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**WAR AND THE WORKPLACE - February 2003**

As a possible war with Iraq now seems inevitable, employers should be aware of whether any of their staff are volunteer reserves.

There are currently approximately 45,000 volunteer reserves in the UK. Already, the Defence Secretary has called up 1,500. Many of those called up already are employed in key positions and the possibility of losing key personnel to a lengthy war in Iraq will not thrill their employers. However, employers have various ways to avoid or minimise the impact of a reserve being called up. It is therefore important for employers to know their legal rights concerning mobilisation of reserve forces.

If there is compulsory mobilisation then both the employer and the employee will be notified. If there is voluntary mobilisation then only the employee will be notified and it is for the employee to get the OK from their employer to go to war. Beware reservists who work for pacifist employers.

Once a call up notice is issued, both the employee and the employer have seven days to apply for the notice to be deferred or revoked. There are a number of specific circumstances in which such an application can be made, for example where the call up would cause serious harm to the business. The harm could be a drop in sales or production because of the absence of the reservist. Even if the application to defer or revoke is not granted, an appeal can be lodged within 5 days of the decision with an Independent Reserve Forces Tribunal.

The first thing that an employer should do is identify which members of staff are reservists. The employer should carry out a risk/impact assessment of the effect of a call up and contingency plans should be developed. Any call up notice should be dealt with quickly and an application to defer or revoke should be made promptly.

If an employee is called up then the employer should be aware that: -

- ◆ They do not need to pay the reservists salary during mobilisation
- ◆ They can recruit temporary cover but they should make it clear at the time of recruitment that the position is temporary and is likely to be ended when the reservist returns.

- ◆ Financial assistance can be claimed to cover the costs of replacing the reservist and the costs of retraining them when they return as their skills and knowledge may need to be refreshed or updated.

Can an employer just dismiss someone who is called up? No. It is a criminal offence to dismiss a reservist because they have been or may be called up and the employer is liable to pay a fine.

What happens when Bush and Blair end their frolics in the sand? A reservist has the right, for up to 6 months after demobilisation to be re-employed in the same job and on terms and conditions that are no less favourable. If it is not possible to re-employ them in the same job, then they must be given the best available position.

In order to get their old job, a reservist must apply in writing by at least the third Monday following their return from service.

After return from service, a reservist's job is safe guarded for at least 13 weeks. If the reservist had between 13 and 51 weeks service before call up then they are guaranteed a job for 26 weeks and if they worked for the employer for more than a year before call up they have a guaranteed period of 52 weeks.

A failure to re-employ can lead to a fine of up to £1,000 and the employer would have to pay compensation equivalent to the protected period the employee would have had. This could be up to a year's salary.

Where an employee is re-employed after mobilisation, their period of continuous service is not broken although the start date of their employment is deemed to be delayed by the number of day's mobilisation they had.

One unanswered question is whether a reservist's contract of employment continues whilst they are mobilised. If it does then they remain bound by any restrictions in it, although they will probably not be revealing your business secrets to Saddam & Co. More importantly, even though they may be away from work and not receiving salary from the employer, if the contract continues they will be entitled to paid holiday as normal. Finally, if the contract continues and when they return they are not taken back on, they could claim for unfair dismissal and the 3 month time limit for making the claim will run from when they were not taken back on. On the other hand, if it is agreed that their contract will not continue during mobilisation, there is no obligation to pay holiday pay and any unfair dismissal claim should be made within 3 months from that date, and it is difficult to make a claim to the Employment Tribunal from the Iraqi desert. Therefore, perhaps it would be wise for an employer to agree with the employee that their contract will not continue during the period of mobilisation but to reassure that if they are re-employed later their continuous service will be as if they remained employed.

It is clear that mobilisation of reserve troops could have a serious impact on businesses. In order to minimise the effect of mobilisation, employers should start planning now and should make use of their rights to challenge the call up. Employers should also re-employ reservists for the correct protected period when they return. Unfortunately, many called up employees will not be treated properly by their

employers and this will mean an increased number of claims to Employment Tribunals. In view of the Government's stated commitment to reducing employment tribunal claims one wonders whether avoiding any involvement in a war at this time altogether would best further this.