U.S. Office of Personnel Management
Guidance on Ensuring USERRA Protection

Overview

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) protects individuals performing, or who have performed, uniformed service in accordance with 38 U.S.C. 4301-4335 from employment discrimination on the basis of their uniformed service, and provides for their prompt restoration to civilian employment when they return to civilian life. Uniformed service means the Armed Forces; the Army National Guard and the Air National Guard, when engaged in active duty for training, inactive duty training, or full-time National Guard duty; the Commissioned Corps of the Public Health Service; and any category of persons designated by the President in time of war or emergency.

USERRA is intended to ensure that these uniformed service members are not disadvantaged in their civilian careers because of their service, are promptly reemployed in their civilian jobs upon their return from duty, and are not discriminated against in employment because of their military status or uniformed service obligations. The President's July 19, 2012, memorandum titled, "Ensuring the Uniformed Services Employment and Reemployment Rights Act (USERRA) Protections," directs agencies to take steps to ensure robust compliance across the Federal Government with USERRA's employment and reemployment protections. Section 2 of this memorandum directs the Office of Personnel Management (OPM) to issue guidance to Federal agencies on ways to improve USERRA protection policies and practices. The purpose of this guidance is to support Federal agencies in robustly complying with USERRA protections through training, new data collection procedures, new USERRA metrics, guidance and tools, and by strengthening relationships between service members and stakeholder groups.

Training

The Veterans' Benefits Improvement Act of 2008, Public Law (P.L.) 110-389, October 10, 2008, requires all Federal agencies to provide Uniformed Services Employment and Reemployment Rights Act (USERRA) training. The mandatory USERRA training is to be provided to "any personnel of the agency who are authorized to recommend, take, or approve any personnel action that is subject to the requirements of this chapter with respect to employees of the agency." Consistent with this law, agencies must provide USERRA training at least once during Fiscal Year (FY) 2013 and annually thereafter.

· Employees subject to the mandatory OPM-approved USERRA training requirements include human resource professionals, hiring managers, and any employee involved in interview panels, review boards, etc.

· Agency employees must complete the mandatory USERRA training by July 31st of each fiscal year.

· Agencies must report to OPM the number and percentage of employees subject to mandatory OPM-approved USERRA training requirements so trained during the fiscal year by September 30th of each year.

· Agencies are encouraged to use Department of Labor's USERRA e-learning application on HR University at http://hru.gov/course_catalog.aspx?cid=33&mgr=false or the training provided to agencies by OPM on September 21, 2009, available at: http://www.chcoc.gov/Transmittals/TransmittalDetails.aspx?TransmittalID=2525. Agencies not using these resources must consult with OPM on the mandatory USERRA training they wish to provide. In addition, OPM is working with the Office of the Special Counsel (OSC) to include OSC's training as an option that agencies can use to satisfy the mandatory training requirement.

· In addition to the mandatory USERRA training, OPM suggests agencies provide "event-based" or "just in time" training to covered employees. For example, when an agency is aware that one of its employees is being demobilized from uniformed service, that agency could provide focused training to affected staff on USERRA return-to-duty rights and obligations, time frames, etc. (i.e., the USERRA provisions that impact the imminent event – in this case reintegration of uniformed services personnel to the agency). OPM will work with the Chief Human Capital Officer (CHCO) and Chief Learning Officer (CLO) Councils to ensure that mandatory USERRA training continues to meet the needs of the Federal Government in complying with USERRA.

· In addition to the mandatory training described above, agencies should require USERRA training for their uniformed employees who are eligible for active duty activation.

Improved Data Collection Procedures

The July 19, 2012, Presidential Memorandum (PM) directs agencies to take steps to ensure robust compliance across the Federal Government with USERRA's employment and reemployment protections. Section 2(d) of the PM directs the OPM and the Department of Defense to work together to improve data-collection procedures to help better track overall uniformed service member employment data, including Guard and Reserve members. However, all Federal agencies are responsible for ensuring the integrity of the employment data reported to the OPM. To facilitate the reliability of this information, OPM provides instructions for processing USERRA status changes in its *Guide to Processing Personnel Actions,* and agencies are expected to follow that issued guidance. When an employee is absent (whether in pay or nonpay status) in order to perform duty with the uniformed services and has reemployment rights under the USERRA, such a Federal employee is placed in the appropriate status and the agency is further instructed to:

· Provide the employee with information about any applicable restoration rights after service is completed and explain those rights or refer the employee to a specialist who can explain them. (See USERRA, as codified in 38 U.S. Code chapter 43 and regulated in 5 CFR part 353.)

