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[Nashville](#) > [Print Edition](#) > [Industries](#) > [Business Services - Employee Compensation & Benefits](#)

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Rejoining employee ranks

When reservists come home, most find jobs waiting

Nashville Business Journal - January 13, 2006 by [Mike Stuhreyer](#) Special to the Nashville Business Journal

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Over the past dozen years, since the onset of the Gulf War, active-duty use of National Guard and reserve personnel has increased 1,300 percent. And with almost half of the fighting force in the war on terror being pulled from the ranks of the civilian work force, employers are sharing the sacrifice more than ever before.

Big and small business alike are grappling with costs associated with losing productive employees for extended periods of time and of complying with federal law governing the workplace rights of the guard and reserve.

That law, the Uniformed Services Employment and Re-Employment Rights Act, covers both full time and part time employment and has among its major provisions guarantees pertaining to an employee's reinstatement to their rightful position and pay post-deployment, continuation of limited health benefits throughout deployment, and protections prohibiting employment discrimination against an individual called to active duty.

The **Tennessee Chapter of Employer Support of the Guard and Reserve**, a Department of Defense organization that promotes cooperation and understanding between reserve members and their civilian employers, has identified approximately 2,700 Tennessee businesses that employ guard members and reservists.

According to TESG's State Chair, Joe Thomas, virtually all of those businesses comply with USERRA and a significant number go above and beyond its requirements. "There are many, many employers in this state that outperform the letter of the law, and one of TESG's goals is to find and acknowledge as many of them as possible," says Thomas.

Sam Coulter, HCA's vice president of employee relations, doesn't foresee a change in the company's policies. "These policies are now memorialized in our documentation and procedures as part of our leave of absence policy," he says. "It can be revised, but I don't envision that we would pull it back. It's become part of our culture. It's part of who we are."

The impact of expanded policies to HCA's bottom line is real, but due to the company's size and revenue, such cost considerations are a non-factor. Says Coulter, "With 133 employees active, those bottom-line costs are not material in relation to the overall financial wherewithal of this company. There is a quantifiable cost, no doubt about it, but that's not part of our decision-making matrix."



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But few employers come close to matching HCA's resources. According to the TESG, 60 percent of the 2,700 businesses that employ guard members and reservists have less than 25 employees. Yet those companies have identical responsibility to their guard or reserve under USERRA, though the impact may be much more dramatic.

Small businesses have a more difficult time keeping operational flow consistent, because one person will typically handle many functions within the organization. When that person leaves it's a significant shock to the business, particularly if he or she is a crucial employee or executive.

Access to modern communications technology can mitigate that shock somewhat - a business may use the Internet to communicate with a deployed individual if a critical situation arises - but it's no substitute for having that person on-site, fully engaged.

The **National Federation of Independent Business**, a small business advocacy group for 600,000 members nationwide, works closely with TESG to monitor the effects of USERRA on employers.

In watching how small businesses meet the challenges of losing an employee - sometimes their only employee - to active duty, NFIB spokesman Jim Brown sees proof of the resiliency inherent in the entrepreneurial mind-set.


"Small business owners adjust, because they have to. They're nimble and they work through the challenge," says Brown. "I know of a situation where a sole business owner was called to active duty, and his retired father came in and ran his business until he came back. There are plenty of untold stories about everybody pitching in to keep a business viable."

Rare in Tennessee are stories of a returning guard member or reservist filing a grievance against his or her employer for USERRA violations.

Jonathan Motley, an attorney with law firm **Boult Cummings Connors & Berry's** labor and employment group, advises companies on drafting policies that meet the requirements of USERRA.

"(USERRA) is pretty specific in terms of what the employer is required to do," says Motley. "It's not in the interest of an employer once they're on notice of a situation to really fight it, because you can usually figure out what's required. I've not even seen a filing in six months."

TESG's Thomas concurs. His group, through its ombudsman program, is often the first impartial third party involved in any potential dispute between employer and employee.



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"We have 50 volunteer lawyers who have trained to work on USERRA-related issues in an advisory or mediation capacity. Ninety-five percent of the disputes we see are simple communications issues that are resolved without escalation." In fact, of the 3,500 guard and reserves who recently returned from Iraq with the 278th Armored Cavalry Regiment in Cookeville, TESG received only 10 complaints.

For Thomas, the increased level of sacrifice required of employers during this time of extended and multiple deployments reinforces his group's mission to help businesses understand the role of guard members and reservists.

"When that employee is away on military service, his or her job is either not getting done, co-workers are pitching in to do it, or temporary employees are being hired," he says. "In the great majority of these cases, these employers are incredibly patriotic and bend over backwards to ensure to that reservist that they're behind him or her."

Mike Stuhreyer is a Nashville-area freelance writer.