

# Employment and Reemployment Protections for Reservists??FAQs

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The Civilian Reservist Emergency Workforce (CREW) Act protects the job rights of FEMA Reservists while they are deployed to disasters, emergencies and critical trainings by including FEMA Reservists under the Uniformed Services Employment and Reemployments Rights Act (USERRA). This means that if you hold another job, you are able to deploy as a FEMA reservist and your job will be protected. It also protects you against penalization, discrimination, or loss of employee benefits as a result of your deployments to disasters, emergencies, and critical trainings. The CREW Act became law on Sept. 29, 2022.

Please visit the Department of Labor's [know your USERRA Rights website](#) for a full explanation of rights and protections under USERRA.

## Frequently Asked Questions

### What protections do Reservists receive under the CREW Act?

The CREW Act expands USERRA to include FEMA Reservists. USERRA was enacted to ensure that members of the uniformed services are entitled to return to their civilian employment upon completion of their service. FEMA reservists should be reinstated with the seniority, status, and rate of pay they would have obtained had they remained continuously employed by their civilian employer. The law also protects individuals from discrimination in hiring, promotion, and retention based on present and future membership in the uniformed services. The definition of “uniformed services” includes, the Armed Forces, the Army National Guard and Air National Guard, the commissioned officer corps of the Public Health Service (PHS) and the National Oceanic and Atmospheric Administration (NOAA), members of the National Disaster Medical Service (NDMS), members of the National Urban Search and Rescue (USAR) System, and now, as a result of the CREW Act, FEMA Reservists.



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## What does this mean for Reservists?

Essentially, the passing of the CREW Act means that any Reservist deployed to a Stafford Act event cannot lose their outside employment due to their work with FEMA. They are also able to take time to train for such deployments. Additionally, they are protected from employment discrimination for being a Reservist.

## Which employers does this law apply to?

The law applies to ALL employers, both public and private, regardless of size. This also includes foreign employers doing business in the U.S. and American companies doing business in foreign countries.

See [20 C.F.R. § 1002.34](#).

## Can a Reservist also hold a state or federal job, or a job at a private sector entity that interacts with FEMA?

Yes, so long as the employment is cleared in writing by FEMA's Office of Chief Counsel and your supervisor before starting the outside employment. The Outside Employment form can be found [here](#) or by contacting your Cadre Management team. Military service does not require this clearance.

## What types of employment do USERRA protections apply to?

USERRA protects all employee types to include executive, managerial, and professional employees. See [20 C.F.R. § 1002.43](#).

Additionally, it also applies to temporary, part-time, probationary, and seasonal employees. USERRA rights are not diminished because an employee holds a temporary, part-time, probationary, or seasonal employment position. However, an employer is not required to reemploy an employee if the employment he or she left to serve in the uniformed services (including Reservists) was for a brief, nonrecurrent period and there is no reasonable expectation that the employment would have continued indefinitely or for a significant period. The employer bears the burden of proving this affirmative defense. See [20 C.F.R. § 1002.41](#).

However, USERRA does not apply to independent contractors. See [20 C.F.R. § 1002.44](#).



## Does USERRA protect against discrimination in initial hiring?

Yes. An employer need not actually employ a Reservist to be his or her “employer” under USERRA, if it has denied initial employment on the basis of his or her membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services (including FEMA). Similarly, if an entity withdraws an offer of employment because the Reservist is called upon to deploy, the entity withdrawing the employment offer is an employer for purposes of USERRA. See [20 C.F.R. § 1002.40](#).

## What are Reservists required to do in order to be eligible to return to their job after a deployment?

To be eligible for reemployment following a deployment, Reservists must meet the five conditions defined below. See [20 C.F.R. § 1002.32](#).

The Reservist must:

1. hold a civilian job;
2. have given written or verbal notice to the civilian employer prior to leaving the job for Reservist training or deployment except when precluded by FEMA necessity;
3. not have exceeded the 5-year cumulative limit on periods of service (note: this is per employer);
4. have been released from service under conditions other than dishonorable for military reservists and Guard (Note: FEMA is determining how this applies to Reservists); and
5. report back to the civilian job in a timely manner or submit a timely application for reemployment (requirements for timely reemployment are addressed below).

## What does “giving notice” mean?

Reservists must give advance written or verbal notice to the employer. See [20 C.F.R. § 1002.85](#). The law does not specify how much advance notice is required, but FEMA and Department of Labor advises that Reservists provide their employers with as much advance notice as possible under the circumstances.



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Practically, this means that Reservist should give notice to their employer **as soon as possible after they have accepted their deployment request**. It might be 24 hours-notice, or 4 days-notice, depending on the requested arrival date, but the Reservist must give as much notice as possible in the circumstances.

### **How should Reservists give notice to their employers?**

Notice can be written or verbal. However, written notice is preferred where possible. The notice may be informal and does not need to follow any specific format. However, Reservists may prefer to give notice via email or another method in order to create a time-stamped record. This could be in addition to a verbal notice. See [20 C.F.R. § 1002.85](#).

A sample notice letter can be found in the “Other Information” tile of the DTS Responder Portal. Reservists can complete this document and provide it and a copy of their DTS Request to their employers.