- If applicable, ask the employee to state in writing whether unused annual leave should be paid in a lump sum or held until the employee returns. (See 5 U.S. Code 5552 and 5 CFR 550.1203(c).)

- If the employee called to active duty is a member of the Reserve or National Guard, work with the employee to determine if he or she is covered by the reservist differential provision in 5 U.S. Code 5538 and, if he or she is covered, provide information about the program.

More specifically, and to further assist agencies in reporting accurate data, in March of 2010 OPM reworked its PAY STATUS data element to PAY STATUS/USERRA STATUS and added the following codes and definitions found in the Guide to Data Standards (GDS). Agencies are instructed to use these codes:

- *U: USERRA Status/Not Qualifying for Reservist Differential*. Employee is absent from civilian position to perform service in the uniformed services and has reemployment rights under USERRA, but employee's service is not qualifying under the reservist differential provision in 5 U.S.C. 5538 or a similar reservist differential provision under another authority. Employee may be in nonpay status or pay status (through use of paid leave or other paid time off). Employee is placed in USERRA status through use of nature of action code 473 and legal authority code Q3K.

- *Q: USERRA Status/Qualifying for Reservist Differential*. Employee has USERRA status, and the service is qualifying under the reservist differential provision in 5 U.S.C. 5538 or a similar reservist differential provision under another authority (whether or not employee is actually entitled to a reservist differential payment). Employee may be in nonpay status or pay status (through use of paid leave or other paid time off). Employee is placed in USERRA status through use of nature of action code 473 and legal authority codes Q3K and QRD (or, if QRD does not apply, an agency-specific legal authority code).

OPM strongly encourages agencies to visit the GDS periodically at http://www.opm.gov/feddata/GDS/GDS_A09.pdf for updates to these codes.

New USERRA Metrics

The July 19, 2012, Presidential Memorandum directs OPM to develop appropriate metrics to measure implementation of the Memorandum. How well the Federal Government is performing in these areas will be informed by two key metrics:

- The number of USERRA claims filed against Federal executive agencies with the Department of Labor (DOL) and Office of Special Counsel (OSC) in each fiscal year; the number of those claims which have merit, based on standards established by the DOL and the OSC; and the number of claims as to which an agency was ultimately held to be liable, pursuant to a final decision by an appropriate adjudicative body (this adjudicated claims number may also reflect claims that were filed independently with the Merit Systems Protection Board and not first with DOL/OSC, and those claims will be so identified). Agencies will receive their specific results from DOL at the end of each fiscal year.

- The number and percentage of Federal employees subject to the mandatory OPM-approved USERRA training requirement who received such training. Agencies will provide their data to OPM by September 30th each year.

OPM will use the results of these metrics to work with the USERRA Working Group to further develop guidance to support robust compliance and to improve training.

Guidance and Tools

The Presidential Memorandum discusses the need for uniformed service members "to be reintegrated as quickly and efficiently as possible when they return to civilian life." This statement recognizes the cycle of transition that comes with a leave of absence from the Federal workplace to serve the nation and the subsequent return to the workplace.

Several Federal agencies and private companies take a systemic approach to reintegrating uniformed service members, keying in on strategies for managing the workload while the employee is deployed, communicating with the employee while deployed so he/she keeps abreast of the activities of the office, and utilizing the skills the employee developed while deployed when he/she returns to the office. These strategies and others are often modeled within a lifecycle of strategies—pre-deployment, deployment, and post-deployment.

