

News Release



U.S. Department of Labor
Veterans Employment and Training Service
Washington, D.C.
USDOL 02-

For Immediate Release
Date:
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USERRA Protects Family and Medical Leave Rights of Reservists and National Guard *Labor Department Reminds Employers Military Service Time Counts Toward Eligibility*

WASHINGTON – National Guard and reservists returning to civilian occupations after serving in support of President Bush's post-Sept. 11 national emergency declaration should have their active duty time counted towards their eligibility to take time off from work under the Family and Medical Leave Act (FMLA).

The Department of Labor has issued a memorandum that clarifies its position on the rights of returning uniformed service members to family and medical leave under the Uniformed Services Employment and Reemployment Rights Act. USERRA entitles returning service members to all the benefits of employment that they would have obtained if they had been continuously employed.

Under ordinary circumstances, a worker becomes eligible for leave under the FMLA after working for a covered employer for at least 12 months, during which he or she completed at least 1,250 hours of work. The memorandum says that employers should count the months and hours that reservists or National Guards would have worked if they had not been called up for military service towards FMLA eligibility.

"Recognition of the rights and responsibilities established by USERRA will ensure that those who stood ready to serve our nation can return to their civilian jobs with all the legal benefits that they have earned," said Frederico Juarbe Jr., assistant secretary of labor for the Veterans' Employment and Training Service (VETS). "All staff of the Veterans' Employment and Training Service and the Wage and Hour Division will follow the guidance in this memorandum when dealing with inquiries involving family and medical leave rights of such service members."

A member of the National Guard or Reserve who is absent from employment for an extended period of time due to military service and who requests FMLA leave shortly after returning to civilian employment may not have actually worked for his or her employer for a total of 12 months or may not have performed 1250 hours of actual work with the employer in the 12 months prior to the start of the FMLA leave.

The memorandum clarifies that the months and hours that the employee would have worked, but for his or her military service, should be combined with the months employed and the hours actually worked to meet the 12-months and the 1250 hours of employment required by the FMLA.

Questions about eligibility should be referred to the Veterans Employment and Training Service or to the Wage and Hour Division. State directors for VETS are listed at www.dol.gov/vets. Local Wage and Hour Division offices can be found at www.dol.gov/esa/whd or by calling the toll free number 1-866-487-9243

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