

**National Disaster Medical System  
Clarification of Provisions of P. L. 107-188  
Public Health Security and Bioterrorism Preparedness and Response Act of 2002**

**Intermittent Disaster Response Personnel**

**Question:** Is there a time limit on the intermittent appointment, or is it indefinite?

**Response:** There is no time limit on the appointments. However, the appointments only are effective if the individual is an active NDMS member.

**Question:** Once appointed, do the licenses of NDMS personnel work in all states and territories because these people are now federal personnel, or do we have any licensure issues?

**Response:** Once individuals are appointed under the Act, their licenses will be valid in all states and territories as long as these individuals are performing work within the scope of the federal appointments. States may not impose qualification requires on federal employees acting with the scope of their employment.

**Property and Insurance**

**Question:** Can States and local governments use NDMS team equipment and supplies during a localized deployment?

**Response:** Yes, as long as the state or local government reimburses NDMS for the equipment and supplies used.

**Question:** Can NDMS teams purchase insurance with federal monies (i.e., liability insurance while working in the warehouse, etc).

**Response:** Yes, NDMS teams may purchase insurance with federal funds.

**Compensation for Work Injuries (Worker's Compensation)**

**Question:** Do the worker's compensation protections include time spent by NDMS team personnel when they are doing required work on the federal "basic load" of equipment and supplies to prepare for deployments, training, drills, inventories, equipment maintenance, etc.

**Response:** Section 2811 (e)(2) provides that an intermittent disaster response appointee who

sustains an injury while acting in the scope of appointment shall be considered an employee of the Public Health Service and the injury shall be considered incurred in the performance of duty. This includes work related to the preparation for deployments, training, drills, and equipment maintenance, as long as the work is in furtherance of the duties and responsibilities under the appointment.

### **Employment and Reemployment Rights**

**Question:** Does this law give NDMS members the same job protection and reemployment rights as military reservists in the federal system?

**Response:** Yes

**Question:** What does this exactly mean?

**Response:** It means that if an NDMS team member is activated for a deployment or training, the employer must let the employee serve. The employee's job must still be there after service/training is concluded.

**Question:** Does this apply in any situation where NDMS is activated?

**Response:** Yes, once the Secretary activates NDMS for any purpose.

**Question:** Does this apply to all NDMS personnel?

**Response:** Yes, all NDMS personnel are covered.

**Question:** Does this law give NDMS personnel the right to simply notify their employers that they are leaving for a deployment, or does it allow HHS to determine that an employee still have to receive employer permission to deploy.

**Response:** Although notice is normally required for an employee to exercise retention and reemployment rights on return from service, this requirement is not imposed when the Secretary activates the NDMS. In fact, section 2811(e)(3)(B) specifically states that notice is not required and is deemed precluded by military necessity for purposes of 38 U.S.C. § 4312(b) when the Secretary activates the NDMS. Section 4312(b) of Title 38 provides that no notice is required for absence from a position of employment by reason of service in the uniformed services if such notice is precluded by military necessity or it is otherwise impossible or unreasonable. We recognize that this lack of notice may inconvenience the affected employers, but obtaining employer permission for deployment conflicts with the aim of the Act to respond effectively to bioterrorism and other public health emergencies. Prior to a need for deployment, however,

HHS could engage and educate employers about the possibility of NDMS deployment.

**Question:** CAN OGC recommend language for a letter that can be given to employers as notification that an employee will be on deployment or official training.

**Response:** A sample employer notification of uniformed service is set out at 32 C.F.R. Part 104, Appendix B. It should be used when an employee participates in training and could be used in NDMS activation when notice can practically be given. As edited for NDMS purposes, the sample notification would read as follows:

This is to inform you that (insert applicant or Service member's name) must report for National Disaster Medical System training or duty on (insert date). My last period of work will be on (insert date), which will allow me sufficient time to report for NDMS duty. I will be absent from my position of civilian employment for approximately (enter expected duration of duty as specified on your order, and include the applicable period you have to return or submit notification of your return to work) while performing NDMS training or duty unless extended by competent authority or delayed by circumstances beyond my control. I otherwise expect to return to work on (insert date).

Signature and date

Employer acknowledgment and date

There is a National Guard website that has information for employers on reemployment and retention rights. The website is [www.esgr.org](http://www.esgr.org).