<u>Pre-Deployment</u>

The first stage of reintegration should take place well before an individual performs uniformed service. An agency should assess its workforce and identify employees who may be likely to perform uniformed service. For example, an agency is likely aware of which employees have an obligation to the military that may result in active duty activation at some point during the employee's tenure. Once an agency has identified these employees, the following strategies can be pursued:

- Create an engagement structure within the agency that builds a collaborative approach to deployment by employees, team members, and management officials by:

  o Developing continuity plans to ensure smooth transition of duties, responsibilities, contacts, information, data, etc., from deployed employees to other members of the office;

  o Ensuring the deployed individual, human resources professionals, managers, coworkers, and other appropriate staff are educated and trained on the requirements of USERRA;

  o Formulating a "continuous engagement" plan so deployed employees keep abreast of the major activities of the office/agency while deployed. The method (e.g., phone calls, email, videoconferencing, mail) and frequency (e.g., weekly, monthly, quarterly) of communicating may be determined prior to deployment and adjusted as necessary;

o   Creating checklists for the employee and management outlining specific roles and responsibilities that each will follow in the event of activation;

o   Identifying employees who may have a spouse or domestic partner (different-sex or same-sex), or other family members who could be deployed to ensure support is provided as appropriate; and

o   Establishing a network of similarly deployed individuals and other employees who have gone through mobilizations and can lend support to deployed employees before, during, and after their deployment.

During Deployment

During the deployment stage, the deployed employee's primary focus is on his/her military mission and service. However, continuous engagement (when practical) by the agency reinforces to the deployed employee his/her importance to the office and may provide an efficient return after deployment. Once the deployed employee has been activated, management and the employee should review the checklists to determine if all information is still accurate and relevant. An agency should consider the following strategies for this stage of the cycle:

·   Ensure accurate and relevant checklists are in place that reinforce the agency's commitment to the mobilized employee by:

o   Securing personal items while gone or storing items until return; and

o   Providing access/connectivity to agency resources such as e-mail, job postings, newsletters, and training opportunities, where practical.

·   Implement the "continuous engagement" plan so the deployed employee keeps abreast of agency news, activities, and information to ensure a transparent return to the agency.

·   Where feasible, provide training opportunities to the deployed employee so his/her skills are maintained and further developed.

Post-Deployment

The post-deployment stage can be a time of stress for the returning employee and the agency. Successful agencies recognize this and plan for their employees' return. Strategies an agency should consider for successful reintegration of its employees are:

·   Establish a formal re-boarding process to ensure the employee's successful return to the agency by:

o   Developing a reintegration checklist of actions to be taken such as access to building, receiving new ID cards, restoration of appropriate information technology services;

o   Hosting "Welcome Back" celebrations and acknowledgements that are supported and attended by agency leadership;

- Allowing the returning employee an opportunity to discuss his/her deployment with his co-workers so they gain a better appreciation for what he/she did while deployed;

- Creating a reintegration team that includes a network of other employees who have performed uniformed service to assist with reintegration by providing the returning employee an empathetic ear, updates on organizational changes, mentoring, etc; and

- Establishing procedures for follow-up within 6 months of reintegration to include reintegration or exit interviews.

· Accelerate the returning employee's performance by:

- Communicating the performance expectations of the employee within the first 30 days of his/her return;

- Articulating the alignment of the employee's work with the mission and strategic priorities of the organization;

- Identifying any new skill-sets the employee acquired while deployed and utilizing those skills so that the employee has career advancement opportunities and the agency benefits from those acquired skills; and

- Establishing procedures for follow-up each quarter to determine how well the employee is performing and coping in the workforce.

OPM, the White House USERRA Working Group, and the Council on Veterans Employment will continue identifying strategies for reintegration of employees who are deployed and will work together to develop and implement a Reintegration Framework for Governmentwide use in the future.

Strengthening Stakeholder Relationships

Stakeholder relationships are strengthened by collaboration, information, and communication. A strategy to consider for strengthening stakeholder relationships is:

· Formulate an engagement plan with stakeholders by:

- Soliciting input and providing information to agency employees and their family members;

- Creating affinity groups for employees who perform uniformed service within the agency;

- Establishing partnerships with veterans service organizations; and

- Collaborating with Government entities involved in veteran issues such as the Department of Veterans Affairs, DOL-VETS, OPM, etc.

Encourage agency managers to engage military family support groups before, during, and after deployment of their service member employees. Interaction with these groups can bring new perspectives and insights into the needs of the service member/worker.