As the United States continues to develop its response to the COVID-19 pandemic, thousands of members of the National Guard will be activated to help deal with the threat. Last week, Massachusetts Governor Charlie Baker activated 2,000 of the state’s National Guardspeople to aid the COVID-19 fight. As states assess how to use the National Guard to assist with the current state of emergency, service members will be called on to serve in increasing numbers. The Reserve components of the federal armed forces could also be mobilized to aid the national response. In addition, many brave emergency responders have already begun, and will continue, working in volunteer capacities to support their communities.

The business impact for employers is that many employees will be called upon to
leave their regular work to serve. If and when this occurs, employers must take into account the various state and federal laws that protect military and emergency responder leave.

On the federal level, the Uniformed Services Employment and Reemployment Rights Act (USERRA) sets requirements for leave and re-employment for activated uniformed service members. On the state level, statutes may require paid or unpaid military or emergency responder leave for national guard service or for those employees who respond to emergencies (i.e. voluntary ambulance or rescue personnel). Further, these laws prohibit discrimination, including disciplinary actions, for failure to come to work. Being aware of and complying with these requirements in handling leave requests protects employers from inadvertently violating these laws and exposing their business to the risk of litigation.

As our nation and its states struggle to handle the COVID-19 outbreak, leave laws are in a state of flux all across the country, and new legislation is announced seemingly daily. It can be a struggle for employers to keep up with the quick pace of legal developments. However, companies should keep in mind that there are also existing laws in place protecting leave for those mobilized to address emergency situations, both federal and state. In the case where one or more employees need leave to serve in such capacity, consult with counsel to gain a full understanding of existing requirements, and to ensure that all applicable obligations are met.

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