



USERRA

Uniformed **S**ervices **E**mployment and
Reemployment **R**ights **A**ct of 1994



USERRA

38 U.S.C., Chapter 43

20 C.F.R., Part 1002

USERRA vs. other laws, plans, agreements

- USERRA supersedes any state or local law, contract, agreement, policy, plan, practice, or any other matter that reduces, limits, or eliminates in any manner any right or benefit provided by USERRA.

USERRA provides that

- A person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.

Benefits of Employment Includes:

- **The terms, conditions, or privileges of employment, including** any advantage, profit, privilege, gain, status, account, or interest (including wages and salary for work performed) that accrues by reason of an employment contract or agreement or an employer policy, plan, or practice and includes rights and benefits under a pension plan, a health plan, an employee stock ownership plan, insurance coverage and awards, bonuses, severance pay, supplemental unemployment benefits, vacations. And the opportunity to select work hours or location of employment.

USERRA includes

Virtually all positions whether in the employ of Private sector or Local, State or Federal government.

- Probationary
- Career
- Casual
- Overseas
- Part-time
- Seasonal

USERRA “Covered Service”

- Voluntary or Involuntary
- Fitness Examination; i.e., testing/physical exam
- Active Duty
- Initial Active Duty for Training
- Active Duty Training
- Inactive Duty Training
- Full-Time National Guard Duty
- Funeral Detail
- Intermittent Emergency Responders

USERRA protects “Covered Service” of

- **Up to 5 years** (cumulative, under honorable conditions) with exceptions
- Some exceptions:
 - **initial enlistments** of more than 5 years
 - **drills, annual training and specified other “essential” training** in the National Guard/Reserve and
 - **Guard and Reserve “callups”** (Bosnia, Noble Eagle, Iraqi Freedom, etc.)

USERRA reemployment exception

- Pre-service job was/is for a **brief, non-recurrent period** where the circumstances of employment would cause **no reasonable expectation that employment would continue indefinitely or for a significant period***;

USERRA reemployment exception

- Reemployment **impossible or unreasonable** due to **changed circumstances** of employer*;
- Reasonable accommodation would impose **undue hardship** on employer*;

(*employer bears burden of proof)

USERRA asks the service member to

- **Provide notice** of pending service (unless impossible or unreasonable)
- Serve under **non-disqualifying conditions**

And **return**, or apply to return **in a “timely” manner**

Return to Work

- **Examinee & 0-30 Days:** the first scheduled work period following travel and 8 hour rest after separation;
- **31-180 Days:** application for reemployment no later than 14 days after separation;
- **Over 180 Days:** application for reemployment no later than 90 days after separation;

Return to Work

- **Convalescence:** up to two years for hospitalization or convalescence for **service connected** illness or injury;
- **Failure to Return on Time:** subject to employers' rules, policies, and practices;

Return to Work- Documentation

- **0-30 Days:** no documentation required;
- **Over 30 days:** employer may require documentation showing:
 - application is timely**
 - service limitation** not exceeded
 - character of service** is non disqualifying

USERRA asks employers to:

- **Provide Notice to Employees**
of all benefits and responsibilities
under USERRA

USERRA asks employers to:

- **Release** the employee for covered service (military leave, **vacation leave*** or LWOP)
- **Return** the employee as though **continuously employed**

* **employee's option**

USERRA Reemployment

- **Escalator position”**
 - The position the service member would have attained **if continuously employed** during service period (or a position of “**like seniority, status and pay**”, if service was over 90 days)
 - must provide notice of, and opportunity for, **promotions**

USERRA Reemployment

- **“Status”**
 - conditions of employment, **viewed very broadly by the courts** as including duties, responsibilities, location, hours, working conditions, pay, seniority, & opportunity to advance;

USERRA Reemployment

■ “Seniority”

- benefits that would **flow** or accrue with “reasonable certainty”, w/ satisfactory performance (presumed), simply **through the passage of time**

USERRA Reemployment

■ **Seniority**” examples:

- overtime and “picks”
- vacation **accrual rate**
- sick leave **accrual rate**
- cost of living adjustments (COLAs) to **wage or salary rate**
- **pension benefits**

USERRA Reemployment

■ “Pay”

- **rate** commensurate with **escalator position** and **seniority**

USERRA Reemployment

- Employer must make a **reasonable effort** to qualify returning employee for **escalator position**, or accommodate a **service connected disability**;
- If unable to qualify – **must offer another position**;

USERRA Reemployment

■ Pensions & Savings Plans

- must be given **credit for time & make up contributions upon reemployment**
- period of service counts as active employment for purposes of benefits and vesting
- if contributory, person allowed to **make up missed payments to the plan** (3X length of service, up to 5 years)

USERRA asks employers to:

- Allow employees performing military service to **continue health plan coverage** upon request for up to 24 months.
- **Cost to employee** for health plan continuation:
 - **service of 30 days or less** - normal employee cost (if any)
 - **service of 31 days or more** - may charge up to 102% of full premium

USERRA Reemployment

■ Health Plan Reinstatement

- immediate upon reemployment
- no waiting period
- no exclusions (except condition(s) determined by DVA to be “service-connected”)

USERRA Reemployment

■ “Non-Seniority Benefits”

- commensurate with benefits provided to employees on **like leaves of absence**
- If more than one policy-**most advantageous applies**

USERRA Dispute Resolution

- **Military Unit Command** (employer may request an accommodation)
- **ESGR** (800-336-4590)
- **USDOL/VETS**

U. S. Department of Labor



- **Veterans' Employment and Training Service**
- **9 Bond Street, Room 4511 or 4512**
- **Brooklyn, NY 11201**
- **(718) 613-3676 or 3677**
- **<http://www.dol.gov/vets>**