horizontal line.

BOB HOLLINGSWORTH  
EXECUTIVE DIRECTOR  
NATIONAL COMMITTEE FOR  
EMPLOYER SUPPORT OF THE GUARD AND RESERVE



# *Employer Awards*



- ▶ **Above and Beyond Award**
  - ▶ Awarded by the State Committee to employers who go 'above and beyond' the requirements of the law to support Guardsman and Reservists
  
- ▶ **Pro Patria Award**
  - ▶ Awarded annually by the State Committee to the most supportive employer in the State/Territory





# *Employer Awards*



## ▶ **Freedom Award**

▶ Awarded by the Secretary of Defense to the top 15 employers nationwide

▶ Categories include; small companies, large companies and government/municipal





# *Employer Awards*



## ▶ **2005 Freedom Award Winners**

**Alticor, Incorporated**  
**Citizens Financial Group**

**Eaton Corporation**  
**Enterprise Rent-a-Car**

**IDACORP**  
**Los Angeles Police Department**

**Louisiana Dept of Public Safety & Corrections** **Baton Rouge, LA**

**Pioneer Financial Services**  
**Ryland Homes**

**Sears, Roebuck and Company**  
**South Dakota State University**

**State of Delaware**  
**Toyota Motor Sales, USA Inc.**

**USAA**  
**Wachovia Corporation**

**Ada, Michigan**  
**Providence, Rhode Island**

**Cleveland, Ohio**  
**St. Louis, Missouri**

**Boise, Idaho**  
**Los Angeles, California**

**Kansas City, Missouri**  
**Calabasas, California**

**Hoffman Estates, Illinois**  
**Brookings, South Dakota**

**Dover, Delaware**  
**Torrance, California**

**San Antonio, Texas**  
**Charlotte, North Carolina**





# Statement of Support



- ▶ A statement signed by the employer/agency indicating their support for the Guard and Reserve
- ▶ Form available on line at [www.esgr.mil](http://www.esgr.mil)





# *Statement of Support*



## ► **Five Levels**

- \* 1<sup>st</sup> Star: Sign Statement Of Support
- \*\* 2<sup>nd</sup> Star: Review HR Policies
- \*\*\* 3<sup>rd</sup> Star: Train HR Managers
- \*\*\*\* 4<sup>th</sup> Star: Go Above and Beyond
- \*\*\*\*\* 5<sup>th</sup> Star: Become an ESGR Advocate

***Our goal is to help all employers of RC Members achieve Five Star status!***





# *Contact Info*



- ▶ Web Site: [www.esgr.org](http://www.esgr.org) (.com/.mil)
- ▶ Phone: 1-800-336-4590
- ▶ Email: rich.grant@mo.ngb.army.mil
- ▶ In Missouri (573) 638-9500 ex. 7730

*Mr. Richard Grant*

