

Important Legal Issues

Service Member's Group Life Insurance (SGLI)

National Guard Service Members automatically get \$400,000 of life insurance coverage for a monthly charge. You can choose your beneficiary (or beneficiaries). If you want to refuse or reduce the coverage, you must do so in writing.

Wills

Nobody wants to talk about wills but it is a vital part of planning and Family Readiness. A will is a legal document that tells how you want your belongings divided after your death. If you die without a will, the state decides how to divide up your property. If you have a will, you can divide your property the way you wish. Service Members and their families can have wills done by the JAG section when they are called to active duty. It is recommended that families with children have a will.

A Power of Attorney

A power of attorney is a legal document that permits you to name a person who can act on your behalf when you are not able to act yourself. You must be sure to choose someone you know very well - and trust completely!! It is recommended that a Power of Attorney is given to a spouse or parent. There are three basic Powers of Attorney:

- General - this allows the individual to make any decision on any aspect of your life.
- Limited or Special - the person holding the power of attorney can only make decision in specified areas.
- Medical - given to guardians of Service family members under the age of 18. A special, limited Power of Attorney is a required document within a Family Care Plan.

Family Care Plan

All single parent Service Members and dual service couples who are responsible for family members, to include vulnerable adults in their care, must complete a Family Care Plan and validate it on an annual basis. This plan ensures that you have a guardian for your children in case you are called to duty. A Family Care Plan is also for Service Members who are responsible for the care of others besides children. This includes parents. Selecting a responsible guardian is vital to a successful Family Care Plan. This is the person that will accept full responsibility for the dependent family members while the Service Member is accomplishing the mission. If the long-term guardian lives far away, a temporary guardian should be established in case the Service Member is immediately called to duty. Both guardians will have a power of attorney that covers the areas they are responsible for (including, transportation, living arrangements, and especially medical care). It is recommended that **ALL** Service Members with children have a Family Care Plan.

Your Family Care Plan should also include copies of all documents essential to care for the dependent family members. This would include: birth certificates, immunization, medical, and dental records, and names and addresses of all health-care providers.

For more information, please check with your personnel or readiness NCO.

Family Deployment Handbook

Re-Employment Rights

Re-employment rights are one of the first things on the mind of a deploying Service Member. How will I get my job back when I return? Will I lose my seniority or the promotion I was expecting? Below is information about USERRA - the Uniformed Services Employment and Reemployment Rights Act of 1994.

USERRA is a federal law which gives members and former members of the U.S. armed forces (active and reserves) the right to go back to a civilian job they held before military service.

Who gets USERRA protection? You probably qualify for USERRA protection if you meet all five of these tests:

- **Job.** Did you have a civilian job before you went on active duty? *All* jobs are covered, unless your employer can prove the job was truly a temporary position. USERRA applies to all private employers, state governments, and all branches of the federal government.
- **Notice. YOU (OR A RESPONSIBLE OFFICER FROM YOUR MILITARY UNIT) MUST GIVE ADVANCE NOTICE TO YOUR EMPLOYER BEFORE LEAVING FOR ACTIVE DUTY.** Notice can be oral or in writing, but you can best protect your rights by sending a letter by certified mail, or having your employer sign your copy of your letter, acknowledging receipt.
- **Duration.** You can be gone from your civilian job for up to five years (total from the same employer). Any absences from your employer protected under the previous law (VRRRA) count towards your total. Deployments and Presidential call-ups do not count against the five year total.
- **Character of service.** If you are discharged, you must receive an honorable or general discharge. This test does not apply if you remain in the reserve component, but your employer can still require some proof from your unit that your period of service was honorable. A letter from your commander will suffice.
- **Prompt return to work.** If you were gone up to 30 days, you must report back to the first shift which begins after safe travel time from your duty site plus eight hours to rest. If you were gone 31 to 180 days, you must apply in writing for work within 14 days after completing military service. If you were gone 181 days or more, you must apply in writing for work within 90 days. Tell your employer you worked there before, and you left for military service. It is recommended that the Service Member stay in contact with their employer during the deployment and keep them informed on their intended time they will return to work.

You are entitled to protections both while you are gone and when you return to work.

