

H.R. 7785, a bill to amend title 38, United States Code, to extend certain employment and reemployment rights to members of the National Guard who perform State active duty

As ordered reported by the House Committee on Veterans' Affairs on September 17, 2020

By Fiscal Year, Millions of Dollars	2021	2021-2025	2021-2030
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	†	†	not estimated
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2031?	No	Contains intergovernmental mandate?	Yes, Under Threshold
		Contains private-sector mandate?	Yes, Under Threshold
† H.R. 7785 would increase spending subject to appropriation by increasing USERRA cases; CBO cannot estimate the number of or costs for those cases.			

H.R. 7785 would amend the Uniformed Services Employment and Reemployment Rights Act (USERRA) to include service by members of the National Guard when they are ordered to state active duty by a governor. Those personnel are often activated to respond to natural disasters or civil disturbances; they are directed and paid by the state while activated. USERRA generally requires employers to reemploy National Guard members serving on federal active duty upon their return to civilian life. The act also prohibits employment discrimination against such service members. The Departments of Labor, Defense, and Justice and the Office of Special Counsel collaboratively support and enforce USERRA, and these agencies reviewed roughly 2,500 unique cases from all reserve components in 2019.

CBO expects that additional resources would be needed to review an increase in cases; however, CBO does not have a basis to estimate those additional costs because federal agencies do not report the costs to administer and enforce USERRA at a sufficient level of detail to enable CBO to estimate the cost per case. Further, there is not an adequate source of combined data concerning how many National Guard members are ordered to state active duty.

The bill would impose intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) on the employers of individuals who serve state active duty in the National Guard. It would expand existing protections in law to include members who return to work after state active duty, requiring employers to provide the same benefits, pay, and seniority as if they had not been deployed. The bill also would expand a requirement in current law that employers treat employees who are on state active duty as furloughed employees or employees on a leave of absence, entitling them to any compensation or benefits otherwise available to them in that status. The cost of the mandate would be the cost to employers who provide these benefits.

The cost of the mandates is difficult to determine because the available data does not distinguish between members of the National Guard ordered to federal and state active duty. In order to exceed the thresholds established in UMRA, CBO estimates that employers would need to provide furlough benefits, such as health insurance, to more than 100,000 National Guard members on state active duty for more than two weeks. Because the total number of National Guard activations by federal and state authorities for domestic service has not exceeded this figure in recent years, CBO estimates the overall cost to employers would be below the annual thresholds established in UMRA for intergovernmental and private-sector mandates (\$84 million and \$168 million, respectively in 2020, adjusted annually for inflation).

The CBO staff contacts for this estimate are Paul B.A. Holland and Brandon Lever (for mandates). The estimate was reviewed by Leo Lex, Deputy Director of Budget Analysis.