

***U.S. Department of Labor  
Veterans' Employment & Training Service  
(VETS)***

**Tony Smithhart**  
Iowa Director



# Uniformed Services Employment and Reemployment Rights Act

## USERRA Law – Purpose

- To encourage service in the Uniformed Service.
- Minimize disruption for both the employer and the military employee.
- Prohibit Discrimination

# Discrimination Prohibited

- **Shall not be denied** employment (hiring), reemployment, promotion, benefit, etc.
- Because of service, application to perform service, membership, etc.
- Military service only has to be **a motivating factor**, not the sole reason for the action

## **Uniformed Services Include**

- Army, Navy, Marine Corps, Air Force, & Coast Guard
- Army, Navy, Marine Corps, Air Force, & Coast Guard Reserves
- Army and Air Guard
- Commissioned Corp of the Public Health Service
- Any other service designated by the President in time of war or emergency

# What USERRA Doesn't Do

- Supersede company policies that provide additional benefits above USERRA
- Above and Beyond USERRA examples:
  - Pay Differential
  - Continuation of benefits
  - Etc.



# Who is Eligible for Reemployment?

- Anyone who is “absent” from a position of employment due to uniformed service on a **voluntary** or **involuntary** basis
  - Active Duty, weekend drills, annual training, Active Duty for Operational Support (ADOS)
  - Military Training – initial enlistment testing and requirements included / fitness exams
  - Full-time National Guard Duty (excluding Technician’s)
  - Funeral Honors
  - National Disaster Medical System (NDMS)
  - public health emergency, etc. (Title 42, US Code section 300hh-11(e))



## Eligibility (cont.)

- Hold position of employment prior to military service (FT, PT & temporary)
- Brief and non-recurrent jobs are not protected
- Timely return to work or application for reinstatement.



# Prior Notice

- **Advanced verbal or written notice** to employer provided prior to service
- Notice may be given by the service member or by an “appropriate officer”
- Notice not required if precluded by military necessity or otherwise impossible or unreasonable to provide (call-ups)





# Duration of Service

- 5-year cumulative limit on military duty for other than training

## Exceptions

- Service required beyond 5 years
- Person is unable to obtain release due to no fault of their own (stop loss)
- Required training for Guard/Reservists
  - 2 week training, drills, developmental training
- Ordered to involuntary service or retained to active duty due to domestic or national security

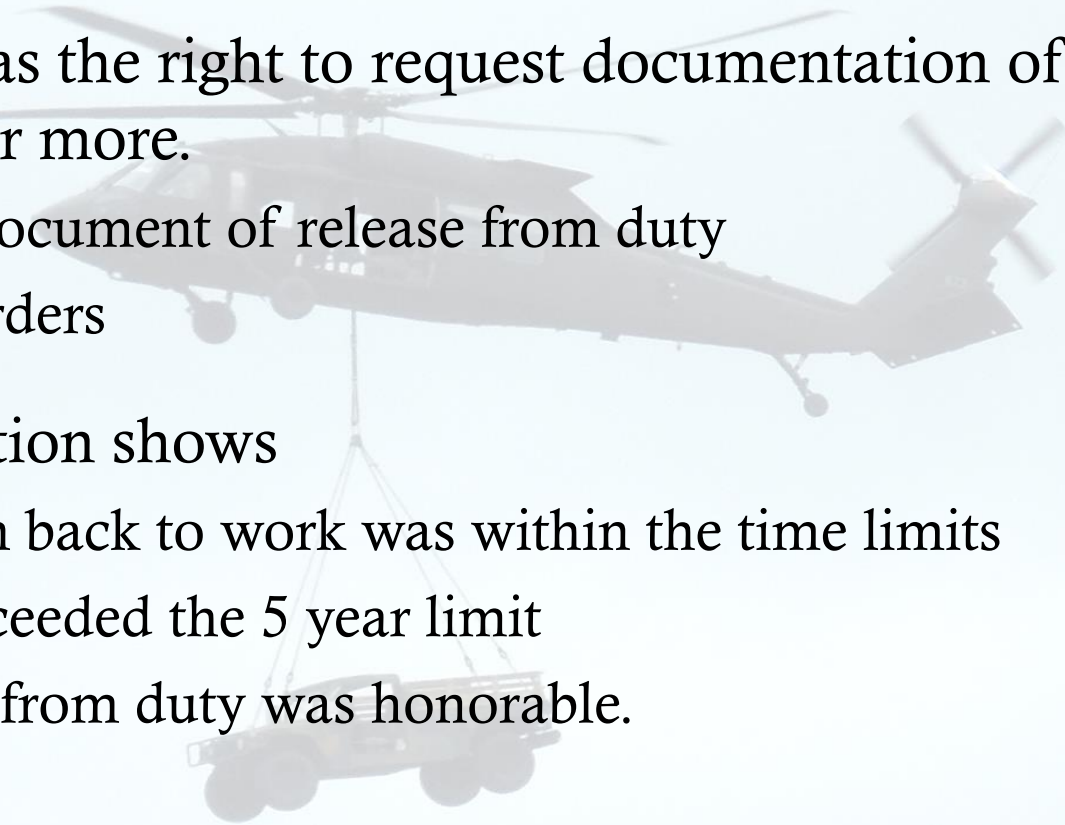
# Deadline of Return

- Depends on **DURATION** of service
- Less than 31 days – report for work the first fully scheduled shift after the completion of 8 hours. Rest and recovery \*
  - Include fitness-for-service exams.
- 31-180 days – apply within 14 days
- 181 days or more – apply within 90 days
- Hospitalization or convalescence (2 yrs.)
- 38 U.S.C. 4312 (e)

