



## **Military Leave Law Procedures and Guidelines**

### **Employees Called to Ordered Military Duty**

Under the federal Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) and California Military and Veterans Code, reservists and other employees who join the Armed Forces of the United States, the National Guard or the Naval Militia who are called to ordered military duty are **entitled** to a military leave of absence. All employees, officers, and elected officials of the County of Riverside and its districts are covered by these federal and state laws.

These laws also provide for certain job protection rights, benefits and military pay (regular base pay paid by the employer), under most circumstances, for the first 30 calendar day period of active military duty.



Military orders, when received, must be honored and the employee placed on a leave of absence for the duration of the orders. However, there is a five-year limit (applies to period of service, not absence) on cumulative military duty with a single employer in order for federal benefits and protections to continue.

Reserve and National Guard training and involuntary call-ups do not count toward the employee's five-year limit. Some voluntary service is also excluded. Department Representatives must check with their HR Services Manager before denying reemployment on the basis of the five-year limit.

## Active Duty

Employees who are out on active military duty may qualify to receive military pay under state law and military differential (supplemental pay) under County provisions as described below.

### Military Pay

Under California Military & Veterans Code, eligible County employees who are called to active duty receive regular pay for the first 30 calendar days of military duty per fiscal year. The fiscal year runs from July 1<sup>st</sup> through June 30<sup>th</sup>.

The 30 calendar days of absence for military leave includes the employee's normal days off. Whatever base pay the employee would have earned on his/her normal schedule during those days is payable.

County employees eligible to receive the military pay described above are as follows:

- Any County employee who has been employed by the County for at least one year (includes any period of active U.S. military service) from the day on which the leave is to begin and the need for leave is for one of the following reasons:
  - a. Ordered duty for purposes of active military training, encampment, naval cruises, special exercises, or like activities provided that the period of ordered duty does not exceed 180 calendar days including time going to and returning from duty;
  - b. Active military duty as a member of a reserve component of the U.S. Armed Forces;
  - c. Active federal military duty as a member of the National Guard or Naval Militia; or
  - d. Employee is inducted, enlists, enters or is otherwise called into active duty as a member of the U.S. Armed Forces.

No national or local emergency needs to exist.

- Any County employee who is a member of the National Guard going on active duty by order of the Governor during a proclaimed state or national emergency regardless of the length of County service. Employees may receive regular pay for up to 30 calendar days for each proclamation of emergency that may be issued. There is no “fiscal year” limitation.

Example: Milton Marine, who has been with the County for 18 months, is called to active military duty in preparation for the war in Iraq. He requests and is granted a military leave of absence. Milton will be on leave from January 5<sup>th</sup> through April 4<sup>th</sup>. The Department Representative who also keys payroll for the whole department, Tammy Timekeeper, is keying time for Milton. Using her calendar, Tammy determines that Milton should receive his regular pay from January 5<sup>th</sup> through February 3<sup>rd</sup> (exactly 30 calendar days).

Since Milton only works on Mondays, Tuesdays, Thursdays and Fridays, he will receive pay for 18 work days. Time after February 3<sup>rd</sup> will be discussed in the next section.

January - 2009						
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February - 2009						
Sun	Mon	Tue	Wed	Thurs	Fri	Sat
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30-day status -  Days normally worked are in red

*Note: In order to receive the military pay described above the employee must provide the County with military documentation showing that the eligibility requirements have been met.*

### County Provisions - Military Differential

For employees who are called up to active duty in combat, preparation for combat, or for the war on terrorism, the Board of Supervisors has approved extended supplemental pay (Military Differential Pay) and benefit continuation for those employees who are also eligible at the time of call-up to receive their regular pay for the first thirty calendar days of military leave in accordance with the California Military and Veterans Code. Also included are reservists who are

called up because of the war in Iraq, or because of possible homeland military actions while the United States is at war or is preparing for war that appears imminent. For additional information, please refer to "[Agreement Between the County of Riverside and Employee Unions to Provide Salary Continuation for Specified Reservists Called to Active Duty.](#)"

Each fiscal year, starting on the 31<sup>st</sup> day of military leave due to active duty, eligible County employees shall receive the difference between their county base salary (pay for their regularly scheduled hours) and their military base pay.

