



IDAHO NATIONAL GUARD
JOINT FORCE HEADQUARTERS
HUMAN RESOURCE OFFICE
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NGID-HRO

07 April 2024

MEMORANDUM FOR Idaho National Guard Employees

SUBJECT: HR Policy Letter 004: Expiration of Uniformed Services Employment and Reemployment Rights Act (USERRA) Protection

1. References:

a. Public Law 103-353, 13 October 1994, Employment and Reemployment Rights of Members of the Uniformed Services

b. 38 U.S.C. Chapter 43, 10 October 2008, Employment and Reemployment Rights of Members of the Uniformed Services

c. 5 CFR Part 1208.2, 4 February 2000, Practices and Procedures for Appeals under the USERRA and the VEOA

d. 5 CFR Part 353, 22 March 2024, Restoration to Duty from Uniformed Service or Compensable Injury

e. 20 CFR Part 1002.5, 11 March 2024, What Definitions Apply to USERRA

f. Department of Defense Instruction (DoDI) 1205.12 Ch1, 20 May 2016, Civilian Employment and Reemployment Rights for Service Members, Former Service Members and Applicants of the Uniformed Services

2. The Idaho National Guard (IDNG) HRO will provide a 30-day termination notice to all Federal Technicians who are approaching the end of their 5-year cumulative service USERR. Based on the needs of the National Guard, reinstatement past the 5-year cumulative absence will be at the discretion of the agency.

a. Per 38 USC 4304(B), a National Guard technician employed under section 709 of title 32, the term "employer" means The Adjutant General of the State in which the technician is employed.

b. On a case-by-case bases, Commanders, Directors, and Supervisors can request HRO to reinstate a federal technician after their USERR have expired.

3. According to 38 USC 4312, an employer is not required to reemploy a person if:

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a. The employer's circumstances have so changed as to make such reemployment impossible or unreasonable; or

b. The employment from which the person leaves to serve in the uniformed services is for a brief, nonrecurrent period and there is no reasonable expectation that such employment will continue indefinitely or for a significant period such as temporary technicians.

c. The IDNG will have the burden of proving the impossibility or unreasonableness, undue hardship, or the brief or nonrecurrent nature of the employment without a reasonable expectation of continuing indefinitely or for a significant period.

4. POC – Supervisory Human Resource Specialist, (208) 272-3341.

JAMES W. HICKS
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