

OVERVIEW OF THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

The Uniformed Services Employment and Reemployment Rights Act (USERRA) is a federal law that establishes certain rights and benefits for employees, and duties for employers when employees serve, or have served, as members of the armed forces. This document summarizes some of the rights and obligations related to the employment, reemployment, and retention of servicemembers under USERRA.

Enacted in 1994,ⁱ USERRA provides employees who voluntarily or involuntarily take time off from work to serve in the uniformed services with up to five-years of job and benefits protection.ⁱⁱ

Right to return to work following deploymentⁱⁱⁱ

USERRA protects the right of a Reservist or Guard Member to return to work after a period of military service. To be eligible for reemployment protection, the servicemember must:

- provide advanced written or oral notice of service;
- have been called away from work for no more than five years of cumulative time in the uniformed service;
- timely return to work or apply for reemployment; and
- serve under honorable conditions.

Upon return, the employer must timely reinstate the servicemember, and grant him or her status, seniority, and benefits as if he or she had never left for military service.

An employer is **not** required to give an employee the same job he or she had when called to duty. Rather, an employer must provide a job of like seniority, status and pay that the servicemember would have held but for the employment break due to service. In addition, if a job of like seniority, status, and pay is not available, an employer must provide an elevated position. An employer is also obligated to reinstate the servicemember's health insurance and to provide training or retraining of job skills as necessary.

Reasonable accommodations for service-related disabilities^{iv}

An employer must make reasonable efforts to accommodate the needs of a servicemember who develops a service-related disability, or has a disability that is aggravated by his or her service, and to help the servicemember become qualified for reemployment. If the servicemember is not able to perform the position he or she would have otherwise been entitled to under USERRA, the employer, after reasonable attempts to accommodate the servicemember, must attempt to reemploy the servicemember at a position that is equal in seniority, stay, and pay to the position. If no such position exists, the employer is obligated to place the servicemember in a position the servicemember is able to perform that is the nearest equivalent in terms of seniority, status, and pay to what he or she would have been entitled to under USERRA.

Protection from termination without cause^v

A returning servicemember may not be fired without cause after returning to work if he or she served more than 30 days. (The time frame for this protection depends on the length of service: 180 days of protection for service between 31-180 days, and one year of protection for service of at least 181 days).

Protection from discrimination in employment, reemployment, or promotion^{vi}

A servicemember may not be discriminated against in employment decisions on account of his or her service in the Armed Forces. An employer may not deny initial employment, promotion, or any other benefit of employment to an individual on the basis of military service. In addition, an employer may not retaliate against an employee for exercising USERRA rights.

Preservation of Health Insurance and Benefits^{vii}

Servicemembers may elect to continue their health benefits while away on military service. Health plans may be continued for up to 24 months but generally only cover the servicemember, not his or her beneficiaries. Upon reintegration, the employer may not impose an exclusion or waiting period, other than for coverage related to illness or injury resulting from the servicemember's military service.

An employer is required to treat the servicemember as if he or she has been employed throughout the entire absence for pension purposes. If the plan requires employee contributions, the servicemember must continue to make such contributions during his or her absence. The servicemember may repay the pension plan upon reemployment for either five years or three times the length of service (whichever is shorter).

Filing a Complaint

To file a formal complaint for a USERRA violation, contact the U.S. Department of Labor, Veterans Employment & Training Service (DOL-VETS): at 1-866-487-2365 or use the online form at: <http://www.dol.gov/elaws/vets/vetpref/1010.htm>

Where can I find out more?

Employer Support of the Guard and Reserve (ESGR) has a number of resources on USERRA at <http://www.esgr.org/site/USERRA.aspx>

The Department of Labor administers USERRA and provides user-friendly guides to understanding its provisions at <http://www.dol.gov/compliance/laws/comp-userra.htm>

ⁱ USERRA was enacted to "encourage noncareer service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment[, including] the disruption to the lives of persons performing service . . . as well as to their employers, their fellow employees, and their communities. . . ." 38 U.S.C. § 4301(a)(1)-(2).

ⁱⁱ 38 U.S.C. § 4301-4334. The first regulations implementing USERRA were promulgated in 2005. See 70 Fed. Reg. 75246 (Dec. 19, 2005). USERRA applies to all public and private employers regardless of size. Special rules apply to state and federal employers and certain federal intelligence agencies. See 38 U.S.C. §§ 4314-15, 4323-25.

ⁱⁱⁱ 38 U.S.C. §§ 4304, 4312; 20 C.F.R. 1002.32.

^{iv} 38 U.S.C. § 4313; 20 C.F.R. 1002.225.

^v 38 U.S.C. 4316; 20 C.F.R. 1002.247.

^{vi} 38 U.S.C. § 4311; 20 C.F.R. 1002.18–20 C.F.R. 1002.19.

^{vii} 38 U.S.C. § 4317(a) (health plan coverage); 38 U.S.C. § 4318(a)(2)(A) (pension protection); 20 C.F.R. 1002.164 (health plan coverage); 20 C.F.R. 1002.259–1002.260 (pension protection).