

**STATEMENT OF BRARRY COX COL, ARNG
DIRECTOR OF OMBUDSMAN SERVICES
NATIONAL COMMITTEE FOR EMPLOYER SUPPORT
OF THE GUARD AND RESERVE**

**BEFORE THE
HOUSE
COMMITTEE ON VETERANS' AFFAIRS**

**THE SERVICEMEMBERS LEGAL PROTECTION ACT OF 2004
DRAFT BILL**

**THE SAFEGUARDING SCHOOLCHILDREN OF DEPLOYED SOLDIERS ACT
OF 2004
H.R. 3779**

**THE USERRA HEALTH CARE COVERAGE EXPANSION ACT OF 2004
DRAFT BILL**

**THE PATRIOTIC EMPLOYER ACT OF 2004
H.R. 4477**

JUNE 23, 2004

Colonel Brarry A. Cox
Director
Military Member Support and Ombudsman Services
National Committee for Employer Support of the Guard and Reserve

After serving nearly ten years as a Non-Commissioned Officer, COL Brarry A. Cox was commissioned from the West Virginia Military Academy's Officer Candidate School. He earned a Bachelor of Arts degree from the University of Charleston and he holds a Master of Science degree in Management. His military education includes: the Engineer Officer Basic and the Ordnance Officer Advanced Courses, Command and General Staff Officer Course, the U.S. Army War College Defense Strategy Course. He is a 1999 graduate of the resident course at the U.S. Army War College, Carlisle, Pennsylvania. COL Cox has completed these additional military courses: U.S. Army Command and General Staff College Battalion Pre-Command Course; Army Logistics Management College Manpower and Force Development Course; US Transportation Command Joint Deployment Systems Course; Army Management Engineering College Manpower Staffing Standards and Organizational Efficiency Review Techniques Courses; C&GSC Force Development Officer Course; NBC Defense Officer Course and the Maintenance NCO Advanced Course. In 1978, while serving as an E6 in the 3664th Maintenance Company, COL Cox was selected as the WVARNG Soldier of the Year.

COL Cox served fourteen years in the WVARNG in a variety of NCO and commissioned officer positions. He held a full-time Administrative Supply Technician position in the 3664th Maintenance Company prior to attending Officer Candidate School. Since entering the National Guard Bureau Title 10 program in 1986 he has completed assignments as a Reserve Officer Training Command Assistant Professor of Military Science at the University of Wisconsin, Stevens Point, Wisconsin; Manpower Support Officer, National Guard Bureau, Edgewood, Maryland. Overseas assignments include Army National Guard Contingency Planner, V Corps, Frankfurt, Germany and Plans, Policy and Training Officer, 1st Armored Division, Bad Kreuznach, Germany. COL Cox served for three years in the Pentagon as Chief, Army National Guard General Officer Management Office, Washington, DC. He was selected to participate in the NGB Command/Leadership Program and commanded the 1st Battalion, 77th Brigade Troop Command, West Virginia Army National Guard. Upon completion of his command tour he assumed the duties as Chief, ARNG Staff Management Office and was assigned as the Director of Training, Office of the Secretary of Defense/Reserve Affairs from July 2001 through June 2003.

Among his decorations are the Defense Meritorious Service Medal, Meritorious Service Medal (with 2 Oak Leaf Clusters), Army Commendation Medal (with 4 Oak Leaf Clusters), Army Reserve Component Achievement Medal (7th Award), National Defense Service Medal, Humanitarian Service Medal (2nd Award), Armed Forces Reserve Medal (2nd Award), Non-Commissioned Officer Professional Development Ribbon (with Numeral 3 Device), Overseas Service Ribbon (with Numeral 2 Device), Army Service Ribbon, Army Reserve Overseas Training Ribbon (with Numeral 2 Device), the Office of the Secretary of Defense Identification Badge, the Department of the Army Staff Badge and the US Army Excellence in Competition Badge (Bronze – Rifle).

Chairman Smith and members of the Committee: I am Col Brarry Cox, the Director of Ombudsman Services for the National Committee for Employer Support of the Guard and Reserve (ESGR). ESGR is the Department of Defense (DOD) organization whose mission is “to gain and maintain support from all public and private employers for the men and women of the National Guard and Reserve as defined by demonstrated employer commitment to employee military service.”

The Uniformed Services Employment and Reemployment Rights Act (USERRA) states that, "It is the sense of Congress that the Federal Government should be a model employer in carrying out the provisions of this chapter." Mr. Chairman, the fact that we are here today is testimony to your continued commitment to that statement.

Background:

ESGR consists of a small national staff and more than 4,000 volunteers, in 55 Committees, for each state, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam. We recently established our 55th Committee in Europe.