- **Health insurance during service.** If you ask for it, your employer must continue to carry you and your family on the company health plan for up to 30 days of service, at the normal cost to you. **TRICARE does not cover family members for tours of less than 30 days.** You can get up to 18 months of coverage, but your employer can pass the full cost (*including the company's share*) on to you up to 102% of the cost.
- **Prompt reinstatement.** You get your job back immediately if you were gone 30 days or less. After longer service, you must be reinstated within a reasonable amount of time. This is normally within the next work schedule to be published.
- **Status and Seniority.** For purposes of status, seniority, and most pension rights (including pay rate) you are treated as if you never left for military service. If your peers got promotions or raises while you were gone, you do too.

Family Deployment Handbook

- **Training and other accommodations.** Your employer must train you on new equipment or techniques, refresh your skills, and accommodate any service-connected disability.
- **Special protection against discharge other than for cause.** If you are fired within a protected period, your employer must prove the firing wasn't because of military service. Your protected period varies with how long you were gone.
- **Immediate reinstatement of health benefits.** You and your family may chose to go back on the company health plan immediately when you return to your civilian job. There can be no waiting period and no exclusion of pre-existing conditions, other than for VA-determined service-connected conditions.
- **Anti-discrimination provision.** USERRA prohibits discrimination based on military service or military service obligation.
- **Other benefits.** USERRA guarantees you certain rights. It does not eliminate any *other* benefits you may have from state law, contract, or collective bargaining agreement.

MN FAMILY LEAVE STATUTE FOR LEAVE TO ATTEND OFFICIAL MILITARY FUNCTIONS

From time to time we receive questions concerning family being able to take leave from their employers to attend military events. I hope that the below, which is an excerpt from S.F. No. 3683, 4th Engrossment – 2007- 2008th Legislative Session (2007-2008) of *Minnesota*, will help to clear any questions you may have.

Sec 8. [192.325] DISCRIMINATION AGAINST FAMILY OF SERVICE MEMBER; UNPAID LEAVE REQUIRED.

An employer may not:

(1) discharge from employment or take adverse employment action against any employee because of the membership of that employee's spouse, parent or child in the military forces of the United State, of this state or any other state; or (2) discharge from employment, take adverse employment action against, or otherwise hinder an employee from attending the following kinds of events relating to the military service of the employee's spouse, parent, or child and to which the employee is invited or otherwise called upon to attend by proper military authorities:

(i) departure or return ceremonies for deploying or returning military personnel or units;

(ii) family training or readiness events sponsored or conducted by the military; and

(iii) events held as part of official military reintegration programs. The employee

must provide reasonable notice to the employer when requesting time off and the employer must provide a reasonable amount of non-paid time off for the employee, for the purposes enumerated in items (i) to (iii), not to exceed two consecutive days or six days in a calendar year. The employer must not compel the employee to use accumulated but unused vacation for these events. Section 645.241 does not apply to this section.

EFFECTIVE DATE! This section is effective August 1, 2008, and applies to employment action occurring on or after that date.

You may also refer to Public Law 110-181 as part of the National Defense Authorization Act for FY 2008, Section 585(a).

ESGR (*Employer Support of the Guard and Reserve*) is available to help you and your employer sort out any differences and to understand the employer's rights during deployments as well as the Service Members rights. Call your local FAC for more information or the contact information for your local ESGR representative.

Family Deployment Handbook

Communication – Whether it is the Service Member or the Family Member it is important to understand that communicating with your employer is of the utmost importance. Ensure that you provide your employer with the information of upcoming events when you know you are going to need time off for military duty or to attend an event for the families. The law is there to support you, but understand that we have duties to inform our employers and this provides them with time to make necessary adjustments in their operations.

Letters to Employers – We have templates of letters for you to send to your employer to inform them of your deployment and for your reapplication upon returning from the deployment. These memorandums are located on the web at www.125fa.com/formletters.htm.

Enforcement

- Contact the units ESGR Point of Contact Mr. Jim Mitchell at (320) 269-9284.
- The U.S. Department of Labor Veterans Employment and Training Service (VETS), (651) 259-7511. The Department of Labor is responsible for resolving and/or investigating reemployment issues.
- USERRA gives you the right to sue your employer in federal court. If your lawsuit is successful, you may be able to recover court costs and attorney fees from your employer.