\* Same criteria when departing for duty

# Documentation Upon Return

- Employer has the right to request documentation of service of 31 days or more.
  - DD214 – document of release from duty
  - Military Orders
- Documentation shows
  - Application back to work was within the time limits
  - Has not exceeded the 5 year limit
  - Separation from duty was honorable.



# Unavailable Documentation

- May not readily be available or does not exist.
  - Service Members (SM) don't always know where to find it or who to ask.
  - SM's may not receive at active duty check out.
- Must reemploy according to the guidelines. Prompt Reinstatement.
  - How long should you wait for documentation?
  - What can you do if you don't receive it?
- If/when documentation does become available & reemployment requirements were not met?
  - Then what? Terminate or retain?

# Reinstatement

- Escalator Principle – where would the employee be had they never left for military duty?
- Continuous accumulation of seniority
  - SM returns from military duty. A promotable position became available while he was on duty. He was told he could not apply for it because he wasn't available at the time the positions became open.
- Status (location/shift)
  - SM returns from military duty after being away for 12 months. During that time his shift was eliminated at the location prior to his military service. He was told at his return there were only shifts available at a plant 2 hours away. His only option was to transfer there or not have a job.

# Reinstatement – Cont.

- Refresher Training/Retraining
  - SM returned to work at a car dealership in the maintenance department. He was fired a couple weeks later. The employer stated he did not know the equipment and took too long to complete a repair. There were no trainers available.
  - What possibilities were open to the dealership manager to train him?
- Prompt Reinstatement
  - Once SM provides notice of returning to work.
  - As soon as possible, not longer than 2 weeks.





# Reinstatement – Cont.

- Disabled due to military service
  - Make reasonable efforts to accommodate
  - What if there are no positions in the company the employee is qualified to do?
  - We have a position but the costs to accommodate the disability is extraordinary.
  - Does the company have to pay them the same even though the position is normally at a lower rate? (could be more or less)
- The “fill-in” employee
  - The employer hired a fill in while the SM was deployed. The employer really likes the fill and does not wish to bring the SM back into the position. The SM has been given a position in the company with lower status but similar pay.

# Reinstatement – Cont.

- **Pension Contributions**

- SM returned from deployment and found the employer did not continue contributions to his pension or retirement plan and was upset.

*Does the employer need to continue to contribute or were they correct in not continuing the contributions?*

- How much time does the employer have to meet the contribution guidelines?



# Reinstatement – Cont.

- **Health Insurance**
- Elect continued health insurance coverage through civilian job (prior to military duty)
  - no additional cost if service less than 31 days
    - up to 102 % administrative cost if service is over 31 days or more
- Right to reinstatement of coverage upon reemployment (no waiting periods)
- No exclusion of “pre-existing conditions” (unless service connected)

# Additional Rights

- A military employee tells his manager he has his 2 week Annual Training coming up in a month. The manager says that's fine but you'll need to use your vacation time.
  - *Can the manager / employer require this?*
- An employee tells his manager he has drill weekend in 2 weeks and was scheduled to work. The manager tells him he may go as long as he finds someone to cover his shift.
  - *Can the manager / employer require this?*

# Protections (cont.)

- Protection against discharge without cause for 1 year after return if service is over 180 days
- Protection against discharge without cause for 6 months after return of 31 days to 180 days of service
- Burden of Proof is on the employer.
- Employers are prohibited from retaliating from anyone who:
  - Files the complaint
  - Testifies as part of the investigation

***Is the returning employee always entitled to have the same job back?***

***Not always.***

- ★ Less than 91 days - job that would have been attained (normally same job as when you left)
- ★ 91 days or more - into the same position of a position of *like seniority\**, *status and pay* (must be qualified for position)
- ★ --38 U.S.C. 4313

***“SHOULD BE TREATED AS IF THEY NEVER LEFT”***

- \* Seniority = longevity in employment & benefits of employment.  
Benefits = advantage, profit, privilege, gain, status, account, interest, pension, health and stock plans, insurance, bonuses, severance, vacations & the opportunity to select hours & location





## *Overview of Military Employees Requirements*

Key responsibilities of  
Guard/Reserve member:

- Provide Advance verbal/written notice
- Provide Documentation (orders if over 31 days)
- Reporting back on time (14 or 90 days)