The National Committee for Employer Support of the Guard and Reserve (NCESGR) is a Department of Defense volunteer organization. NCESGR provides free education, consultation, and if necessary mediation with employers of Guard and Reserve employees. Support is provided through outreach and education to employers and military members and through our Ombudsman services. Employer support is critical to an individual's decision to remain in the Reserves under normal conditions. Lengthy and recurring mobilizations exacerbate the issue. When employees are absent from their employers for extended periods of time it is crucial that communication is clear, concise and timely. Employers want predictability: when will my employees go and when will they return from military service?

NCESGR provides community-based programs to encourage employer support of employees who are members of the Reserve components. ESGR has implemented a web-based network to enhance communication with ESGR local volunteers, RC service members and their employers. Our 'Statement of Support,' 'Boss lift,' 'Briefing with the Boss,' and Awards programs build an employer support network comprised of both military, civilian and government-employer leaders who are capable of facilitating communication, education and exchange of information.

Both private and public sector employers need to understand their USERRA responsibilities with respect to their Reserve employees and also the importance of the Reserve components (RC) to the national defense. NCESGR's employer outreach program supports education and awareness of USERRA among Human Resource professionals. The Office of the Assistant Secretary of Defense for Reserve Affairs (OASD/RA) sponsors NCESGR research studies to determine the specific impact on employers and how the shared manpower assets usage can be efficiently managed.

When it becomes necessary, our Ombudsmen Directorate-supported by a full-time staff of five and about 700 volunteer “Ombudsmen”-performs informal mediation efforts. Each Ombudsman has been formally trained on USERRA. During fiscal year 2003, we (ESGR) handled more than 22,000 inquiries from National Guard and Reserve personnel and their civilian employers. These volunteer Ombudsmen are to be commended for their work in support of our employers and their Guard or Reserve employees. We seek to avoid litigation and to resolve these cases at the lowest level possible. Historically, our success rate exceeds 90%.

History:

Since 1940, persons leaving civilian employment for voluntary or involuntary military service have had the legal right to reemployment in their civilian jobs after satisfactory completion of their service. In its first case construing the reemployment statute, the Supreme Court held that the law is to be “liberally construed for he who has laid aside his civilian pursuits to serve his country in its hour of need.” *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 285 (1946).

In recent years, the reemployment statute has been discussed primarily in connection with the National Guard and Reserve, but the law applies equally to both the Regular and Reserve components of the Armed Forces.

USERRA’s scope of applicability is unique among Federal labor-management laws. USERRA applies to the Federal Government (as a civilian employer), to the States, to political subdivisions of States (counties, cities, school districts, etc.), and to private employers, regardless of size. So we at ESGR extend our outreach efforts and service to the entire spectrum of employers – public and private.

Under section 4319 of USERRA, 38 U.S.C. 4319, United States employers and foreign entities controlled by United States employers are bound by USERRA all over the world. This provision is one of the reasons we established our 55th committee in Europe, to support our Reserve component members who live and work in Europe.

Enforcement:

I understand that the focus of this hearing is the enforcement of USERRA with respect to public sector employers. Our role is to attempt to resolve issues before enforcement action becomes necessary.

The Department of Labor- Veterans’ Employment Training Service (DOL-VETS) has told us that they open about 1,300 USERRA cases per year. As I have stated, we (ESGR) handled about 22,000 inquiries last year. I cannot tell you that there is any direct correlation between our 22,000 inquiries and the 1,300 cases opened by DOL-VETS. Since there is no requirement for complaints to be routed through ESGR prior to going to DOL-VETS, I do not know how many of the DOL-VETS claimants contacted us first and how many went to DOL-

VETS directly. Once an individual makes a formal complaint to DOL-VETS, this becomes a Federal law enforcement matter and we (ESGR) no longer pursue it.

Proposed Amendment to USERRA

Section 4317(a) of USERRA, 38 U.S.C. 4317(a), permits an employee leaving a position of employment for voluntary or involuntary service to elect continued health plan coverage through the civilian job. The employer is permitted to charge the employee up to 102% of the entire premium, including the part the employer normally pays in the case of active employees. After 18 months of absence from the civilian job, the employer is permitted to discontinue this arrangement. The proposed "USERRA Health Care Coverage Extension Act of 2004" increases that period from 18 months to 24 months. This change would bring coverage in line with the period a Guard or Reserve member may be involuntarily called to active duty under the partial mobilization authority. (Section 12302 of title 10)

Conclusion:

The National Committee for Employer Support of the Guard and Reserve will continue aggressive outreach efforts in support of our mission to gain and maintain support from all public and private employers for the men and women of the National Guard and Reserve. The support provided by all employers, both public and private, during this global war on terror has been tremendous. When issues do arise and personal contacts are made, the overwhelming majority of the issues are settled through mediation conducted by ESGR volunteers. Indeed, many employers go beyond the requirements set forth in USERRA. Providing differential pay, extending insurance benefits and forming family support within the organization are commonplace across this great nation. America's employers are inextricably linked to our national security. Mr. Chairman and members of the Committee, this concludes my statement