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**UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT**  
**(USERRA)**

**What is USERRA?**

USERRA protects the job rights of military reservist and National Guard personnel and is a comprehensive revision of the federal law of veterans' employment rights. USERRA applies to virtually all employers and protects the rights of those who serve with the regular component, reserve component and National Guard in active federal military service.

**Which employers are covered by USERRA?**

USERRA applies to all private employers, states, branches of federal government, and union hiring halls and similar entities to which employers have delegated employment-related responsibilities. There is no exception for small employers.

**Who is eligible for USERRA protections?**

To obtain USERRA's protections, a service member must meet each of the following five requirements:

- (1) Job.** All jobs are covered, except jobs for a brief, nonrecurrent period and in which there is no reasonable expectation that such employment will continue indefinitely for a significant period.
- (2) Notice.** The service member must give advance notice to the employer before leaving for active duty unless it is a classified mission or when notice is impossible.
- (3) Duration.** All Service members are entitled to five years of protected absence. Absences with any one employer are cumulative and include absences protected under prior law (The Veterans' Reemployment Rights Act).
- (4) Character of service.** The Service member must receive an honorable or general discharge for the service in question. If the period of absence was 31



days or longer, the employer is entitled to ask the service member for proof of character of service, listed on DD Form 214.

- (5) Timely request or reapplication for work.** The service member must return to work within a reasonable period of time after completion of service. The definition of "reasonable" depends on how long the service member was gone. For absences of up to 30 consecutive days, the service member is entitled to safe travel time from place of duty to his or her residence plus eight hours of rest. The service member must "report" to work at the beginning of the first normal shift on the full calendar day following this period. For absences of 31 to 180 days, the service member must "apply" for work not later than 14 days after completing service. For absences greater than 180 days, the service member has 30 days to apply for work after completing service.

### **What protections must an employer give under USERRA when I am being mobilized or deployed?**

Service members are entitled to protections that apply while they are absent due to military duty, as well as upon their return to work. The following protections apply while the service member is performing military duty:

- (1) Health insurance for the service member and family members.** Upon request, service members can maintain health coverage, subject to the normal employee's contribution, for up to 30 days of service. Service members can maintain civilian employer-sponsored health coverage for up to 18 months, at their request, but employers can charge up to 102% of the full premium under the plan, including any employer contribution.
- (2) Other Benefits.** USERRA requires an employer to treat an employee who serves in the armed forces like any other employee of similar seniority and status who is on furlough or leave of absence for purposes of bonuses and promotions. For example, if the employer offers employees on furlough or leave of absence holiday bonuses, a serving service member-employee is also entitled to them. If the employer has more than one kind of furlough or leave of absence, the service member is entitled to the most generous treatment for comparable periods of time.

### **What protections must an employer give under USERRA after I return from deployment or mobilization?**

- (1) Prompt reinstatement.** Service members away from their civilian employment for 30 days or less are entitled to immediate reemployment and are required to report back to work at the start of the first regular shift starting



at least eight hours after safe travel time from their release from duty. All other covered service members must be reemployed “promptly.” This also applies to reinstatement of the Service member’s health benefits.

- (2) Seniority.** Service members away from their civilian employment for 90 days or less are entitled to the exact job they left. If service was more than 90 days, the employer has the option of giving the returning service member a position of like seniority, status, and pay. For all absences, USERRA incorporates the "escalator principle," which means returning employees are entitled to the same seniority they would have had if they had never left the employer for military service. Conversely, if their pre-service peers took pay cuts, or their jobs were eliminated, the returning service member gets the same adverse treatment.
- (3) Status.** Returning service members are entitled to the same status they would have attained if continuously employed. This includes job title, location, the opportunity to work during the day versus at night, and the opportunity to work in departments where there are better opportunities to earn commissions.
- (4) Special protection against discharge other than for cause.** If a returning service member is fired within a protected period, the employer has the burden of proving that the discharge was for cause, and not in retaliation for USERRA-protected service. The protected period is one year for service members gone for 181 days or more, and 180 days for service members gone for 31 to 180 days. Service members gone for 30 days or less are protected only by the general anti-discrimination clause of USERRA, with no specified protected period.
- (5) Pension benefits.** For purposes of pension benefits, employers must count any period of service protected under USERRA as if it were service with the employer. This applies both to benefit eligibility (vesting) and to benefit computations. If the pension plan does not require employee contributions, the service member gets credit as if she or he had never left work. If the plan uses employee contributions or deferrals, the returning service member gets up to three times the period of absence (up to a maximum of five years) to make up any missed contributions.
- (6) Anti-discrimination provision.** USERRA prohibits discrimination based on military service or obligations. If military service was a factor in an employer's adverse action, the employer must prove that the adverse action would have been taken in the absence of the employee's military service or status.



USERRA also prohibits retaliatory action against those who take action to enforce USERRA protections, including witnesses.

- (7) Training and other accommodations.** An employer must make “reasonable efforts” to train a Service member on new equipment or techniques, refresh skills not used during service, and accommodate a service connected disability, or to offer the service member alternate employment.

### **Does my employer have to pay me while I’m on military duty?**

USERRA does not require employers to pay individuals for time not worked due to military service. However, federal employees have a right to one-hundred and twenty (120) hours of paid military leave each fiscal year, and approximately 40 states have similar laws for state employees. Some employers prefer for employees to use vacation days or paid leave when they are performing military training. However, employees have the right to use "vacation, annual, or similar leave with pay" before beginning military service. The decision whether to take such leave prior to performing military duty is the employee's decision, and the employer cannot require the employee to do so.

### **Can I waive my rights as a Service member under USERRA?**

Generally no, but there are some instances where a signed waiver of reemployment will affect the Service member’s ability to gain seniority while deployed. The Service member is not required to sign such a waiver and it is generally not in the Service member’s best interest to sign such a waiver.

### **What enforcement rights are available if my USERRA rights have been violated?**

- (1) The service member should start by contacting the National Committee for Employer Support of the Guard and Reserve (ESGR) at 1-800-336-4590.
- (2) If an ESGR Ombudsman cannot resolve the matter, the service member may file a complaint with the Veterans' Employment and Training Service (VETS), U.S. Department of Labor, 1-800-442-2838 or (202) 219-9110. The Service member can also contact the U.S. Attorney General or the Merit Systems Protection Board.
- (3) The service member may seek legal assistance from the Department of Labor (DOL) and Department of Justice (DOJ).
- (4) Service members may file a private lawsuit against their employer.