

GUIDELINES FOR EMPLOYERS ON MILITARY RESERVISTS

There are in the UK over 30,000 Voluntary Military Reservists and on occasions they may be called up for training or to be mobilised. The following outlines the process and rights of these employees.

1. Are they a reservist?

Military reservists are encouraged to inform their employer if they are a reservist. However, since 2004 notification to the reservist's employer will be made automatically by the Ministry of Defence 'Employee Notification' system.

2. Training

All reservists have annual training commitments. The number of days does vary between the three reserve forces, but in general it will include a 15-day continuous training course at an annual training camp.

There is no obligation on the employer to grant a request by a reservist for additional paid or unpaid leave. But employers are encouraged to do so, taking into account the transferable skills and benefits for the business.

3. Mobilisation/call-up

Where a reservist makes a request for voluntary mobilisation (that is no call-up notice has been issued by the Defence Secretary) the employee needs to obtain his/her employer's consent to the mobilisation. The employer is under no obligation to give that consent. If the employer refuses, the reservist must accept that decision.

However, where the Defence Secretary has issued a call-up notice, this involves a compulsory mobilisation. reserve forces may be mobilised from three months up to one-year in any five year period; but in some circumstances this can be every three years.

In general a reservist cannot refuse to attend when called for mobilisation and the employer must allow the reservist to go, unless it can be demonstrated that serious harm will be caused to the business, which will not be adequately compensated for by Government compensation arrangements available (see below). Employers seeking an exemption must apply to an adjudication officer at the MOD within seven days of the individual receiving their notice of call-up. For an exemption it will be necessary to show that the loss of the employee will cause:

- A risk of financial harm, eg. loss of sales, markets or reputation
- Reduced ability to produce goods or provide services
- An effect on research and development of new products, services or processes.

If successful the call-out notice may be deferred or revoked.

A person who fails to comply with a call-up is guilty of desertion or absence without leave under the Reserve Forces Act 1996; an offence triable by a civil court or by a court martial. Unless exempted (see above) the employer cannot refuse to let the employee go and if the employer (or any other person) tries to induce a reservist to desert or be absent without leave they are also guilty of an offence.

The Act makes it an offence to dismiss a reservist, if the employer of a person who may be required to enter upon a period of military service, terminates that person's employment without his consent at any time when he is not in that service, and does so solely or mainly by reason of any duties or liabilities which that person may be liable to perform or discharge:

- if required to report at any time or place with a view to entering into military service; or .
- if s/he enters upon a period of military service .

In such case the employer is guilty of an offence and liable on summary conviction to a fine. This applies only to reservists who are employed and not to reservists who are applying for jobs.

4. Pay and Compensation

There is no obligation on the employer to make any payment to the reservist during call-up. The individual will receive military pay. In addition, The Reserve Forces Act 1996 gives the MOD powers to make payments to reservists when their military pay is less than their civil pay. The MOD will also cover employer contributions to a Company pension scheme, should the reservist elect to remain within the scheme and to continue to pay into it.

In addition, employers whose employees are called-up can claim compensation for costs incurred for a temporary replacement or overtime costs to a maximum of £110 per week (c. \$40k per year), plus advertising and recruitment costs for a temporary replacement and retraining of the reservist on their return to work.

There is no right for the Reservist employee to accrue leave while mobilised. When they return to work, the employer is entitled to grant them leave pro rata from the date they return to the end of the calendar year.

5. Return to Work

Once a call-out notice has been issued, the Reservist is covered by the Reserve Forces (Safeguard of Employment) Act 1985 (SOE 85). This provides two types of protection - protection of employment for those liable to be mobilised, and reinstatement for those who have been mobilised. This means that:

- the employer cannot terminate a person's employment based on their liability to be mobilised and without their consent
- the Reservist is entitled to reinstatement to their original position (or one of equal pay and status) on completion of military service

At the end of the tour, the Reservist returns to the Mobilisation Centre, where they undergo debriefing and medical checks. Once the Reservist has been demobilised, they are sent on post-operational tour leave. At this stage, the Reservist is still in full-time service with the MOD.

Reservists are entitled to a period of post-operational tour leave of up to 40 days. During this leave period, the Reservist must contact their employer to agree a date for their return to work. After post-operational tour leave, the Reservist is no longer in full-time service and becomes a civilian again.

The rights of the reservists to be taken back into employment apply for a period of six months, following the end of the period of military service.

6. Protected period

On return to work a reservist, in addition to the employee's common law and statutory employment rights, is entitled to the benefit of a protected period following re-employment.

The length of the protected period depends on the employee's service prior to call-up. If the employee's period of prior service with the employer is less than 13 weeks, the protected period is 13 weeks; if the previous period was between 13 and 51 weeks the protected period is at least 26 weeks and if the previous period was 52 weeks or more the protected period is 52 weeks.

7. Continuity of Service

This is a more difficult area. Generally the duration of the employee's military service is not counted for continuity of service purposes so the period of military service is considered a period of suspended employment. Albeit the in re-employment s/he will be treated as though s/he has continuity of service, in that the continuity of his/her employment is treated as unbroken by the period of military service. Whether or not the employer counts the period of military service as being continuity of service should be confirmed with the employee before they are mobilised.