

# Supporting Employers of Reserve Component Members

The Uniformed Services Employment and Reemployment Rights Act (USERRA) (Pub. L. 103-353, 1994) prohibits employers from refusing to hire a reservist, guardsman, veteran, or someone applying to enter military service on the basis of his or her military-service affiliation. It also guarantees service members reemployment by their former employers after periods of military duty, including service as a member of a Reserve Component (RC), and requires employers to provide service members with certain benefits during and after their military absences.

Although Congress, in deliberating the legislation in the early 1990s, considered the potential costs that USERRA might impose on employers, the way in which the Department of Defense (DoD) uses the RCs has changed dramatically since then. The number of RC duty days increased from a little more than 5 million in 1993 to nearly 13 million in 1996. During the global war on terrorism, it peaked at more than 68 million in 2005. By 2010, the number of RC duty days had diminished to fewer than 38 million but was still well above what it was when USERRA was passed. As a result, activation and deployment are now common for RC members. A January 2011 DoD survey of RC members found that one in three had been activated in the past two years and that three in four of those activated were deployed.

Given the increased mobilization of RC forces and the continuing need to balance the rights, duties, and obligations of employers, RC members, and their families, DoD asked RAND to consider whether changes are needed to USERRA, activation and deployment procedures, and the Employer Support of the Guard and Reserve (ESGR). (ESGR uses a nationwide network of volunteers to conduct informational briefings on USERRA, recognize exemplary employers whose policies and actions encourage military participation, and provide mediation services when issues arise.) RAND researchers reviewed existing literature and data, analyzed DoD-administered surveys of employers and RC members, and interviewed RC chiefs and employers.

## Clarity of USERRA

RAND researchers considered whether there is need for a rewrite of USERRA based on its legal and legislative history. They found that USERRA is generally clear and consistent with other employment laws. They therefore concluded that

### Key findings:

- Existing legislation addressing employer obligations in the event of an employee's military duty-related absence is clear and has been applied across periods of widely varying Reserve Component use.
- Employer knowledge of obligations and where to go for help in fulfilling them is incomplete.
- Impact of this legislation varies by employer; no single change would address all employer concerns.
- Ways to mitigate employer concern might include a more flexible employer appeal process, expanded communication, and publicizing available supports.

there is no need for substantial revision to the legislation. Rather than coming from the provisions of the legislation, many of the challenges employers face stem from activation rates and the utilization policy.

## Employer Understanding

Although USERRA is clear, employer knowledge of it and ESGR is incomplete. Employers of RC members are more familiar than other employers with USERRA, more confident in their ability to comply with it, and more aware of ESGR programs. Yet, one in four RC employers said they did not know all they needed to comply with USERRA, and fewer than half were aware of ESGR programs. Many expressed an interest in the types of programs, awards, and support ESGR already offers. Low response rates to the employer survey and employer unwillingness to participate in interviews suggest that USERRA is not a high-priority issue for employers except when dealing with duty-related absences.

Current policy instructs the RCs to identify a representative who can consider employer requests for adjustments to reserve duties when they would adversely affect a business. Improved implementation of this policy could meet some employer concerns about potential hardships. Our research suggests that knowledge of the policy among employers is

low. Details about the policy and its implementation are not readily available, suggesting the need for further DoD review.

### Varied Impacts

The impacts that reserve duty can have on employers can vary widely, though issues related to managing workload are most common among those reporting an impact. Longer or more-frequent absences for RC duties, as well as the absences of key or highly skilled employees or those who are “one of a kind” in their organizations, are more likely to affect employer operations than shorter, less frequent absences or absences of other employees. Smaller employers are also more likely than larger ones to experience impacts. Nevertheless, the analysis did not identify any single cause of employer impact.

### No Single Change Would Address Employer Concerns

There was no consensus among employers on the support programs that would be most useful in the event of duty-related absences. In fact, employers were most likely to report that no support programs were needed. Among those that did note a need for more support, many expressed a desire for advance notification of both absence and return, as well as clear and consistent documentation from DoD on the term of duty and type of service. Employers with seasonal or cyclical work schedules, smaller employers, and employers facing absences of key or multiple personnel requested more flexibility and employer input in scheduling training duty and deployment. Most employers did not state a preference of duty length or frequency.

### Federal Employer Support

The federal government employs a disproportionately large fraction of RC members. Although the federal government employs less than 2 percent of the U.S. workforce, it employs nearly 18 percent of RC members who are employed full time. RC members employed by the federal government are neither more nor less likely than other RC members to experience USERRA-related problems and neither more nor less likely to describe their employers as supportive of their military duty. Federal employers did express a higher level of awareness of USERRA obligations and were more likely to view RC mem-

bers more favorably than employees who are not RC members. At the same time, a higher proportion of federal employers reported that RC members returned from activation with substance-abuse problems, a service-related disability, or increased stress. It is not clear whether RC members who are federal employees are more likely to have these problems or whether federal employers are more aware of them.

### Recommendations

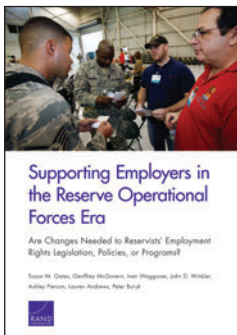
The research suggests that, rather than Congress revising USERRA, DoD can most effectively support employers by modifying existing programs and procedures.

To promote greater flexibility to employers, DoD should consider implementing a more extensive appeal process that would not be limited to specific categories of employers but could be accessed by employers as needed. Such an appeal process, similar to that used in the United Kingdom, would allow DoD to address the most-significant instances of employer impact and balance DoD needs with those of the employer.

DoD should also explore ways to standardize and expand communication with employers. A simple, easy-to-read form with duty start and end dates could include information on the time frame in which RC members must notify their employers of their intent to return to employment per USERRA provisions. DoD should also provide employers with updated information whenever duty is extended. DoD could use such notices to provide information on available resources and services.

Similarly, ESGR should continue its efforts to promote awareness of USERRA. This might include partnering with the Department of Labor and the Small Business Administration to disseminate information about USERRA, particularly to smaller employers.

Finally, employers that have had successful experiences with duty-related absences could be a useful resource for other companies facing such absences for the first time. A network of employers of different sizes and in different industries could be a particularly powerful peer resource. DoD should consider soliciting employers to serve as peer mentors and developing an awareness program for those providing this service. Such a program would provide another means for engaging RC employers while providing them with direct support.



This research brief describes work done for the RAND National Defense Research Institute documented in *Supporting Employers in the Reserve Operational Forces Era: Are Changes Needed to Reservists' Employment Rights Legislation, Policies, or Programs?* by Susan M. Gates, Geoffrey McGovern, Ivan Waggoner, John D. Winkler, Ashley Pierson, Lauren Andrews, and Peter Buryk, RR-152-OSD (available at [http://www.rand.org/pubs/research\\_reports/RR152.html](http://www.rand.org/pubs/research_reports/RR152.html)), 2013. The RAND Corporation is a nonprofit research institution that helps improve policy and decisionmaking through research and analysis. RAND's publications do not necessarily reflect the opinions of its research clients and sponsors. RAND® is a registered trademark. © RAND 2013

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