

USERRA protects rights of returning military personnel

The Uniformed Services Employment and Reemployment Rights Act (USERRA) was enacted in 1994 to protect the employment rights of Americans who perform military service through various federal uniformed services, including Reserve and National Guard.

Under USERRA, if a military member leaves his or her civilian job for service in the uniformed services, he or she is entitled to return to the civilian job, with accrued seniority, provided he or she meets the law's eligibility criteria. USERRA applies to voluntary as well as involuntary service, in peacetime as well as wartime. The law applies to virtually all civilian employers, including the Federal Government, State and local governments, and private employers, regardless of size.

As applied to employment policies and programs, USERRA generally provides that uniformed service members who conclude their service and are reemployed by their civilian employers must receive the rights and benefits of employment that they would have received had they been continuously employed. For example, USERRA protects the pension rights of employees upon return from the military. Short term compensation benefits, such as vacation time accrual, are exempted from this requirement.

Who is eligible for protection under USERRA?

Reemployment rights extend to all persons who have been absent from a position of employment because of the performance of duty on a voluntary or involuntary basis in a uniformed service, including: active duty, training for active or inactive duty, funeral honors duty, fitness testing for duty. To have reemployment rights

following a period of service in the uniformed services, a military member must have:

1. Informed his/her civilian employer that he/she was leaving the job for service in the uniformed services.
2. Been honorably discharged from service.
3. Reported back to his/her civilian employer in a timely manner or submitted a timely application for reemployment.
4. Not exceeded the period of service of five years.

Health Care Coverage

USERRA allows for the continuation of health care coverage (at the expense of the employee) during the first 18 months of service.

Family Medical Leave Act (FMLA)

Normally, to qualify for FMLA leave, an employee must have worked for an employer for at least 12 months and worked at least 1,250 hours in the year preceding the leave.

However, USERRA requires that persons who are reemployed under its provisions be given credit in calculating FMLA eligibility for periods that they would have been employed but for the protected service. For example, if a returning employee performed military service for three months in the previous year, the employee will be credited three months towards the FMLA's months-of-employment requirement.

For more information, contact CTSI at (303) 861-0507.

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