Example: Beginning February 4<sup>th</sup>, the 31<sup>st</sup> day of Milton's military leave, Milton will begin receiving military differential pay throughout the remainder of his leave. Milton's military base pay was calculated to be \$2,000 biweekly. Since Milton makes \$2,500 biweekly with the County, his military differential pay will be \$500.

If an employee's base military pay is higher, there is no salary supplement, but benefits are still continued. [[See Benefits While on Military Leave section](#)]. Employees will continue to be paid on regular County pay dates.

*Note: When an employee goes out on military leave, ACO Payroll will stop any additional pay for Uniform Allowance or Bilingual Skill Pay and will override the deduction for Survivor's Benefit for any employee receiving military differential pay.*

## **Inactive Duty Training**

California law also provides for unpaid military leave for up to 15 calendar days annually for **inactive** duty training, including time involved going to and returning from that duty. (California Military & Veterans Code, § 395.9)

The County does not pay and is not required to pay for Inactive Duty Training (this includes weekend drills of military reservists). However, employees may (but are not required to) use vacation and/or other leave time except sick leave to attend scheduled reserve drill periods or perform other inactive duty reserve obligations.

## **California Military Spousal Leave**

Under California law (Military and Veterans Code, § 395.10), a qualified County employee (this does not include independent contractors) working an average of 20 or more hours per week is eligible for up to 10 days of unpaid leave during the same period his or her qualified spouse/registered domestic partner is on leave from active duty. The County may not retaliate against the employee for requesting or taking this type of leave. Also, taking this leave shall not prevent the County from allowing the employee to take other leaves to which he or she may be entitled. To qualify for this leave, the employee must meet the following conditions:

The employee must provide notice of intention to take this leave within two business days of receiving official notice that the qualified spouse/registered domestic partner will be on leave from deployment; and either

- The employee must be the spouse/registered domestic partner of a member of the U.S. Armed Forces who has been deployed during wartime to an area designated as a combat theater or combat zone; or
- The employee must be the spouse/registered domestic partner of a member of the National Guard or Reserves who has been ordered to active duty during a period of military conflict, pursuant to Sections 12301 or 12302 of Title 10 of the U.S. Code or Title 32 of the U.S. Code.

When requesting this unpaid leave, the employee must provide military documentation (such as Military Orders) to the County certifying that the requested leave will occur during the period his/her spouse/registered domestic partner will be on leave from deployment.

*Note: Vacation and/or other leave time except sick leave may be substituted for unpaid leave.*

## **Requesting Military Leave**

To qualify for the right to leave and reemployment rights when returning to work, the employee must give advance written or verbal notice to his or her Department Designee, except when advance notice of a military leave of absence is impossible or precluded by military necessity.

An employee requesting military leave or military spousal leave should complete a Non-Medical Leave of Absence Request form and forward the form to his/her Department Representative along with the proper supporting military documentation. This form is available in the HR Toolbox at [www.workforceexchange.net](http://www.workforceexchange.net).

**Note:** In order for the employee to receive their regular salary for the first 30 calendar day period of military duty, the employee must provide the County with military documentation showing that the eligibility requirements have been met. Department Representatives may contact the employee's commanding officer if clarification of orders or travel time is needed.

The Department Representative sends the approved Non-Medical Leave of Absence Request form along with the supporting documents to the Human Resources Services Team who reviews the leave and then submits the leave to Central Human Resources for processing.

If an employee is requesting military leave and the leave will exceed or has exceeded 30 days, the Department Representative must determine if the employee is eligible to receive military differential pay (salary supplement) in accordance with County provisions. If the employee is eligible to receive military differential pay, the Department Representative sends a copy of the leave request form, military orders, and most current military Leave and Earnings Statement (LES) to ACO Payroll in order for the employee to receive military differential pay. **The above information is required in order for ACO Payroll to process the employee's military differential pay.**

Whenever an employee's orders are extended, the Department Representative must send updated military orders and a current military Leave and Earnings Statement to ACO Payroll. ACO Payroll will use the updated LES to recalculate the military differential pay for the employee.

## **Tracking Military Leave**

Department Representatives are responsible for tracking the employee's total leave in calendar days within a fiscal year. The purpose is to identify the period of 30 calendar days in which the employee may be entitled to pay.

