



NATIONAL SECURITY RESEARCH DIVISION

- CHILDREN AND FAMILIES
- EDUCATION AND THE ARTS
- ENERGY AND ENVIRONMENT
- HEALTH AND HEALTH CARE
- INFRASTRUCTURE AND
TRANSPORTATION
- INTERNATIONAL AFFAIRS
- LAW AND BUSINESS
- NATIONAL SECURITY
- POPULATION AND AGING
- PUBLIC SAFETY
- SCIENCE AND TECHNOLOGY
- TERRORISM AND
HOMELAND SECURITY

The RAND Corporation is a nonprofit institution that helps improve policy and decisionmaking through research and analysis.

This electronic document was made available from www.rand.org as a public service of the RAND Corporation.

Skip all front matter: [Jump to Page 1](#) ▼

Support RAND

[Purchase this document](#)

[Browse Reports & Bookstore](#)

[Make a charitable contribution](#)

For More Information

Visit RAND at www.rand.org

Explore the [RAND National Security Research Division](#)

View [document details](#)

Limited Electronic Distribution Rights

This document and trademark(s) contained herein are protected by law as indicated in a notice appearing later in this work. This electronic representation of RAND intellectual property is provided for non-commercial use only. Unauthorized posting of RAND electronic documents to a non-RAND website is prohibited. RAND electronic documents are protected under copyright law. Permission is required from RAND to reproduce, or reuse in another form, any of our research documents for commercial use. For information on reprint and linking permissions, please see [RAND Permissions](#).

This report is part of the RAND Corporation research report series. RAND reports present research findings and objective analysis that address the challenges facing the public and private sectors. All RAND reports undergo rigorous peer review to ensure high standards for research quality and objectivity.



NATIONAL SECURITY RESEARCH DIVISION

Supporting Employers in the Reserve Operational Forces Era

Are Changes Needed to Reservists' Employment
Rights Legislation, Policies, or Programs?

Susan M. Gates, Geoffrey McGovern, Ivan Waggoner, John D. Winkler,
Ashley Pierson, Lauren Andrews, Peter Buryk

Prepared for the Office of the Secretary of Defense

Approved for public release; distribution unlimited

The research described in this report was prepared for the Office of the Secretary of Defense (OSD). The research was conducted within the Forces and Resources Policy Center of the RAND National Defense Research Institute, a federally funded research and development center sponsored by the Office of the Secretary of Defense, the Joint Staff, the Unified Combatant Commands, the Navy, the Marine Corps, the defense agencies, and the defense Intelligence Community under Contract W74V8H-06-C-0002.

Library of Congress Control Number: 2013945722

ISBN: 978-0-8330-8091-2

The RAND Corporation is a nonprofit 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.

Support RAND—make a tax-deductible charitable contribution at www.rand.org/giving/contribute.html

RAND® is a registered trademark.

© Copyright 2013 RAND Corporation

This document and trademark(s) contained herein are protected by law. This representation of RAND intellectual property is provided for noncommercial use only. Unauthorized posting of RAND documents to a non-RAND website is prohibited. RAND documents are protected under copyright law. Permission is given to duplicate this document for personal use only, as long as it is unaltered and complete. Permission is required from RAND to reproduce, or reuse in another form, any of our research documents for commercial use. For information on reprint and linking permissions, please see the RAND permissions page (www.rand.org/pubs/permissions.html).

RAND OFFICES

SANTA MONICA, CA • WASHINGTON, DC

PITTSBURGH, PA • NEW ORLEANS, LA • JACKSON, MS • BOSTON, MA

DOHA, QA • CAMBRIDGE, UK • BRUSSELS, BE

www.rand.org

Summary

The Uniformed Services Employment and Reemployment Rights Act (USERRA) was designed to prevent hiring discrimination and bolster job protection for members of the armed forces, including those of the Reserve Components (RCs).¹ Under USERRA, it is against the law for an employer to refuse to hire a reservist, guardsman, veteran, or someone applying to enter the military services on the basis of the applicant's military service affiliation. Moreover, service members are guaranteed reemployment by their former employers after periods of military duty. Since 1994, this landmark employment rights legislation has provided assurance to men and women weighing the decision to volunteer to defend the United States and is a tangible expression of gratitude for their immense sacrifice.

Although Congress considered the potential costs that USERRA might impose on employers in crafting the original legislation, the way in which the U.S. Department of Defense (DoD) uses the RCs has changed dramatically since 1994—potentially altering the cost-benefit calculation on which the passage of USERRA was based. During the Cold War, the RCs were largely viewed as a strategic reserve that could be called upon in the event of a major contingency operation. RC members participated in regular drill activities (one weekend a month plus an additional two-week period each year) but did not view extended activation as a likely event.² This model of the RCs began to change with the first Gulf War in 1991, and then changed dramatically after September 11, 2001.