# *ESGR Mission, Goals, and Support*

**Becky Coady**  
**ESGR Program Director**



# *ESGR Overview*

- Secretary of Defense Initiative - 1972
- Active duty military forces needs Guard & Reserve forces
- Guard & Reserve forces are about ½ of today's military
- Guard & Reserve members with special skills are utilized in community support missions such as the Agricultural Team sent to Afghanistan



# *State ESGR Staff*

- *3 paid staff*
  - Facilitate programs
  - Report to National ESGR
  - Support State volunteers
- *106 volunteers statewide*
  - Employer Outreach
  - Military Outreach
  - Ombudsman
  - Employment Initiative Program



# *Education Programs*



- **Employer Outreach**
  - Bosslifts or Center of Influence
  - Lunch and Learn/Employer Basic Training
  - Company Training – Managers and Supervisors
  - Resource
- **Military Outreach**
  - Annual USERRA
  - Awards programs

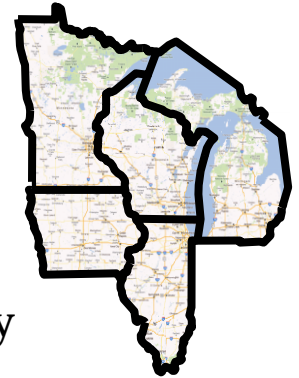
# The Reserve Component

# The Guard

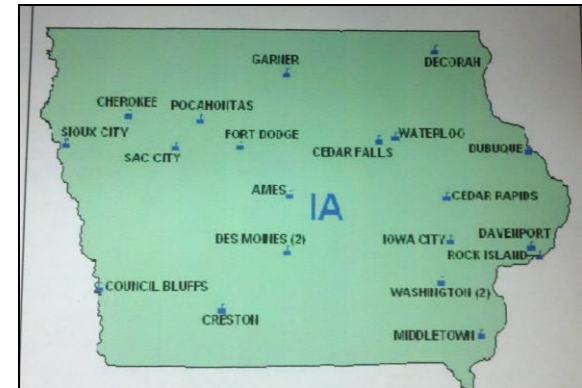
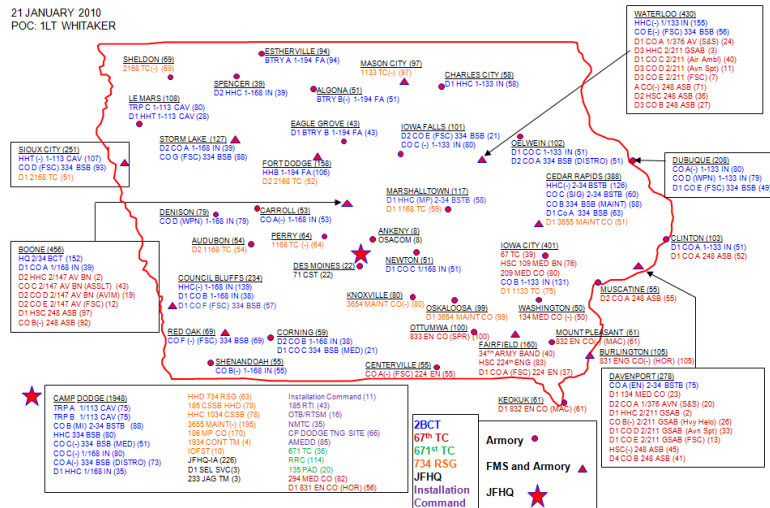
- State
- Federal

## The Reserves

- Federal
- Regional
- Limited to how they support



21 JANUARY 2010  
POC: 1LT WHITAKER





# Reserve Components in Iowa

- Army National Guard
- Air National Guard
- US Army Reserves
- US Marine Corp Reserves
- US Navy Reserves



# *Mediation Services*

## Ombudsman Program

Free USERRA Mediation and Consultation

Available to employers as well as military

Represent and assist both parties with any needs. We are not partial to one party over another and should not take sides.

# Employment Assistance

- Resources
  - H2H – Hero 2 Hired
  - JCEP – Job Connections Education Program
  - IWD – Iowa Workforce Development



# Contact Info

## **ESGR**

Local ESGR Representative: Becky Coady  
On Line: [www.esgr.mil/iowa](http://www.esgr.mil/iowa)

State Office Email: [rebecca.l.coady.ctr@mail.mil](mailto:rebecca.l.coady.ctr@mail.mil)  
[heather.m.geerdes.ctr@mail.mil](mailto:heather.m.geerdes.ctr@mail.mil)  
[stacy.l.craven2.ctr@mail.mil](mailto:stacy.l.craven2.ctr@mail.mil)

Toll Free: 800-294-6607 Ext 2757, 4192 or 2742

## **DOL- Tony Smithhart**

515-281-9061  
[Smithhart.anthony@dol.gov](mailto:Smithhart.anthony@dol.gov)

## **JCEP – Shawn Hippen**

515-252-4285  
[Shawn.hippen@jcep.info](mailto:Shawn.hippen@jcep.info)

## **Hero2Hired – Marvin Dixon**

515-252-4592  
[Marvin.l.dixon.ctr@mail.mil](mailto:Marvin.l.dixon.ctr@mail.mil)