A report is available and can be accessed by the department to help track time reported as military leave. The report can be accessed in PeopleSoft by using the following path: [Home > Time and Labor > Reports > Reported Time by TRC Report](#). This report provides the Department Representative with a cumulative total of military days recorded for a given employee or group within a stated time frame. **Please be aware that this report will only provide the military days reported and paid through Time and Labor. Any time reported directly to ACO Payroll (for example, hours contained on an On-Line Warrant) will not be reflected on this report.**

In addition, the department may view dates of leaves entered into PeopleSoft for a particular employee by using the following path: [Home > Workforce Administration > Job Information > Job Data](#).

## **Reporting Payable Military Time in Time and Labor**

To report **payable** military time in Time and Labor, timekeepers must change an employee's schedule to a 5/40 work week whenever the leave goes beyond a full pay period. This is to help facilitate the payment of holidays.

Military time is entered in Time and Labor by using time reporting code MIL for leaves that fall within the 30 calendar day status. When the employee is not within the 30-day status, the employee may opt to use any vacation, comp time, holiday time, or annual leave balances that accrued before the leave. However, the employee may not be required by the employer to use it.

Starting with the 31<sup>st</sup> day of active military duty, military time is entered as absent without pay using the Military Leave Accrual code MLA (by using time reporting code MLA, the employee will continue to accrue applicable leave time). ACO Payroll each pay period runs a query to find all employees with time

reported as MLA. If all the supporting documents have been received, ACO Payroll will calculate the military differential and key in the military differential pay as MLP.

Example:

Tammy Timekeeper is now entering time for Milton Marine who is out on military leave from January 5<sup>th</sup> through April 4<sup>th</sup>. In Time and Labor, Tammy will key in Milton’s regular hours using the code MIL from January 5<sup>th</sup> through February 3<sup>rd</sup>. Starting February 4<sup>th</sup>, Tammy will key his time as MLA.

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February - 2009						
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March - 2009						
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April - 2009						
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**30-day status -** Days normally worked (in red) are keyed as MIL

**Beyond 30 days -** Days normally worked (in red) are keyed as MLA

*Note: Adjustments to military differential pay will be made by ACO Payroll, whenever the employee receives an increase or decrease in pay rate or when the employee provides ACO Payroll with an updated LES indicating a change in base military pay.*

Holidays

Within the first 30 days of military leave, employees who are eligible to receive military pay keyed as MIL will continue to receive pay for the

holiday. Timekeepers should key any holiday time as time reporting code HOL.

Time reported as MLA, for those employees who are eligible to receive military differential pay starting with the 31<sup>st</sup> day of military leave, will require a change in reporting to comply with CalPERS rules regarding members called to active duty. Military differential pay is not reportable to CalPERS. Therefore, holiday time must not be keyed as HOL. Instead, holiday time must be keyed as MLA. If the system pre-populates the holiday hours, timekeepers must remove the holiday hours and rekey as MLA. Holiday pay is included in the military differential pay calculated by ACO Payroll.

## **Mandatory Furloughs/Mandatory Unpaid Personal Leave**

Employees on paid military leave will not be scheduled for mandatory furloughs or mandatory unpaid personal leave during such leave but will resume participation in any mandatory furlough or mandatory unpaid personal leave upon their return to work. Mandatory Furlough hours or Mandatory Unpaid Personal Leave hours will be prorated for the remainder of the fiscal year.

## **Employment Rights While on Military Leave**

Employees out on military leave have job protections under both California Military and Veterans Code and the federal Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).

The California Military and Veterans Code provides certain rights and protections to employees engaged in military-related activities. However, it is the federal law, USERRA, which is more generally applicable and broader in scope than the State Code. All employers are covered by USERRA, regardless of size.

Protection against Discrimination and Retaliation: Under California and federal law, it is illegal for the County to discriminate against a person in regard to appointment, position, or employment status because of his or her membership in the armed forces, or because of his/her assistance in administering these protections. On these bases, the County may not deny the employee:

- Initial employment;
- Reemployment;
- Retention in employment;
- Promotion; or
- Any benefit of employment.

These laws also prohibit employer discrimination against any person on the basis of that person's past military service, current military obligations or intent to join one of the uniformed services.

