



## **EMPLOYMENT RIGHTS**



The information provided in this document is meant for the sole use of Active Duty service members, retirees, their families, and those individuals eligible for legal assistance. The information is general in nature and meant only to provide a brief overview of various legal matters. Rights and responsibilities vary widely according to the particular set of circumstances in each case. Laws can vary across states, services, and civilian jurisdictions and laws are changed from time to time. Do not rely upon the general restatements of background information presented here without discussing your specific situation with a legal professional.

### **1. WHAT IS THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT?**

A. The Uniformed Services Employment and Reemployment Rights Act (USERRA) prohibit discrimination against employees because of their service in the Armed Forces, the Reserves, or the National Guard. USERRA prohibits an employer from denying any benefit of employment on the basis of an individual's membership, application for future membership, performance of service, or obligation for service in the uniformed services. USERRA also protects the right of veterans, reservists, National Guard members, and certain other members of the uniformed services to reclaim their civilian employment after an absence due to military service, testing, or training.

### **2. WHO DOES USERRA PROTECT?**

A. USERRA potentially covers every individual who has served or will serve in the uniformed services, and applies to all employers in the public and private sector, including federal employers. The law seeks to minimize disruption to the lives of service members by ensuring that they are able to retain their civilian employment and benefits while serving their country, and by providing protection from discrimination because of their service. USERRA protections apply to all military service, whether voluntary or involuntary. State call-up of National Guardsmen is not covered by USERRA, but most states have enacted laws similar to USERRA to protect service members recalled under state authority. USERRA does not protect members discharged or separated from the service under other than honorable conditions.

### **3. WHAT ARE THE OBLIGATIONS OF AN EMPLOYER TO A RETURNING SERVICEMEMBER SEEKING REEMPLOYMENT?**

A. There are four basic entitlements that must be provided by the employer:

1. Prompt reinstatement. Depending on the length of absence, the service member must be reemployed promptly. This will generally be a matter of days rather than weeks.
2. Accrued seniority. Service members must be permitted to accrue seniority as if continuously employed. This entitlement applies to rights and benefits determined by seniority, and are especially important where seniority determines status, rate of pay, pension vesting, and credit for the period for pension benefit computations.
3. Training or retraining and other accommodations. The employer is obligated to train or retrain the service member for the job returned to. This is particularly important in the case of a long period of absence or a service-related disability.



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4. protection against discharge, except for cause. The employer may not discharge the reemployed service member for 180 days following periods of service of 31-180 days, or for one year where the member's service lasted more than 181 days.

### **4. WHAT ARE THE OBLIGATIONS OF THE SERVICEMEMBER SEEKING REEMPLOYMENT?**

A. The service member is responsible for giving the employer notice of the possibility of an absence before active service begins. Notice is not required where prohibited by military necessity or where it would be unreasonable, but members are strongly encouraged to provide written notice to their employers, 30 days in advance if possible. Notice may also be provided to the employer by the member's command. The service member should also make reasonable efforts to maintain records that may be helpful upon return from an absence, including copies of signed orders, any relevant correspondence, and employer contact information. Depending on the length of absence, the member will be required to report back to work or apply for reemployment within a specified period of time, either two weeks for absences of 31-180 days, or 90 days for absences of 181 days or more.

### **5. WHAT IF A RETURNING SERVICEMEMBER IS DISABLED?**

A. USERRA requires that the employer make "reasonable efforts" to accommodate persons with a disability incurred or aggravated during military service. If a person returns from military service suffering from a disability that cannot be accommodated by the reasonable efforts of the employer, the employer must reemploy the person in another position that is the "nearest approximation" of the position to which the person is otherwise entitled and qualified for, in terms of status and pay, with full seniority. A disability need not be permanent to confer rights under USERRA. For example, if a person breaks a leg during annual training, the employer may have an obligation to make reasonable efforts to accommodate the broken leg, or to place the person in another position, until the leg has healed.

### **6. WHAT HAPPENS IF AN EMPLOYER DISCRIMINATES AGAINST A SERVICEMEMBER?**

USERRA provides that a denial of employment or an adverse action taken by an employer is unlawful if a member's connection with a service is a motivating factor (not necessarily the only factor) in the denial of reemployment or other adverse action "unless the employer can prove that the action would have been taken in the absence of such membership, application for membership ... or obligation."

### **7. WHAT REMEDIES ARE AVAILABLE?**

Remedies to a claimant under the law may flow from two different processes. The first is the administrative route (handled by the United States Department of Labor, VETS). The second is the litigation route (handled by the U.S. Attorney General or the Office of Special Counsel). Remedies may differ depending on which route is chosen. Remedies available through the administrative route can include: return to a position; back pay; restored benefits; restored promotional opportunities; retroactive seniority; pension adjustments; corrected personnel files; restored vacation.



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In a court action, possible remedies include all those available administratively. The claimant can only recover dollar-for-dollar losses. Where violation is found to be willful, the court may double any amount owed to the claimant as liquidated damages. The court may not, however, impose any punitive damages under USERRA.

### **8. WHAT IS THE PROCEDURE FOR FILING A CLAIM?**

The Department of Labor, through the Veterans' Employment and Training Service (VETS) provides assistance to all persons with claims under USERRA. If the dispute is not resolved following an investigation, the service member may have his or her claim referred to the Department of Justice for consideration of representation in the appropriate District Court, at no cost to the claimant. Claims of Federal and Postal Service employees may be referred to the Office of Special Counsel for consideration of representation before the Merit Systems Protection Board (MSPB). Individuals who pursue their own claims in court or before the MSPB may be awarded reasonable attorney and expert witness fees if they prevail. Questions or assistance regarding rights and obligations under USERRA should be referred to the nearest Veterans' Employment and Training Service office listed in the phone book under U.S. Government; Labor Department. You can also get the phone number of the nearest VETS Office by making a Legal Assistance appointment.

### **9. WHERE DO I GO FOR MORE INFORMATION OR FOR HELP?**

Reservists with questions or concerns about their civilian job rights should first consult with their command. Contacting a judge advocate for help may be the best step. For more assistance and information, Reservists and their employers may contact the National Committee for Employer Support to the Guard and Reserve (NCESGR), toll-free at (800) 336-4590. NCESGR ombudsmen are trained to provide information and informal mediation services concerning civilian job rights of Reservists. If you believe your employer has violated your rights under USERRA and you wish to file a formal complaint, contact the Veterans' Employment and Training Service (VETS) of the United States Department of Labor.

You can call (800) 442-2838 to obtain the address and telephone number of the VETS office closest to you. VETS is required to investigate all complaints. Under the new laws, VETS will perform investigations for federal employees claiming reemployment rights, as well as employees of state and local governments and the private sector.

### **HELPFUL WEBSITES/PHONE NUMBERS:**

North Carolina Legal Aid  
<http://www.legalaidnc.org/>

Armed Forces Legal Assistance Website  
<http://legalassistance.law.af.mil/>

Employer Support of the Guard and Reserve  
<http://www.esgr.org>