



# USERRA

Uniformed Services Employment  
And  
Reemployment Rights Act

Presentation by the  
**HUMAN RESOURCES**

Committee

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# US Military Forces

- Active Duty = 1.4 million
- Guard & Reserves = 1.2 million
- Since 9/11
  - ◆ 469,000 Guard & Reserves “called up”
  - ◆ Average Tour of Duty = 1 year



# Issues for Employers

- Discrimination claims on the rise – up nearly 50% since 2001
- Willful violations can result in award of “double” back pay
- New Posting Requirement!

[www.dol.gov/vets/programs/userra/poster.pdf](http://www.dol.gov/vets/programs/userra/poster.pdf)



# YOUR RIGHTS UNDER USERRA THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

**USERRA protects the job rights of individuals who voluntarily or involuntarily leave employment positions to undertake military service. USERRA also prohibits employers from discriminating against past and present members of the uniformed services, and applicants to the uniformed services.**

## REEMPLOYMENT RIGHTS

You have the right to be reemployed in your civilian job if you leave that job to perform service in the uniformed service and:

- ☆ you ensure that your employer receives advance written or verbal notice of your service;
- ☆ you have five years or less of cumulative service in the uniformed services while with that particular employer;
- ☆ you return to work or apply for reemployment in a timely manner after conclusion of service; and
- ☆ you have not been separated from service with a disqualifying discharge or under other than honorable conditions.

If you are eligible to be reemployed, you must be restored to the job and benefits you would have attained if you had not been absent due to military service or, in some cases, a comparable job.

## RIGHT TO BE FREE FROM DISCRIMINATION AND RETALIATION

If you:

- ☆ are a past or present member of the uniformed service;
- ☆ have applied for membership in the uniformed service; or
- ☆ are obligated to serve in the uniformed service;

then an employer may not deny you any of the following because of this status:

- ☆ initial employment;
- ☆ reemployment;
- ☆ retention in employment;
- ☆ promotion; or
- ☆ any benefit of employment.

In addition, an employer may not retaliate against anyone assisting in the enforcement of USERRA rights, including testifying or making a statement in connection with a proceeding under USERRA, even if that person has no service connection.

## HEALTH INSURANCE PROTECTION

- ☆ If you leave your job to perform military service, you have the right to elect to continue your existing employer-based health plan coverage for you and your dependents for up to 24 months while in the military.
- ☆ Even if you don't elect to continue coverage during your military service, you have the right to be reinstated in your employer's health plan when you are reemployed, generally without any waiting periods or exclusions (e.g., pre-existing condition exclusions) except for service-connected illnesses or injuries.

## ENFORCEMENT

- ☆ The U.S. Department of Labor, Veterans Employment and Training Service (VETS) is authorized to investigate and resolve complaints of USERRA violations.
- ☆ For assistance in filing a complaint, or for any other information on USERRA, contact VETS at 1-866-4-USA-DDL or visit its **website at <http://www.dol.gov/vets>**. An interactive online USERRA Advisor can be viewed at <http://www.dol.gov/elaws/userra.htm>.
- ☆ If you file a complaint with VETS and VETS is unable to resolve it, you may request that your case be referred to the Department of Justice or the Office of Special Counsel, depending on the employer, for representation.
- ☆ You may also bypass the VETS process and bring a civil action against an employer for violations of USERRA.

**The rights listed here may vary depending on the circumstances. This notice was prepared by VETS, and may be viewed on the internet at this address: <http://www.dol.gov/vets/programs/userra/poster.pdf>. Federal law requires employers to notify employees of their rights under USERRA, and employers may meet this requirement by displaying this notice where they customarily place notices for employees.**



**U.S. Department of Labor  
1-866-487-2365**



**1-800-336-4590**

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# The Basics of USERRA

How to:

Support your employees,

Support your Country,

Stay out of trouble,

&

**Still run your company!**



# Who is Eligible?

USERRA applies to employees of your company who are absent from work for

**Service in Uniformed  
Services**



# “Uniformed Services”

- Army, Navy, Air Force, Marines, and Coast Guard
- Reserves
- National Guard
- Commissioned Corps of Public Health Service
- Persons designated by President during war or emergency



# “Service”


- Active Duty (including training)
- Inactive Duty (including training)
- Full-time National Guard duty
- Fitness for Duty Examinations
- Funeral Honors Duty
- Certain Emergency Services





# Is Advance Notice Required?

- **Yes**, unless it is impossible, unreasonable, or military necessity prevents it.
- May be **written** or **oral**
- Given by the **employee** or **military officer**