*The term "uniformed services" is defined as 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 Services, and any other category of persons designated by the President in time of war or national emergency.*

The County can not discourage applicants or employees from participating in military duty or from volunteering for military training or assignment.

In addition, the County may not retaliate against anyone assisting in the enforcement of USERRA rights, including testifying or making a statement in connection with a proceeding under USERRA, even if that person has no service connection.

Seniority Rights: By federal law, County employees called to active military duty shall not incur a break in service for anniversary date or calculation of seniority. Military service will be considered County service for vesting and benefit purposes. However, any uncompleted probationary period must be completed on the employee's return from leave. Manual adjustments may be required for employees in an unpaid status upon their return to work from military duty.

Merit Increases: In general, there is no guarantee that a merit increase would occur during absence. However, if there is a reasonable certainty that the merit

increase would have occurred if the employee had remained at work then it must be granted. Supervisors and managers must consult with their HR Services Manager before denying any merit increases.

Reemployment/Reinstatement Rights: By federal law, the employee has the right to be promptly reemployed with the County if the employee leaves County employment to perform service in any one of the uniformed services and all of the following conditions are met:

- The employee provides advance written or verbal notice of service;
- The employee has five years or less of cumulative service in the uniformed services while with the County of Riverside;
- The employee returns to work or applies for reemployment in a timely manner as defined by state and federal law after conclusion of service; and
- The employee has not been separated from service with a disqualifying discharge or under other than honorable conditions.

Service in the uniformed services includes the following whether voluntary or involuntary:

- Active duty;
- Active duty for training;
- Initial active duty for training;
- Inactive duty training;
- Full-time National Guard duty;
- Period of absence from employment for the purpose of an examination to determine an employee's fitness for service;
- Period of absence from employment to perform funeral honors duty as authorized by law; or
- Service as an intermittent disaster response appointee of the National Disaster Medical System.

As a general rule, if the employee is eligible to be reemployed, the employee must be restored to the job, salary, and benefit the employee would have attained with reasonable certainty if the employee had not been absent due to military service. This is known as the "escalator position." The "escalator position" reflects what would have happened if the employee had remained at

work even if it means being reemployed in a higher or lower position, laid off, or even terminated.

Example: Milton, upon reemployment is entitled to pay raises, promotions, and any other benefits that he would have received in accordance with seniority.

Depending upon the specific circumstances, the employer may have the option, or be required, to reemploy the employee in a position other than the escalator position. Depending on the specific situation, either California or federal law may govern what position an employee should be reinstated in or reemployed to. Whichever law provides greater rights to the employee prevails. Therefore, all situations should be analyzed on a case-by-case basis. Please refer any reinstatement/reemployment requests to the HR Services Manager for review.

*Note: As required by law, the County will make “reasonable efforts” to train or retrain returning employees in situations where the employee is no longer qualified due to technological advances. The County will also reasonably accommodate returning employees with any disabilities incurred or aggravated during military service.*

When there is military urgency, no advance notice of the employee’s departure is required to protect the reinstatement right. To ensure proper recording of military leave, the employee should request a leave of absence by submitting a Non-Medical Leave of Absence Request form along with proper supporting military documentation. [[See Requesting Military Leave section](#)].

An employer may not be required to give an employee their job back if the employer’s circumstances changed to the extent that it would be considered impossible or unreasonable to do so, or if it would impose an undue hardship (any action that imposes on the employer significant difficulty or expense) on the organization. Reemployment is also not required when there was no reasonable expectation that employment would continue indefinitely.

Incumbents in positions of brief, non-recurrent employment status such as those in the Temporary Assignment Program (TAP) and County temporary employees may be reemployed upon return, but will not be entitled to reinstatement. However, under USERRA an employee must be reinstated upon proper request if there was a reasonable expectation that such employment will continue indefinitely or for a significant period of time. Supervisors and managers must

consult with their HR Services Manager regarding any potential exceptions before denying any reinstatement. Elected officials are not entitled to reinstatement after their term of office expires.

Work Coverage: Under County procedures, when an employee is on military leave of less than 6 months, his/her position is not to be filled during the absence. If the leave is for more than 20 working days, the department may obtain a temporary companion position. To fill such a position temporarily, the department should indicate on the transaction document that it is to cover military leave of a named individual. Any person appointed to fill the position should be informed it is limited-term.