Measured in terms of the number of duty days for members of the RCs, the aggregate burden that employers are asked to shoulder in support of military operations more than doubled between fiscal year (FY) 1993 and FY 1996—from 5.3 million duty days to a sustained level of 12 million to 13 million duty days. After

¹ The term *RC* is used to refer to all seven Guard and Reserve organizations: Army National Guard, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard, Air Force Reserve, and the Coast Guard Reserve (10 U.S.C. §101).

² An activation is an order to active duty for purposes other than training. An activation may be voluntary or involuntary. An activation may or may not be associated with a deployment. A deployment involves the movement of forces for the purposes of a military operation.

2001, during the global war on terrorism, the burden continued to grow, reaching 68.3 million duty days in 2005. By FY 2010, the number of duty days had declined to 37.5 million. Thus, although it is substantially lower than the FY 2005 peak, the number of duty days in FY 2010 still far exceeded the norm at the time USERRA was passed.

Activation and deployment are now common occurrences for RC members: Approximately one-third of RC members surveyed in January 2011 reported that they had been activated in the previous two years, with more than three-quarters of those experiencing deployment.³

The shift from a strategic to an operational reserve implies that employers of RC members are more likely to experience a duty-related employee absence than they would have been when USERRA was passed. Survey data reveal that those absences typically exceed 30 days.

Given the increased mobilization of the National Guard and Reserve and the continuing need to balance the rights, duties, and obligations of employers, RC members, and RC members' families, DoD asked the RAND National Defense Research Institute to consider whether changes are needed to USERRA, Employer Support of the Guard and Reserve (ESGR) programs, or RC activation and deployment policies. To address this policy question, the study focused on the following research questions:

- What are the legal protections provided by USERRA, what obligations do they impose on employers, and what are the areas of ambiguity?
- To what extent do employers understand their obligations under USERRA?
- What factors influence the cost of USERRA protections for employers?
- What changes to USERRA or to DoD policy would employers find useful in fulfilling their obligations under USERRA?

To address these questions, we undertook five key research tasks: a review of prior literature and existing data, descriptive and multivariate analysis of data collected by DoD in 2011 through the National Survey of Employers and between 2007 and 2010 through the Status of Forces Surveys of Reserve Component Members (SOFS-Rs), legislative and legal historical review of USERRA, interviews with each of the RC chiefs conducted in 2011, and interviews with 16 employers conducted in 2012. Table S.1 describes how the research tasks informed our answers to the research questions.

This report presents findings from this multimethod approach. The literature review, analysis of data from the SOFS-Rs, and interviews with RC chiefs also serve to provide important contextual information that aids in the interpretation of the research findings. We synthesize the findings from the research questions described

³ For National Guard members, these duty figures would include duty in support of state missions. USERRA covers duty in support of federal missions. National Guard duty in support of state missions is covered by state laws.

Table S.1
Information Sources Used to Address Research Questions

Research Question	Information Source
What are the legal protections provided by USERRA, what obligations do they impose on employers, and what are the areas of ambiguity?	Historical review of USERRA, DoD National Survey of Employers, interviews with employers
To what extent do employers understand their obligations under USERRA?	DoD National Survey of Employers, interviews with employers and with RC chiefs, SOFS-Rs
What factors influence the cost of USERRA protections for employers?	Review of prior research, DoD National Survey of Employers, interviews with employers and with RC chiefs, SOFS-Rs
What changes to USERRA or to DoD policy would employers find useful in fulfilling their obligations under USERRA?	DoD National Survey of Employers, interviews with employers and with RC chiefs

here to develop recommendations regarding potential changes to USERRA, ESGR programs and RC activation, and deployment policies.

USERRA Provides Protection Against Discrimination and Provides Reemployment Rights

USERRA was written to encourage service in the U.S. armed forces by removing some barriers to military service that are related to civilian employment. In its current form, there are two main aspects of the law: (1) general antidiscrimination protection based on veteran status and (2) reemployment rights after periods of military duty. Both categories of protection offer valuable benefits to veterans, as well as to civilians considering joining the military. As written, the law is strongly pro–service member. The law explicitly protects both voluntary and involuntary duty and, unlike other employment laws, does not exempt employers from its provisions based on their size. However, the law does provide for exceptions to the reemployment provisions—for example, in instances in which the provisions might cause the employer undue hardship.

