

SUBCHAPTER D—PERSONNEL, MILITARY AND CIVILIAN

CROSS REFERENCE: For a revision of Standards for a Merit System of Personnel Administration, see 5 CFR part 900.

PART 44—SCREENING THE READY RESERVE

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APPENDIX A TO PART 44—GUIDANCE FOR EMPLOYERS OF READY RESERVISTS

AUTHORITY: 10 U.S.C. 10149.

SOURCE: 85 FR 84241, Dec. 28, 2020, unless otherwise noted.

§ 44.1 Purpose.

This rule updates Department of Defense (DoD) policy and responsibilities for the screening of Ready Reservists under 10 U.S.C. 10149.

§ 44.2 Applicability.

This rule applies to non-Federal employers of Ready Reservists filling key positions.

§ 44.3 Definitions.

For purposes of this part, the following definitions apply:

Extreme community hardship. A situation that, because of a Reserve member's mobilization, may have a substantially adverse effect on the health, safety, or welfare of the community. Any request for a determination of such hardship will be made by the Reserve member and must be supported by documentation, as required by the Secretary of the Military Department concerned.

Inactive National Guard (ING). Members of the National Guard in an inactive status in the Ready Reserve and attached to a specific National Guard unit. These members do not participate in training activities but mobilize with their unit of assignment or with other units within their State on partial or full mobilization. They are not subject to a call-up pursuant to 10 U.S.C. 12304.

Individual Ready Reserve (IRR). A manpower pool within the Ready Re-

serve of each of the RCs consisting of individuals who have had some training or who have served previously in the AC or in the Selected Reserve, and may have some period of their MSO remaining pursuant to 10 U.S.C. 651. The IRR consists of members of the Ready Reserve who are not in the Selected Reserve or the ING. Additionally, the IRR also includes some personnel who are participating in officer training programs or in the Armed Forces Health Professions Scholarship and Financial Assistance Programs.

Key employee. Any non-federal employee occupying a key position within an agency, company, local government, or organization.

Key position. A public or private civilian position, not a job series, designated by the employer and approved by the Secretary of the Military Department concerned) that cannot be vacated during war or national emergency.

Mobilization. The process by which the Armed Forces of the United States, or part of them, are brought to a state of readiness for war or other national emergency.

Ready Reserve. The Selected Reserve and Individual Ready Reserve liable for active duty as prescribed by law.

Selected Reserve. Those units and individuals within the Ready Reserve designated by their respective Military Service and approved by the Joint Chiefs of Staff as so essential to initial wartime missions that they have priority over all other reserves.

§ 44.4 Policy.

It is DoD policy that:

(a) Members of the Ready Reserve shall be screened (see the appendix to this part for specific screening guidance) at least annually to meet the provisions of 10 U.S.C. 10149 and to provide a Ready Reserve force composed of members who:

(1) Meet Military Service readiness standards of mental, moral, professional, and physical fitness and possess the military qualifications required in the various ranks, ratings, and specialties.

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(2) Are available immediately for active duty (AD) during a mobilization or as otherwise required by law.

(b) Ready Reserve members whose immediate recall to AD during an emergency would create an extreme personal or community hardship shall be transferred to the Standby Reserve or the Retired Reserve, or shall be discharged, as applicable.

(c) Ready Reserve members who occupy key positions shall be transferred to the Standby Reserve or the Retired Reserve, or shall be discharged, as appropriate.

(d) After a mobilization is ordered, no deferment, delay, or exemption from mobilization will be granted to Ready Reserve members because of their civilian employment.

§ 44.5 Responsibilities.

(a) The Under Secretary of Defense for Personnel and Readiness (USD(P&R)) adjudicates, before mobilization, conflicts the Ready Reserve screening process has identified, but has not resolved, between the mobilization manpower needs of the civilian sector and the Military Services.

(b) The Assistant Secretary of Defense for Manpower and Reserve Affairs (ASD(M&R)), under the USD(P&R), coordinates resolution of conflicts between the mobilization manpower needs of the civilian sector and the Military Services identified but not resolved through the Ready Reserve screening process.

(c) The Secretaries of the Military Departments and Commandant, United States Coast Guard, ensure coordination with the ASD(M&R) to resolve conflicts (identified, but not resolved through the Ready Reserve screening process) between the mobilization manpower needs of the civilian sector and the military. They will review petitions submitted by employers, take applicable action, and promptly transmit the results of that determination to the reservist concerned and their employer after making a determination in response to the petition. Materials provided or produced with regard to the petition will be retained by the Secretary Concerned.

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APPENDIX A TO PART 44—GUIDANCE FOR EMPLOYERS OF READY RESERVISTS

(a) Employers of Ready Reserve members. Prior to any mobilization action, employers of Ready Reserve members are encouraged to adopt personnel management procedures designed to prevent conflicts between the emergency manpower needs of civilian and military activities that may occur during a military mobilization requiring Ready Reserve participation. Employers are encouraged to assess the internal capabilities of their own positions and the organic capacity to sustain emergency manpower needs prior to a military mobilization which can produce an accurate listing of what they consider key positions to their organization. Employers, via the head of or suitable designee within an agency, company, local government, or organization, are encouraged to use the below key position guidelines as a reference for considering designations and, when applicable, petitioning the respective Military Service if a Ready Reserve member fills a key position. Nothing in this part shall reduce, limit, or eliminate in any manner any right or benefit provided by USERRA. Employers must ensure that key position determinations are not undertaken in a manner that would violate USERRA.

