



USERRA: Smoothing the Transition Between Active Duty and Civilian Employment

Veterans' Employment & Training Service

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February 25, 2009





Why is USERRA Important?

- More than 691,900 Guard and Reserve members mobilized since September 11, 2001
- More than 570,000 have returned, with more than 121,000 remaining on active duty
- Rate of USERRA complaints received has remained steady, with 1,389 cases opened during FY 2008





What does USERRA Protect?

- Prohibits employment discrimination on basis of past, current, or future military obligations
- Protects reemployment rights with pre-service employers for Veterans, Reserve, and National Guard members
- Prohibits retaliation on account of an individual's exercise of USERRA rights or assistance in investigation





USERRA Overview

- **Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. 4301-4335**
- **20 C.F.R. Part 1002, Regulations for Private and State Employers**
- **5 C.F.R. Part 353, Regulations for Federal Agency Employers**
- **Covers virtually all U.S. employers, regardless of size, both here and overseas**





Who is Covered?

- **Anyone who performs, applies to perform, or has an obligation to perform:**
 - **Service in the armed forces: Active, Reserve and National Guard**
 - **Service in the U.S. Public Health Service Commissioned Corps**
 - **Service in the National Disaster Medical System**
 - **An examination to determine fitness for military service**





Basic USERRA Protections

- Discrimination/Retaliation prohibited in:
 - Initial hiring, promotions, retention in employment, employment benefits
- Reinstatement following service
- Benefits during service
 - Health plans, other benefits
- Benefits after reinstatement
 - Health plan, pension benefits, seniority





USERRA Eligibility; 5 Criteria

- For USERRA protections, the employee must:
 - Be absent from civilian employment due to service
 - Provide advance notice to employer
 - Have 5 years or less service with that particular employer (some exceptions)
 - Submit timely application for reemployment
 - Have no disqualifying discharge (e.g., dishonorable, bad conduct, other than hon.)





Discrimination, Retaliation

- An employer may not take any adverse action against an employee due in any part to an employee's military service or obligations
- An employer may not take any adverse action against an employee for exercise of his/her USERRA rights, or for rendering assistance in exercising those rights





Reinstatement/Escalator Principle

- **Returning employee must be promptly reinstated in same position of seniority, status, and rate of pay he/she would have attained had he/she remained continuously employed**
- **Escalator principle may result in negative consequences in reemployment (layoff)**





Reinstatement/Escalator Principle

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





USERRA Health Benefits

- During service, employee may elect to continue employer-sponsored coverage for 24 months upon leaving for active duty.
- Employer may require payment up to 102% of total premium cost
- After service, if coverage not continued, employer must promptly restore without waiting periods or exclusions (except service-connected injuries or illnesses)





Pension Benefits

- On reemployment, the employee is treated as not having a break in service for purposes of vesting, participation, and benefits accrual
- For contributory plans, employee can make-up missed contribution following reinstatement anytime up to three times deployment length





Enforcement Investigations

- **VETS investigators in all States**
- **Most cases resolved without litigation**
- **State and private sector cases referred to USDOJ**
- **Federal executive branch cases referred to Office of Special Counsel**





VETS Investigation Process

- **USERRA investigations are complaint-driven**
- **Must be completed w/in 90 days, but can be extended with permission from claimant**
- **Complaints can originate from a variety of sources:**
 - Technical Assistance Requests**
 - ESGR Referrals**
 - VETS 1010 Complaint Form**





VETS Investigation Process

- VETS reviews relevant documents, interviews witnesses
- VETS has subpoena power
- VETS will first attempt to obtain satisfactory resolution through negotiation or mediation
- Employers may seek accommodation from military unit command





Enforcement

- If claim unresolved, claimant may request referral to U.S. Dept. of Justice or Office of Special Counsel
- DOJ and OSC have independent discretion whether or not to offer representation in Federal District Court, or before Merit Systems Protection Board





VETS Compliance Assistance

- Outreach, education, briefings and technical assistance (Nearly 600,000 since 9/11)
- MOUs with ESGR, DOJ, OSC
- Electronic complaint forms
- E-Laws USERRA Advisor
- Senior Investigators
- USERRA rights poster
- VETS Recovered: **\$1,981,290.38**





Emerging USERRA Issues

- Pension benefits/accrual up to time of death during service (HEART Act)
- Effect of arbitration agreements
- Punitive damages for intentional violations (many State statutes)
- Post-reinstatement manifestation of service injury/disability
- USERRA-like protections for family members under FMLA





Other USDOL/VETS Programs

- **Jobs for Veterans State Grants**
- **Homeless Veterans Grants**
- **Transition Assistance Program**
- **Licensing/Certification Initiatives**
- **HireVetsFirst**
- **RealLifelines**





USDOL VETS Contact Info:

- **Veterans' Employment and Training Service, New York State Offices**
- **Albany** (518) 457-7465
- **New York City** (718) 613-3676
- **Syracuse** (315) 479-3203
- **Watertown** (315) 772-0837

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