Employer Impact of USERRA Stems from Duty-Related Absences

Our framework for understanding the impact of duty-related absences in the context of USERRA builds on two key insights in the prior literature. First, the net effect for employers stems from both direct and indirect impacts of dealing with the absence in a way that complies with USERRA. Direct impacts are those associated with recruiting, screening, hiring, and training replacement workers, as well as retraining the reservist upon his or her return from military duty (as needed). Direct impacts also include the relative cost of the replacement worker (which may be positive or negative, depending

on the cost of the absent reservist) and the cost of providing benefits to the reservist during his or her absence (either voluntarily or as required by law). In addition, indirect effects, such as lost business, productivity, or opportunity for growth, may be incurred. Second, the impact will vary across employers and will also be influenced by who is getting deployed and for how long.

Figure S.1 describes our conceptual framework. By establishing employment and reemployment rights, USERRA has the potential to impose costs on employers. Those costs are influenced by characteristics of the absence, the employee who is activated and his or her position with the employer, the employer, and the overall economy. DoD policy, as well as DoD and ESGR programs, targeting employers can influence costs *indirectly* through their effect on the nature of absences, the characteristics of employees who are activated and their positions with their employers, and potentially the characteristics of employers. DoD and ESGR programs can also have a *direct* influence on some of those costs. A key focus of our analysis was to identify any systematic relationships between characteristics of the absence, position or employee, or employer on the one hand and the cost of absences to the employer on the other and to consider what types of policies might provide an effective response.⁴

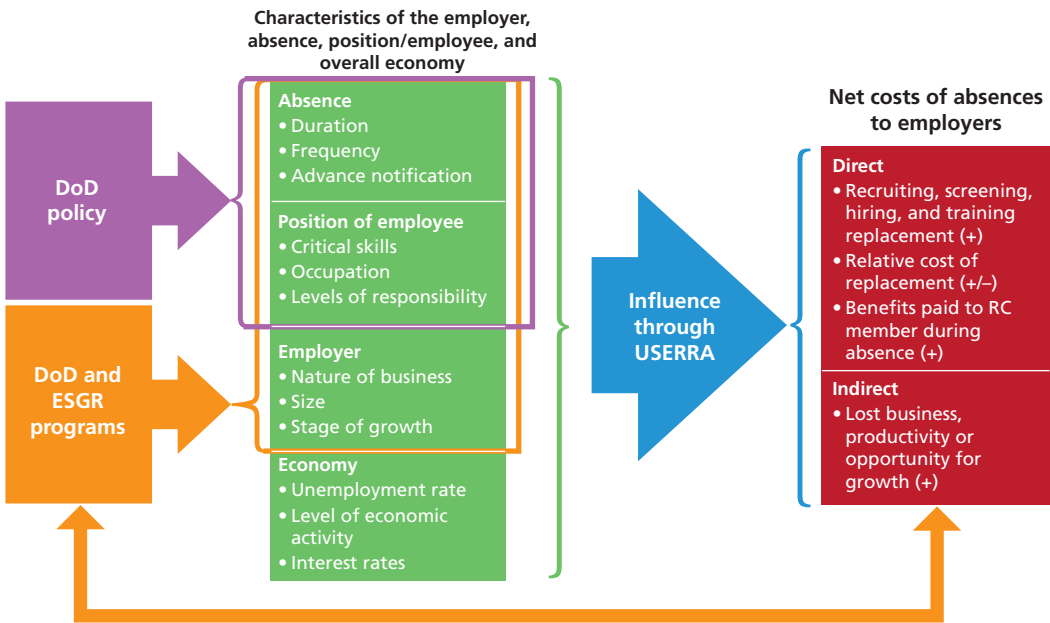
Findings

Legal Protections Provided by USERRA Are Generally Clear and Consistent with Other Employment Laws

We considered whether there is sufficient need for a rewrite of the USERRA legislation based on USERRA's legal and legislative history. Whereas USERRA's predecessor laws (Selective Training and Service Act [Pub. L. 76-783, 1940], and the Vietnam Era Veterans' Readjustment Assistance Act, commonly known as the Veterans' Reemployment Rights Act [Pub. L. 92-540, 1972]) were deficient in terms of content, DoD policy interface, and general harmony with employment protections related to things other than military service or affiliation, USERRA is generally clear and consistent with other employment laws. As such, we conclude that there is no need for substantial revision to the legislation. Many of the challenges employers face stem from RC activation rates and utilization policy rather than from the employment and reemployment protections of USERRA itself.

⁴ Because much of the data used in this study were collected during a significant economic downturn, we are not able to identify relationships between characteristics of the economy and the cost of absences, although such relationships have been suggested in the literature.

