



November 21, 2005

DIRECTOR'S MEMORANDUM NO. 04-06

MEMORANDUM FOR: ALL VETS STAFF

FROM: GORDON J. BURKE, JR. [Approved]  
Director, Operations and Programs

SUBJECT: FEMA National Disaster Medical System (NDMS) Letter to  
Employers Regarding USERRA Coverage

REFERENCE: Section 2811 of the Public Health Security and Bioterrorism Preparedness  
and Response Act of 2002, P.L. 107-188 enacted June 12, 2002  
[http://frwebgate.access.gpo.gov/cgi-  
bin/getdoc.cgi?dbname=107\\_cong\\_public\\_laws&docid=f:publ188.  
107](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_public_laws&docid=f:publ188.107)

I. Purpose: To provide information to VETS' staff on USERRA coverage for service  
for intermittent disaster-response appointee in the NDMS.

II. Background:

A. The NDMS is part of the U.S. Department of Homeland Security, Secretary  
for Emergency Preparedness and Response. Public Law 107-188, "SEC. 2811.  
Coordination of Preparedness for and Response to Bioterrorism and Other Public Health  
Emergencies" states in part:

- (3) Employment and reemployment rights
  - (A) In general

Service as an intermittent disaster-response appointee when the Secretary activates  
the National Disaster Medical System or when the individual participates in a training  
program authorized by the Assistant Secretary for Public Health Emergency Preparedness  
or a comparable official of any Federal agency specified in subsection (b)(2)(B) of this  
section shall be deemed "service in the uniformed services" for purposes of chapter 43 of  
Title 38, pertaining to employment and reemployment rights of individuals who have  
performed service in the uniformed services (regardless of whether the individual receives

compensation for such participation). All rights and obligations of such persons and procedures for assistance, enforcement, and investigation shall be as provided for in chapter 43 of Title 38.

(B) Notice of absence from position of employment

Preclusion of giving notice of service by necessity of Service as an intermittent disaster-response appointee when the Secretary activates the National Disaster Medical System shall be deemed preclusion by "military necessity" for purposes of section 4312(b) of Title 38, pertaining to giving notice of absence from a position of employment. A determination of such necessity shall be made by the Secretary, in consultation with the Secretary of Defense, and shall not be subject to judicial review.

B. FEMA's National Disaster Medical System provided VETS with an example of a letter they are now sending to employers. The intent of the letter is to advise employers that the employee mentioned in the letter will be deployed to a disaster or is scheduled for disaster training, and the employee has the right to return to work with all benefits covered by USERRA. A copy of the letter is attached to this DM.

III. Action:

The attached NDMS letter should be used by VETS to validate a claimant's eligibility for USERRA protection if they file a USERRA claim. The letter also documents that the employer was advised of the NDMS activee's USERRA rights and protection when s/he left work and the reason s/he left work. If a claimant does not have a copy of the letter but feels s/he is protected by USERRA, a claim should be opened by VETS. Questions of a person's NDMS status and USERRA eligibility can be verified by NDMS staff:

Barbara J. Spurlock  
Senior Program Analyst, NDMS  
202-646-4287 - Office  
800-872-5945 – Fax

IV. Effective Date: Immediately

V. Inquiries: Direct questions on this Memorandum to Rob Wilson (202) 693-4719 or Bo Wroble (404) 562-2368.

Expiration Date: Until rescinded.

Attachment: Template of NDMS Deployment Letter to Employer