



## Employment Protections During State-Sponsored Activation

*Members of the National Guard who work outside of the state where they mobilize may not have employment protections during a state-sponsored activation.*

### KEY MESSAGE:

State statutes that cover Guard members during state-sponsored mobilizations impact employers within the state. States can modify their statutes to strengthen enforcement mechanisms for members of the National Guard returning to jobs in their affiliated state and protect the employment rights of members of the National Guard who are employed outside of their affiliated state at the time of state-sponsored activations.



### DISCUSSION POINTS:

- The Uniformed Services Employment and Reemployment Rights Act (USERRA)<sup>1</sup> does not apply when a National Guard member is called up by their governor to serve state active duty to respond to state emergencies such as fires, hurricanes, tornadoes, floods, etc.
- Every state has a statute that protects the civilian jobs of National Guard members on state active duty; however:
  - Several states have weak enforcement mechanisms that do not provide the members an adequate private right of action, or another recourse, in the event the members believe the employer has denied their right for reemployment.
  - The majority of states have laws only protecting the employment of members of the National Guard assigned to that specific state.
    - Many National Guard members have civilian jobs in states other than the state of their National Guard membership.
    - Unless state law covers the members who work in that state but are assigned to another state's National Guard, they have no reemployment rights after completing state active duty.
- States can adopt legislation to strengthen their state USERRA statute by providing protections that include these substantive points:
  - An effective enforcement mechanism through private right of action, or another recourse, for members of the National Guard. Employment protection to members of the National Guard of another state by revising wording in existing statute to recognize "members of the National Guard of this state or any other state."

Many states are strengthening their statutes to protect the reemployment rights of members of their National Guard. Ninety percent of all states in their respective statute currently provide an effective enforcement mechanism. Eighty percent of the states have a state law that includes the key seven words of "this state or of any other state" or language we believe is sufficient to provide enforceable reemployment rights. This provision will provide protection to a member of the National Guard of another state who holds a civilian job in the state with the desired provision.

<sup>1</sup>USERRA is a federal statute that covers the employment and reemployment of a person who leaves a civilian job (federal, state, local or private sector) for voluntary or involuntary services in the uniformed services. USERRA protects the civilian jobs of National Guard members after military training or service under Title 10 or Title 32 of the United States Code when they are called up by the president of the United States.