(b) Key position guidelines:

(1) Designate individual positions that are essential in nature to, and within, the organization as “key positions,” and require they will not be filled by Ready Reserve members to prevent such positions from being vacated during a mobilization.

(2) Consider the following questions to determine whether an individual position should be designated as a key position:

(i) Can the position be filled in a reasonable time after mobilization? (Note that this factor must not be the sole factor relied on in making a key position determination.)

(ii) Does the position require technical or managerial skills that are possessed uniquely by the incumbent employee?

(iii) Is the position associated directly with defense mobilization?

(iv) Does the position include a mobilization or relocation assignment in a federal agency that has emergency functions, as designated by E.O. 12656?

(v) Is the position directly associated with industrial or manpower mobilization, as designated in E.O.s 12656 and 12919?

(vi) Are there other factors related to the national defense, health, or safety that will make the incumbent of the position unavailable for mobilization? These factors should not be applied more broadly than intended as to encompass an entire class of workers, nor misapplied to conflict with USERRA, its implementing regulations at 20 CFR part 1002, or other federal statutes and regulations.

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(3) Conduct an annual review of key positions and employees as noted herein.

(4) Petition to the respective Military Service any findings for adjudication of specific Ready Reserve members filling critical positions, as needed.

(5) When employers consider a Ready Reserve member as filling a key position within their organization, they should petition the applicable Reserve personnel center for discussion and adjudication. An employer may not take any employment action with regard to the position for which approval is sought based upon an employee or potential employee's military service until such time as the petition for approval has been approved by the relevant Service Secretary. Below is the list of Reserve personnel centers to which petitions shall be forwarded:

Army Reserve: U.S. Army Human Resources, Command 1600 Spearhead Division, Avenue ATTN: AHRC-ROR-PPA, Fort Knox, KY 40122-5100, <https://www.hrc.army.mil/>

Navy Reserve: Commander, Naval Military Personnel Command (Pers 91), 5720 Integrity Drive, Millington, TN 38055-9100, <https://www.public.navy.mil/bupers-npc/Pages/default.aspx>

Marine Corps Reserve: Director, Marine Corps Individual Reserve Support Activity (MCIRSA), 2000 Opelousas Ave., New Orleans, LA 70114, <https://www.marforres.marines.mil/Major-Subordinate-Commands/Force-Headquarters-Group/Marine-Corps-Individual-Reserve-Support-Activity/>

Air Force Reserve: Commander, Air Reserve Personnel Center/DPAM, 18420 E. Silver Creek Ave., Bldg. 390, MS 68, Buckley AFB, CO 80011, <https://www.arpcc.afrc.af.mil/>

Coast Guard Reserve: Commander (PSC-RPM), U. S. Coast Guard Personnel Service Center, 2703 Martin Luther King Jr Ave. SE, Stop 7200, Washington, DC 20593-7200, <https://www.dcms.uscg.mil/Our-Organization/Assistant-Commandant-for-Human-Resources-CG-1/Personnel-Service-Center-PSC/Reserve-Personnel-Management-PSC-RPM/>

Army and Air National Guard: Submit petitions to the Adjutant General of the appropriate State, Territory, or the District of Columbia.

45.6 Element of payable claim: negligent or wrongful act or omission.

45.7 Element of payable claim: proximate cause.

45.8 Calculation of damages: disability rating.

45.9 Calculation of damages: economic damages.

45.10 Calculation of damages: non-economic damages.

45.11 Calculation of damages: offsets for DoD and VA Government compensation.

45.12 Initial and Final Determinations.

45.13 Appeals.

45.14 Final and conclusive resolution.

45.15 Other claims procedures and administrative matters.

AUTHORITY: 10 U.S.C. 2733a.

SOURCE: 86 FR 32208, June 17, 2021, unless otherwise noted.

§ 45.1 Purpose of this part.

(a) *In general.* The purpose of this part is to establish the rules and procedures for members of the uniformed services or their representatives to file claims for compensation for personal injury or death caused by the medical malpractice of a Department of Defense (DoD) health care provider. Claims under this part may be settled and paid by DoD under the Military Claims Act, Title 10, United States Code, Chapter 163, specifically section 2733a of Title 10 (hereinafter 10 U.S.C. 2733a, section 2733a, or the statute), as added to the Military Claims Act by section 731 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92; 133 Stat. 1457). Claims are adjudicated under an administrative process. This administrative process follows a set of rules and procedures set forth in this part. These rules and procedures are based primarily on a number of detailed provisions in the statute.

(b) *Relationship to military and veterans' compensation programs.* Federal law provides a comprehensive system of compensation for military members and their families in cases of death or disability incurred in military service. This system applies to all causes of death or disability incurred in service, whether due to combat injuries, training mishaps, motor vehicle accidents, naturally occurring illnesses, or household events, with limited exceptions (*e.g.*, when the member is absent without leave or the injury is due to the

PART 45—MEDICAL MALPRACTICE CLAIMS BY MEMBERS OF THE UNIFORMED SERVICES

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45.1 Purpose of this part.

45.2 Claims payable and not payable in general.

45.3 Authorized claimants.

45.4 Filing a claim.

45.5 Elements of payable claim: facilities and providers.