# How long may it last?

- **5 years** (cumulative)
- But exceptions exist, typically for circumstances out of the employee's control




# What is their employment status?

- “Seniority” accrues as if they were at work
- Otherwise considered to be on a “**leave of absence**” and treated the same as other leaves of absence




# What about their benefits while they are gone?

- Treat the same as employees on any other leaves of absence
- Employee may use accrued vacation, but employer cannot require it



# What about their benefits while they are gone?

- *May* require employee to pay for insurance premiums (similar to COBRA)
- 43% of employers pay for medical benefits for a ltd time, usually 6 mos.
- 23% of employers pay for medical benefits for a entire time of leave



# So who does their work while they are gone?

- 82% of employers assign work to co-workers
- 49% hire outside temps
- 43% authorize overtime
- 16% hire replacement employees
- 11% admit to simply allowing “some” work to go undone



# Do I have to take back every service member?

- **Yes, EXCEPT**
- USERRA protections do not apply to:
  - ◆ Dishonorable or bad conduct discharge;
  - ◆ Discharge under “other than honorable” circumstances
  - ◆ Court Martialed Officers or by order of President during wartime
  - ◆ AWOL for more than 3 months




# So when do they have to come back to work?

It depends on how long they are gone

- 30 days or less
  - ◆ Next work day – 8 hour rule
- 31-180 days
  - ◆ Within 14 days of completing service
- 181 days or longer
  - ◆ Within 90 days of completing service





# What if they are disabled when they return?

- Return Deadlines are extended up to two years
  - ◆ Hospitalized or convalescing
  - ◆ Incurred or aggravated by service
- Reasonable Efforts to Accommodate
- What if they fail to return within time limits?
  - ◆ Not automatically terminated
  - ◆ Subject to Employer's Rules governing unexcused absences

# Can the Employer request

## documentation?

- **Yes**, but cannot require it
- Only for absence of 31 days or longer
- Requested Documentation
  - ◆ Timely application for reemployment
  - ◆ Not exceeded 5 year limitation
  - ◆ Not disqualified





# So what job do they get when they come back?

It depends on how long they are gone

- 1-90 days “promptly reemployed”
  - ◆ Job they *would have had*; or
  - ◆ Job they had; or
  - ◆ Nearest approximation if cannot qualify after reasonable efforts
  - ◆ Not an Option to simply offer other job of similar seniority, status, or pay



# So what job do they get when they come back?

- 91 days or more “promptly reemployed”
  - ◆ Job they *would have had*; or
  - ◆ Job they had; or
  - ◆ Nearest approximation if cannot qualify after reasonable efforts
  - ◆ It is an Option to offer other job of similar seniority, status, or pay, if other options fail

# The “Escalator” Principle


- Job they *would have had*
  - ◆ Entitled to the position they would have been in if they had remained continuously employed






# Re-Training Efforts

- Employer must make *reasonable efforts* to provide refresher training or other training necessary due to technological advances
- *May* be excused if it creates *undue hardship* for employer



# Conflicting Re-employment Claims


- Employee who left the position first is entitled to it
- Other employee(s) entitled to other position with full seniority



# What if my company's circumstances changed?

- Re-employment *may* be excused
- Change must be so significant that re-employment would be
  - ◆ Impossible
  - ◆ Unreasonable
- BE CAREFUL!





**They are an “at will” employee,  
I’ll just bring them back,  
*then* let them go in a few weeks...**

**USERRA alters “at will” status  
depending upon length of service**

- 30 days or less – “at will” status not altered
- 31-180 days – “at will” status suspended for 6 months
- 181 days or more – “at will” status suspended for 1 year




# What about Discrimination?

- Discrimination prohibited
  - ◆ Hiring
  - ◆ Promotion
  - ◆ Re-employment
  - ◆ Termination
  - ◆ Benefits
- Protects *current, past* and those *applying* for service
- Burden of proof on Employer



# What about Retaliation?

- Retaliation prohibited
  - ◆ For filing a complaint
  - ◆ For testifying or participating in investigation or proceeding
  - ◆ Exercising any right under the law
- Also protects those not in military service!!!



# So what's an employer to do?

- Post the new poster immediately
- Have a Military Leave of Absence Policy in your Employee Handbook
- Have an Absenteeism and Tardiness Policy and *enforce it*
- Keep good leave of absence records
- Be aware and get help if an issue arises



Thank You!  
Human Resources Committee

Cory King – Chair

[cking@employerlawyers.com](mailto:cking@employerlawyers.com)

Mario Malacara – Vice-Chair

[Mario.Malacara@ServiceKing.com](mailto:Mario.Malacara@ServiceKing.com)