

# USERRA



prepared by  
**PETERSON AFB  
LEGAL OFFICE**

(719) 556-4871



## Introduction

The Uniformed Services Employment and Reemployment Rights Act (USERRA) protects the civilian jobs of Guardsmen and Reservists who voluntarily or involuntarily leave those jobs to perform military service. USERRA prohibits employers from discriminating against employees who served, are currently serving, or are applying to serve in the armed forces. USERRA provides that returning service-members must be promptly reemployed in the same position that they would have attained had they not been absent for military service, with the same seniority, status and pay, as well as other rights and benefits determined by seniority.

## Re-employment

When you leave a job for military service, you have the right to full reemployment when you return, if:

- 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.

USERRA protections generally apply only to members of the Guard and Reserves, not active duty service members.

## Protection from Discrimination and Retaliation

To qualify for USERRA protection, you can be:

- a current service member
- a past service member
- a reservist
- obligated to service in the military
- applying to serve in the military

If you qualify, USERRA protects your right to:

- employment
- return to employment
- employment retention
- promotion
- any employment benefit

Also, your employer may not retaliate against anyone who helps you enforce your rights under USERRA, including witnesses and co-workers, even if the person helping you is not a service member.

## Protection of Benefits

When you are reemployed, your employer must provide you with the same level of benefits that you would have had if you had not left for your military service. Also, you and your dependents have a right to stay on your employer's health care plan for up to 2 years, while you are gone. If you decide not to stay on your employer's health care plan, you can still get back on the plan, when you return to work. Your employer usually cannot put any limitations or waiting periods on this right of return, except for illnesses and injuries suffered during service. Finally, your employer is obligated to maintain your pension plan during your absence.

## Filing a Complaint

If you feel that your employer or your employer's health care provider has violated your USERRA rights, you can

- get help from Employer Support of the Guard and Reserve (ESGR)
- hire a private attorney to enforce your rights
- file a complaint with the U.S. Department of Labor's Veterans and Employment Training Service (VETS) at <http://www.dol.gov/elaws/vets/userra/1010.asp> or call 1-866-4-USA-DOL

## Sources:

38 U.S.C. §§ 4301-4335

<https://osc.gov/Pages/USERRA.aspx>

[http://www.dol.gov/vets/programs/userra/USERRA\\_Federal.pdf](http://www.dol.gov/vets/programs/userra/USERRA_Federal.pdf)

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