

To Employers of National Guard Members Serving in Emergency Event FREQUENTLY ASKED QUESTIONS

This office has received many questions regarding the reemployment of guardsmen involuntarily called to state duty. This paper answers some of those questions as they relate to the current emergency.

My employee was called to help with an emergency event. Since this was state active duty does the member have employment protection?

A service member under either a Federal or State mobilization has full employment and reemployment protection. Federal and State law guarantee employment and reemployment rights of members of the Texas Military Forces (The Texas National Guard and Texas State Guard) when called to duty either by the President or the Governor.

I wasn't given written notification of my Guard employee's. Aren't I entitled to written notification prior to the duty?

Uniform Services Employment & Reemployment Rights Act (USERRA) and Texas law provides employment protection to members serving under verbal orders of their commander. It does not specify written notice as a requirement of that protection. As a matter of practice most Guardsmen and Reservists provide copies of their orders prior to being called. In the case of emergency that may not always be possible. When the Guardsmen return to their employment they can provide that documentation, if it is available. In almost all cases the orders for emergency support have been provided, but a few guardsmen may not receive the proper paperwork before their departure. Upon completion of the duty they all will receive appropriate orders with the all inclusive dates.

Do I have to put the Guardsman back to work if he can't provide me a set of orders?

Employers are entitled to documentation of the duty performed by the Guardsman's upon return to work. If that documentation (orders) is not available, through no fault of the Guardsman, the employer must still promptly reemploy the member. As soon as those orders become available, then the Guardsman must provide them to the employer. Prompt reemployment of guardsmen away for less than 30 days is defined as the next regularly scheduled work shift.

What kind of leave should the guardsmen use while on state duty?

The type of leave used by an employee on state call is dependant on the employer's military leave policy. Many, but not all, civilian employers provide some sort of military leave. If they do, then those guardsmen serving in State Military Duty status qualify to use this military leave. Whether State Guard members qualify for that leave is dependant upon the specific language of the employer's military leave policy. Texas State employees have emergency leave protection. School Districts are provided the option of supplementing the pay of Guardsmen.

However, the employee is not required to use vacation or personal time to support a federal or state call to active duty. It is the employee's option whether to use vacation or personal time for military service upon activation.

The Texas Military Forces appreciates your support to your citizen soldiers and should an employer need additional information or detailed legal information pertaining to the above questions, please contact the TX ESGR Office at 512-782-5858.

www.texasnationalguard.us/dsca