When an employee receives orders for longer than 180 days, there is no legal requirement to keep the County position open, even though the employee will be entitled to reinstatement upon return provided certain conditions are met. It may be in the interest of the department to fill the position. However, Departments considering this should fully understand an employee's reinstatement rights and consult with their HR Services Manager.

For all leaves exceeding 30 days, the County requires that employees provide documentation showing that application for reemployment is timely, the five-year service limitation has not been exceeded, and separation from service has been under honorable conditions. However, reinstatement can not be delayed if documentation is not readily available or doesn't exist.

Protection from Discharge: Under federal law, reinstated employees may not be terminated without cause for six months if the period of military service was more than 30 but less than 181 days, or a year if the period of military service was more than 180 days.

Expiration of Reinstatement Rights: Situations vary as to when the reemployment right expires, depending on whether the employee was a reservist, whether a national or local emergency existed, whether the employee is recovering from an illness or injury incurred or aggravated during military service, and the length of military duty. In addition, the right to return to a job depends on not being dishonorably discharged from the military.

An employee who fails to report or apply for reemployment within the appropriate period specified shall not automatically forfeit entitlement to reinstatement rights

but shall be subject to the conduct rules, established policy, and general practices of the department and County with respect to absence from scheduled work. Department Representatives should consult with their HR Services Managers on questions regarding reinstatement, on a case-by-case basis (CA Military and Veterans Code 395.1, 395.3, 395.4; USC Title 38, Sec 4304, 4312).

## **Benefits While on Military Leave**

In conformance with California and federal laws, employees on military leave will maintain the following benefits:

Leave Accruals: Under state law, employees who are eligible to receive their regular pay for the first 30 calendar days of military leave shall accrue applicable vacation, sick, holiday or annual leave for up to six months regardless of whether the employee is in a paid status. However, under County provisions, these leave credits have been extended to include the entire time of salary continuation.

Note: Accruals may need to be adjusted upon the employee's return from leave.

Retirement: For those employees receiving their regular pay for the first 30 calendar days of military leave in a fiscal year or those receiving pay through the use of their own accruals, the County will continue to pay employer contributions towards retirement and administer the employee contributions as though the employee were at work. For those employees who are in an unpaid status while on military leave or those receiving military differential pay, retirement contributions will not continue. However, employees can receive service credit from CalPERS for time spent on active military duty. [[See Service Credit for Military Leave section](#)]. Once credit is received the County will make all applicable employer contributions towards retirement. Employees will not be required to make up any employee missed contributions.

Basic Life Insurance: The County will continue payment of any employer-paid Basic Life Insurance that the employee had prior to the military leave. Note:

The Accidental Death and Dismemberment (AD&D) plan contains an exclusion for acts of war.

Short-Term/Long-Term Disability: Coverage continues during paid military leave. Coverage stops when you are in an unpaid status but resumes automatically on the first day you return to active County employment. Note: STD and LTD plans both contain an exclusion for acts of war.

Supplemental Life Insurance: Supplemental Life Insurance will continue subject to the employee's payment of the premium. If the employee cancels coverage, the employee has the right to have it reinstated and have any waiting period or evidence of insurability requirements waived upon return provided:

- The employee returns within six months after the leave began;
- The employee applied or is enrolled within 60 days after resuming active work;
- The reinstated amount of insurance does not exceed the amount which terminated; and
- The employee pays any balances.

Health Insurance Plans & Flexible Benefit Credits: An employee out on military leave has the right to continue his/her existing health plan coverage for up to 24 months while in the military, or up to the date on which the employee fails to return to work or apply for reemployment within the required timeframes provided for by federal and state laws. The right to continue health plan coverage also applies to the employee's covered dependents.

*Employees called to duty are encouraged to provide their spouse/registered Domestic Partner or legal guardian with power of attorney to make health insurance selections during open enrollment periods.*

The County will continue payment of any flexible benefit credits and maintain enrollment in the health insurance plans while the employee is receiving Military Differential Pay (salary continuation) or is in a *paid status*. If pay is insufficient to cover the cost of premiums, the employee is responsible for paying the balance.

