

The ALPA Military Affairs Committee would like to take the time to recognize those Military Members who serve their country away from family throughout the year. We recognize the challenges that are involved in balancing military commitments with civilian job responsibilities. Add family into the mix, and you can see how complex this balance can become.

Employees across all departments in FedEx are made up of proud military members currently serving in the Reserve and Guard. All of these employees are granted rights under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). The Department of Labor (DOL) has been charged with the oversight and enforcement of USERRA, and has developed regulations in an easy to use question & Answer format. These regulations can be found at:

<http://preview.tinyurl.com/ALPA-MilAffairs-USERRA-Regs>

We have quoted a few of the pertinent regulations, below, for your convenience:

**Must the employee give advance notice to the employer of his or her service in the uniformed services?**

Yes. The employee, or an appropriate officer of the uniformed service in which his or her service is to be performed, must notify the employer that the employee intends to leave the employment position to perform military service.

The employee's notice to the employer may be either verbal or written. The notice may be informal and does not need to follow any particular format.

**Is the employee required to get permission from his or her employer before leaving to perform military service?**

No. The employee is not required to ask for or get his or her employer's permission to leave to perform military service. The employee is only required to give the employer notice of pending service.

**Is the employee required to accommodate his or her employer's needs as to the timing, frequency or duration of service?**

No. The employee is not required to accommodate his or her employer's interests or concerns regarding the timing, frequency, or duration of uniformed service. The employer cannot refuse to reemploy the employee because it believes that the timing, frequency or duration of the service is unreasonable. However, the employer is permitted to bring its concerns over the timing, frequency, or duration of the employee's service to the attention of the appropriate military authority. Regulations issued by the Department of

Defense at 32 CFR 104.4 direct military authorities to provide assistance to an employer in addressing these types of employment issues. The military authorities are required to consider requests from employers of National Guard and Reserve members to adjust scheduled absences from civilian employment to perform service.

**Does service in the uniformed services have to be an employee's sole reason for leaving an employment position in order to have USERRA reemployment rights?**

No. If absence from a position of employment is necessitated by service in the uniformed services, and the employee otherwise meets the Act's eligibility requirements, he or she has reemployment rights under USERRA, even if the employee uses the absence for other purposes as well. An employee is not required to leave the employment position for the sole purpose of performing service in the uniformed services.

**Is the employee required to submit documentation to the employer in connection with the application for reemployment?**

Yes, if the period of service exceeds 30 days and if requested by the employer to do so. If the employee submits an application for reemployment after completion of a period of service of more than 30 days, he or she must, upon the request of the employer, provide documentation to establish that:

The reemployment application is timely;

The employee has not exceeded the total time limit, currently five years, on the duration of service;

The employee's separation or dismissal from service was not disqualifying.

With rights come responsibilities. The Department of Defense has developed the Employer Support of the Guard and Reserve administration (ESGR) to liaise between employers and employees regarding USERRA.

Below are excerpts from the ESGR website regarding common questions that may arise concerning an Employer's rights and responsibilities for complying with USERRA:

<http://www.esgr.mil/Employers/Additional-Resources/Employer-FAQ.aspx>

**Is the reservist or National Guard member required to provide me a copy of his or her military orders, when he or she gives me notice of an upcoming period of service?**

No. USERRA imposes no such requirement. We (ESGR) recommend that National Guard and Reserve personnel provide to their employers such documentation as

is readily available. If you have any questions, you may call the member's commanding officer. If the member will not provide you that information, please call us (ESGR) at 1-800-336-4590.

**I have an employee who takes a lot of time off for military training and service. Now, she has asked for time off for a time that is particularly inconvenient for me. Am I permitted to veto her request for military leave?**

No. 38 U.S.C. 4312(h). She is only required to give you notice, not to obtain your permission. You have no right to veto the timing, frequency, duration, etc. You are permitted to contact the Commanding Officer. It is Department of Defense (DOD) policy that the Commanding Officer should work with you to resolve conflicts of this kind. The Commanding Officer will accede to your reasonable request to reschedule military training, unless doing so would detract from unit readiness and mission accomplishment.

If the timing of this training period presents a real problem for you, the Commanding Officer will try to adjust the schedule for you, but please understand that such rescheduling must be kept to a minimum. National Guard and Reserve units train together, and they must go to war together. The training periods are scheduled so that the unit can be trained together. If an individual unit member undergoes training at a different time, it is likely to be impossible to replicate the training that the rest of the unit received. As a result, the individual unit member may not be able to perform some critical task, resulting in additional casualties and endangering the accomplishment of the mission.

Under the "Total Force Policy," our nation is more dependent than ever before upon the National Guard and Reserve for essential military readiness. The National Guard and Reserve make up almost half of the total pool of available military personnel.

While ALPA has no role in enforcement of USERRA provisions, your Military Affairs Committee works closely with the ESGR and the DOL. If you have any questions or concerns, please contact the committee at [Fedex-Military@alpa.org](mailto:Fedex-Military@alpa.org). We will be happy to assist you directly or put you in touch with the appropriate government agencies. Thank you for your service and God Bless the members of our Armed Forces.