Figure S.1
Conceptual Framework Linking a Duty-Related Absence to Employer Impact



RAND RR152-S.1

Understanding of USERRA, Employer Obligations, and Where to Go for Help Is Incomplete

Our analysis reveals that employer knowledge of USERRA and ESGR is incomplete. RC employers express greater familiarity with USERRA and confidence in their ability to comply with the law and awareness of ESGR than employers that do not employ an RC member. Nevertheless, roughly one-quarter of RC employers disagreed with the statement that they knew all they needed to know in order to remain in compliance with USERRA. Small employers were more likely to disagree with this statement than large employers. Well below half of RC employers were aware of the Statement of Support and programs and awards sponsored by ESGR. Many employers expressed an interest in the types of programs, awards, and supports already offered by ESGR.

Low response rates to the survey and employers' unwillingness to participate in interviews on this topic suggest that USERRA is not a high-priority issue for most employers except when they are dealing with duty-related absences.

In addition, there is extant policy that instructs the RCs to identify a representative who can consider requests from civilian employers for adjustments to reserve duties in cases in which such duties would have adverse effects on an employer's businesses (Under Secretary of Defense for Personnel and Readiness, 1997). Currently under review by DoD, this instruction, DoD Instruction 1205.12 has the potential to meet some of the concerns raised by employers that do face hardships to their business

activities. Our study suggests that knowledge of such policy among employers is low. Details about the policy and its implementation are not readily available, suggesting the need for further DoD review.

The Impact That USERRA Protections Can Have on Employers Is Highly Varied and Influenced by a Wide Range of Factors

Duty-related absences can impose a substantial burden on employers in some circumstances, but the impacts are highly varied and influenced by a wide range of factors. The impact of USERRA protections stems from the direct and indirect implications of duty-related absence for business operations, rather than from the costs of the specific employment and reemployment rights contained in the legislation. These implications of absences include the need to manage workload, the need to replace the RC member, loss of business, costs of health and other benefits, and lost productivity. Among employers that experience a business impact, issues related to managing workload are most common. However, each type of impact was reported by at least one employer, and small employers were more likely than large employers to report a loss of business.

Our study confirms that factors suggested by prior research and described in our conceptual framework contribute to employer impact. We find evidence that the following factors are associated with greater employer impact:

- longer or more-frequent absences
- the absence of highly skilled employees, key personnel, or employees who are “one of a kind” in their organization
- employer characteristics, including employer size, with smaller employers being more likely to experience impacts.

However, our analysis does not identify any single factor or combination of factors as clear drivers of impact. For example, although employers that experience longer absences are more likely to report an impact, many employers that experienced absences longer than a year reported no impact.

Instead, our analysis suggests that it is a more idiosyncratic combination of factors, including employer circumstances at the time of activation, that result in a significant employer impact. School districts, businesses that depend on personal relationships with clients or customers, and businesses that rely on highly skilled or trained employees are more likely to experience problems and may need more advance notice to plan for the absence. In addition, employers reported challenges in dealing with the activation of the only employee of a certain type in the organization—whether or not that individual is highly skilled. Because it is not possible to shift the work to another employee, more advance planning is needed in these situations.

Employers reported a need to plan for the return of RC members, as well as for their pending absences. Some employers indicated that planning for the return is

inhibited by a lack of information about whether the RC members will return to work after duty and when the duty will end. For a highly skilled employee, an employer can face a need to retrain the employee when he or she returns, particularly in the case of a long absence. Some employers mentioned challenges involved in terminating replacement workers, including the resulting increase in the costs of unemployment insurance. In addition, about 15 percent of employers that experienced a duty-related absence reported that the RC members faced problems, such as difficulty interacting with clients or emotional problems, upon return to civilian employment.

No Single Change to DoD Policy or Support Programs Would Address the Concerns of All Employers

There was no consensus among employers as to the support programs that would be most useful to their businesses in the event of a duty-related absence. The largest share of employers reported that no support programs were needed, but each of the survey options was selected by at least one employer. Employers did express a desire for advance notification of both absence and return, and many employers wanted clear and consistent documentation of the term of duty directly from DoD. Some employers—most notably, school systems, employers with seasonal or cyclical work schedules, smaller employers, and employers facing the absences of key personnel or multiple personnel (including first responders)—requested more flexibility and employer input in scheduling both training duty and deployment. Other common suggestions provided by employers were limits to the duration or frequency of voluntary duty, replacement assistance (possibly at government expense), government contracting preferences for RC employers, and means for remaining in contact with RC members during their terms of duty.