### **Does a Reservist need permission from their employer before accepting a deployment request?**

No. Reservists are not required to obtain permission from their employer. Only notification is required. They can accept the deployment request when it is received, and then notify their employer as soon as possible. See [20 C.F.R. § 1002.87](#).

### **Must a Reservist schedule or accept deployments based on their employer’s needs?**

No. The Reservist is not required to accommodate his or her employer's interests or concerns regarding the timing, frequency, or duration of FEMA service. The employer cannot refuse to reemploy the employee because it believes that the timing, frequency, or duration of the service is unreasonable. See [20 C.F.R. § 1002.104](#).

### **Can a Reservist be required to use vacation time for a deployment?**

No. The employer may not require the Reservist to use accrued vacation, annual, or similar leave during a deployment. See [20 C.F.R. § 1002.153](#)



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## **How long can a Reservists deploy?**

There are no specific limits on deployment length associated with USERRA reemployment protections. However, the USERRA reemployment rights do not apply if cumulative deployments while the Reservist works for a single employer exceed five years. See [20 C.F.R. § 1002.99](#)

Reservists must still follow any FEMA guidance regarding deployment length (e.g., 50-week rule).

## **Are Reservists able to take a rotation while on deployment?**

Reservists can take rotations, sick leave, and federal holidays while maintaining USERRA protections for the deployment. Reservists must follow all applicable FEMA guidance.

## **Does USERRA give Reservists the right to retain their civilian employer benefits during their deployment?**

Yes, health and pension plan coverage for Reservists is covered by USERRA. Individuals deployed more than 30 days may elect to continue employer sponsored health care for up to 24 months. However, they may be required to pay up to 102% of the full premium. For deployments of less than 31 days, health care coverage is provided as if the Reservist had remained employed. See 20 C.F.R. § 1002.164 and § 1002.166.

USERRA pension protections apply to defined benefit plans and defined contribution plans as well as plans provided under federal or state laws governing pension benefits for government employees. For purposes of pension plan participation, vesting, and accrual of benefits, USERRA treats Reservists as continuous service with the employer. See [20 C.F.R. § 1002.149](#), [§ 1002.259](#) and [§ 1002.260](#).

## **When is a Reservist required to notify their employer they are returning to work?**

It is based on the length of the deployment, which may include rotations. See 20 C.F.R. § 1002.115.



- For a deployment 30 days or fewer, the Reservist must return at the beginning of the next regularly scheduled work period on the first full day after the end of the deployment, taking into account safe travel home plus an eight-hour rest period.
- For a deployment of 31 to 180 days, the Reservist must submit an application for reemployment within 14 days of the end of the deployment.
- For a deployment 181 days or more, an application for reemployment must be submitted within 90 days of the end of the deployment.

An application for reemployment need not follow any particular format. The Reservist may apply orally or in writing. The application should indicate that the Reservist is a former employee returning from deployment and that he or she seeks reemployment with the pre-service employer. See [20 C.F.R. § 1002.118](#).

Is a Reservist required to tell their employer that they intend to seek reemployment after completing their deployment prior to leaving to perform FEMA service?

No. When the Reservist leaves the employment position to begin a period of service, he or she is not required to tell the civilian employer that he or she intends to seek reemployment after completing FEMA service. See [20 C.F.R. § 1002.88](#).

### **Can an employer require proof that a Reservist was deployed?**

Yes, if the deployment was more than 30 days. See 20 C.F.R. § 1002.121. If requested, the Reservist must provide documentation that:

1. the reemployment application was timely;
2. the employee has not exceeded the five-year limit on the duration of service, less any exceptions; and
3. the employee's separation or dismissal from service was not disqualifying.

The following documents should suffice: copies of their FEMA Earnings and Leave statements from their MyEPP accounts or a copy of their deployment history from their DTS account.

If employers would like to verify information about an employee's deployment, they can email [FEMA-CREW-Act@fema.dhs.gov](mailto:FEMA-CREW-Act@fema.dhs.gov) with the Responder's name and deployment number. FEMA will verify only that: the responder is a FEMA



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Reservist, the start date of the deployment, and the end date of the deployment (if a deployment has concluded).

### **What if a Reservist believes their employer is not honoring their USERRA protections?**

If a Reservist has issues with enforcing their rights and protections under USERRA, they should visit the Department of Labor Veterans' Employment & Training Service USERRA Website: <http://www.dol.gov/vets/programs/userra> and/or call the toll-free information and helpline, available 8:00am to 8:00pm (Eastern Time), at 1-866-4-USA-DOL (1-866-487-2365). The website includes links to the statute, regulations, and DOL's USERRA guide, which provide more details on these issues. See [20 C.F.R. § 1002.288](#).

Reservist can also initiate private legal action in a court of law, to enforce their USERRA rights. A Reservist is not required to use VETS if they choose not to. See [20 C.F.R. § 1002.288](#) and [§ 1002.303](#).

### **Questions**

Reservists with questions on the how the CREW Act affects their deployment should email at [FEMA-CREW-Act@fema.dhs.gov](mailto:FEMA-CREW-Act@fema.dhs.gov).

For more detailed information on USERRA rights and protections, please visit DOL website ([Know Your Rights | U.S. Department of Labor \(dol.gov\)](#)).



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