

Legal Q&A

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What is USERRA?

The Uniformed Services Employment Reemployment Rights Act (USERRA) is a federal statute that is intended to accomplish three legislatively stated purposes: 1) to encourage non-career service in the uniformed services by eliminating or minimizing the disadvantages to civil careers and employment which can result from such military service; 2) to minimize the disruption to the lives of persons performing service in the uniformed services as well as to their employers, their fellow employees, and their communities by providing for the prompt reemployment of such persons upon completion of such service; and 3) to prohibit discrimination against persons because of their service in the uniformed services.

Who is covered by USERRA?

USERRA protections are afforded to members of the “uniformed services” holding permanent full time or part time, hourly or salaried positions of employment with a private industry, federal, state, or local governmental employer, including cities. (USERRA covers all private and public employers regardless of their size, status, or business.) Only employees who hold temporary positions lasting for brief, non-recurring periods of time are exempt from the safeguards of USERRA. “Uniformed services” means members of the United States Armed Forces (including the United States Air Force, Army, Navy, and Marine Corps), the Army National Guard, and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, as well as any other services designated by the President in time of war or national emergency. There is no distinction between those who serve voluntarily and those who perform involuntary, or mandatory, service. One of the few limitations on such eligible service is that the cumulative length of the military leave of absences required to perform such service and all previous military leave absences with that employer must not exceed five years.

What actions does USERRA require of employees?

Generally, USERRA requires only that employees who volunteer or are called to perform military service give as much advance notice of the leave required as possible to their employers. If feasible, this notice should be in writing. However, employees need not give notice where the giving of such notice is precluded by strategic and/or security concerns or where it is otherwise impossible or unreasonable for such notice to be provided.

What protections does USERRA offer employees?

- 1) No discrimination

- USSERA prohibits discrimination against individuals who are or have been members of the uniformed services as well as those who simply have applied to become members of such military service units. Specifically, USERRA prohibits discrimination against such individuals with respect to any right of employment or employment benefit on the basis of their military service. Among the actions specifically enumerated as discriminatory, and therefore unlawful, if taken as a result of the individual's actual or potential membership in the military or his or her military service and the obligations associated with such service are denial of the following: initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer.

2) Leave of absence

- Pursuant to USERRA, employers are required to allow employees a leave of absence to perform qualified military service. Employers are not generally required to continue the salaries of their employees who are on a military leave of absence. However, Texas state law requires public employers (including cities) to continue to pay the salary of an employee on military leave for a period of fifteen days.

3) Accrual of benefits

- USERRA also guarantees an ongoing entitlement to and accrual of certain benefits to employees on leave to perform military service. Employees absent from work to perform military duty are automatically entitled to ongoing accrual of seniority as well as any other right and benefits determined by seniority that the employee would have attained if he or she had remained continuously employed. Employees on military leave will be required to pay the employee contribution associated with any funded benefit to the extent that the other employees on furlough or leave of absence are also subject to the same contribution requirement. Not only are employees entitled to accrue certain benefits while on military leave, they may also use certain benefits that they have accrued prior to their leave under some circumstances when they are on military leave. Indeed, upon request, employers must allow employees to use any vacation, annual or similar leave with pay that was accrued before the commencement of such employees' military service. However, no employer may require such employees to use any accrued paid leave during military leave.

4) Continuation of health insurance coverage

- Employers must offer employees on leave to perform military service (and the employees' eligible dependents) the opportunity to continue participation in the employer provided health benefit at his or her own expense for up to eighteen months.

5) Reemployment rights

- USERRA also requires employers, regardless of whether they are public or private entities, to offer eligible employees who return from qualified military leave his or her former job, or a similar job, the duties of which he or she is qualified to perform with the same pay, benefits, rank, and seniority that the employee would have expected if his/her work hadn't been interrupted by emergency military duty. The intent of the Act is to reinstate uniformed service personnel "as if they had never been away." The Act also requires employers to make reasonable efforts to provide training to refresh or upgrade the skills where it is necessary in order for employees to qualify and return to their positions. In the event that the employee returns from military leave injured or otherwise disabled and unable to perform his/her previous job, his/her employer must still reemploy him or her in another position that he/she can perform (with or without reasonable accommodation from the employer) that is as close as possible in pay, rank, and seniority to the one he/she left. Employees shall be permitted additional time off to recover or convalesce from injuries incurred or aggravated during the employees military leave.
- In order to qualify for reemployment, employees must report for duty with their employers within the time frames set forth in the Act; those deadlines are based on the length of their military service. Those employees who perform military service for less than 31 days must return to work at the start of the first scheduled workday on the first full calendar day following his or her service, his or her safe transportation home and a break of at least eight hours. Those employees who perform military service for more than 30 days but less than 181 days must apply for reinstatement within 14 days of completing the military service. Those employees who perform military service of more than 180 days must apply for reinstatement within 90 days of completing the military service. If it is impossible or unreasonable for an employee to comply with the applicable reemployment deadline through no fault of the employee, the employee shall be permitted additional time to return to work, provided they return to work as soon as possible.

Are there any exceptions to the protections of USERRA?

Employers may be excused from their reemployment obligations under the provisions of USERRA if the actions required by the Act present "undue hardship" to the employer or if the employer's circumstances have changed such that reemployment is impossible or unreasonable.

Who is responsible for enforcing USERRA?

The Veteran's Employment And Training Service (VETS), a division of the U.S. Department of Labor, investigates all complaints filed against employers under USERRA.