If an employee is in an *unpaid status* while on military leave and is not receiving flexible benefit credits or the flexible benefit credits are insufficient to cover the

cost of the premiums, the employee must contact the Benefits Hotline at (951) 955-4981 to make arrangement for payment of premiums. Health coverage may be terminated by the County due to non-payment of premiums.

*Note: If the employee elects to discontinue health plan coverage or if health plan coverage was terminated due to non-payment of premiums, the employee has the right to have coverage promptly reinstated upon return from leave generally without any waiting periods or exclusions except for service-connected illnesses or injuries. Any changes to elections must be submitted on a Benefit Election Form with supporting documentation attached. The Benefit Election Form can be obtained from the HR Tool Box at [www.workforceexchange.net](http://www.workforceexchange.net). Employees may contact the Benefits Hotline at (951) 955-4981 with any questions regarding health plan coverage.*

TRICARE Medical Coverage: Employees called up for active duty will have medical coverage through one of the federal government's TRICARE plans. TRICARE becomes the primary coverage for the employee while County coverage remains primary for any enrolled family members.

Other Benefits (non-seniority rights): Employees out on military leave are entitled to any other benefits and privileges that would be afforded to individuals on other similar types of leave provided the employee would have been eligible if employment had not been interrupted by a period of service in the uniformed services. These include benefits and privileges provided for by an employment contract, agreement, policy, practice, or plan in effect at the employee's workplace whether it was established before or after the employee's period of service. However, if the employee provides written notice of intent not to return to work and is aware of the specific rights and benefits to be lost, he or she is not entitled to those benefits and privileges but will maintain all other rights provided by law.

## **Returning from Military Leave**



Once an employee returns, the department is required to complete a “Return from Leave” form and forward the original to Central Human Resources and a copy to ACO Payroll. This form is available in the HR Toolbox at [www.workforceexchange.net](http://www.workforceexchange.net). An email indicating the date the employee returned may be sent to ACO Payroll in lieu of forwarding a copy of the Return from Leave form.

In addition, the Department Representative submits to ACO Payroll an “Additional Pay Request Form” for any special compensation (such as uniform pay, bilingual pay, etc.) that needs to be reinstated. You can obtain this form from ACO Payroll’s website at [www.auditorcontroller.org](http://www.auditorcontroller.org).

## **Service Credit for Military Leave**

An employee who takes a military leave of absence, enters military active duty within 90 days of leaving the County, and returns to the County within six months of being discharged from active duty, may have CalPERS service credit posted to his/her account at no cost. If the employee returns to employment after the 6-month period, the employee will be required to pay a portion of the cost.

There are no limitations on the amount of time that can be credited. However, the employee does need to request the service credit and provide CalPERS with supporting documentation (e.g. copy of Military Discharge Documents, DD-

214, Certification of Military Service Record, etc.) for all active duty periods. A CalPERS member may request military credit at any time after returning from military service, but prior to separation or retirement.

Leave credit may be requested by using the Military Service Credit Request form in CalPERS publication "A Guide to Your CalPERS Service Credit Purchase Options." This publication is available through CalPERS' website at [www.calpers.ca.gov](http://www.calpers.ca.gov) or by calling CalPERS at (800) 352-2238. Employees may also obtain this publication by calling the Benefits Hotline at (951) 955-4981.

## **Other Resources**

The California Military and Veterans Code {§ 395 & 391.10} can be accessed through the following website: [www.leginfo.ca.gov/calaw.html](http://www.leginfo.ca.gov/calaw.html).

The federal statute, USERRA {United States Code Title 38, CH 43}, can be accessed through the following website: [www.usdoj.gov/crt/military/statute.htm](http://www.usdoj.gov/crt/military/statute.htm).

Additional information on USERRA can be obtained through the Department of Defense organization known as Employer Support of The Guard and Reserve (ESGR). ESGR informs and educates service members and their civilian employers regarding their rights and responsibilities governed by USERRA. ESGR does not have statutory authority to enforce, but serves as a neutral, free resource to employers and service members. You can access their website at [www.esgr.com](http://www.esgr.com) or reach them at (800) 336-4590.

*Note: Information included in this guide is for use as a reference only, and is not intended to constitute legal advice.*