Most employers did not state a preference for or against shorter, more-frequent duty versus longer, less-frequent duty. And although two-thirds of all employers expressed a preference for combining training and deployment in the event of a long deployment-related activation, one-third of employers preferred to have a gap between training and deployment.

Federal Agencies Employ a Disproportionate Number of Reserve Component Members and Appear to Value and Support Those Members as Much as Other Employers Do

The federal government employs a disproportionately large number of RC members. Whereas the federal government employs less than 2 percent of the U.S. workforce (Falk, 2012), the 2011 RC member survey reveals that it employs 19 percent of the RC members who are employed full time. RC members employed by the federal government are neither more nor less likely to experience USERRA problems and are neither more nor less likely to describe their employers as “supportive” or “very supportive” of their military duty compared with private, for-profit employers. Compared with

private, for-profit employers, federal employers expressed a higher level of awareness of USERRA obligations and were more likely to view RC members more favorably than employees who are not RC members. However, the percentage of federal employers reporting that RC members returning from activation had problems with substance abuse, a service-related disability, or increased stress was more than twice as high as for the overall National Survey of Employers population.

Recommendations

We conclude that **there is no need for substantial revision to the legislation.** Our findings suggest that DoD can most effectively support employers through modifications to DoD programs and policies.

Providing Greater Flexibility to Employers Holds More Promise Than Broad Changes to USERRA or Utilization Policy

Our findings suggest that across-the-board changes to USERRA, utilization policy, or duty structure applied to all RC members and all employers will not resolve employer impacts uniformly, given the sporadic and varied nature of problems faced by employers.

We recommend that DoD consider implementing a more extensive appeal process that would not be limited to specific categories of employers but rather could be accessed by employers on an as-needed basis. Such an appeal process, similar to that used in the United Kingdom, would allow DoD to effectively address the most-significant instances of employer impact and balance its needs with those of the employer. DoD already allows individual RC members to petition for relief from activation. Extant policy also provides employers with access to a similar process. Strengthening such policy, in terms of both implementation and promoting greater knowledge in the employer community, could ameliorate the most-significant instances of employer impact.

DoD Should Explore Ways to Standardize and Expand Communication with Employers About Duty-Related Absences and Available Resources

Since 2004, RC members have been required to provide DoD with information on their civilian employers and job skills and to notify DoD of any job changes (DoD, 2004). The data provided by RC members are retained in the Civilian Employment Information (CEI) database. Many employers would like to see improvements to communication from DoD about duty-related absences—particularly duty start and end dates. DoD should consider developing and preparing a simple, easy-to-read form for employers that documents duty start and end dates. The form could include information on the time frame in which the RC member must notify the employer of his or her intent to return to employment per USERRA provisions. In addition, DoD

should provide employers with updated information whenever duty is extended for the benefit of those employers that are not receiving updates directly from the RC members. Finally, DoD could use these notifications as an opportunity to provide a USERRA information packet and ESGR contact information to employers at the start of duty and information on DoD resources for service members and veterans at the end of duty. Changes to the CEI program may be required to effectively support such improvements.

As part of these efforts, DoD should ensure that the resources available to help employers and RC members deal with common issues that arise in the transition back to civilian life after a deployment are appropriate and adequate. DoD should also ensure that RC employers (as well as RC members) are aware of these resources. Most employers value the RC members they employ and are supportive of their service to the United States. In cases in which an RC member returns from a deployment with problems, employers want to help. DoD should improve access to information on support programs that are available to RC members. DoD should also explore why federal employers are more likely than private, for-profit employers to report that employees are returning from duty with employment-related challenges. It may be that federal employers have a higher level of awareness of possible issues or that RC members who are federal employees are experiencing such challenges at a higher rate.

Of course, these suggestions will be useful to employers only to the extent that DoD maintains up-to-date information about employers of RC members. Responses to the National Survey of Employers suggest that continued efforts to improve this information are needed.

ESGR Should Continue Its Efforts to Promote Awareness of USERRA

Our findings suggest that ESGR should continue its efforts to promote awareness of USERRA and other employer-related programs and policies—especially among known employers of RC members. ESGR should consider partnering with the U.S. Department of Labor and the U.S. Small Business Administration to improve the dissemination of information about USERRA, particularly to smaller employers.

Employer Peer Resource Networks Could Assist Employers in Dealing with Duty-Related Absences

Employers that have had successful experiences with duty-related absences can 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 powerful peer resource for other employers. DoD should consider soliciting employers to serve as peer mentors and developing an award program to recognize employers that provide this valuable service. Such a program would provide another avenue for engaging RC employers while providing them with direct support.