



# Employment Rights Related to Military Service

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**The Uniformed Services** Employment and Reemployment Rights Act (USERRA) protects civilian job rights and benefits for veterans and members of Reserve components. It covers virtually every individual in the country who serves in or has served in the uniformed services and applies to all employers in the public and private sectors.

USERRA requires reemployment of returning service members in the job they would have attained had they not been absent for military service (the long-standing "escalator" principle), with the same seniority, status and pay, as well as other rights and benefits determined by seniority. USERRA also requires that reasonable efforts (such as training or retraining) be made to enable returning service members to refresh or upgrade their skills to help them qualify for reemployment.

USERRA establishes the maximum length of time (five years) that an individual may be absent from work for military duty. Reemployment protection does not depend on the timing, frequency, duration or nature of an individual's service as long as the basic eligibility criteria are met.

**The service member must meet these eligibility criteria:**

1. The employee must have left civilian employment.
2. The employee must have given the employer notice that he or she was leaving to perform military service.
3. The employee must have been released under honorable or general conditions and must have reported to work within the time frame set by USERRA, discussed below.

USERRA also provides protection for disabled veterans, requiring employers to make reasonable efforts to accommodate the disability. Service members convalescing from injuries received during service or training have up to two years from the date of completion of service to return to their jobs or apply for reemployment.

Individuals performing military duty of more than 30 days may elect to continue employer-sponsored healthcare for up to 24 months; however, they may be required to pay up to 102 percent of the full premium. For military service of less than 31 days, healthcare coverage is provided as if the service member had remained employed.

Under USERRA, the period an individual has to make application

for reemployment or report back to work after military service is based on the time spent on military duty. For service of less than 31 days, the service member must return at the beginning of the next regularly scheduled work period on the first full day after release from service, taking into account travel home, plus an eight-hour rest period. For service of more than 30 days but less than 181 days, the service member must submit an application for reemployment within 14 days of release from service. For service of more than 180 days, an application for reemployment must be submitted within 90 days of release from service. However, under Illinois law, all service members are given 90 days to seek reemployment.

**USERRA requires reemployment of returning service members in the job 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.**

USERRA requires that service members provide advance written or verbal notice to their employers for all military duty unless giving notice is impossible, unreasonable or precluded by military necessity. An employee should provide notice as far in advance as is reasonable under the circumstances. Additionally, service members are able, but not required, to use accrued vacation or annual leave while performing military duty.

USERRA protects all members of the uniformed services from discrimination in employment regardless of whether their uniformed service was in the past, or is in the present or future. For example, a Vietnam-era veteran has USERRA protection against most discriminatory employment actions, even though that person's uniformed



service preceded an employment relationship by many years. If that person is subsequently denied a benefit of employment, motivated even in part by that service, he or she may have rights under USERRA.

The discrimination provisions of USERRA address problems regarding initial employment, reemployment, retention in employment, promotion or any other benefit of employment.

A claimant may obtain remedies under the law through two different processes. The first is an *administrative route*, handled by the U.S. Department of Labor's Veterans' Employment and Training Service. The second is the *litigation route*, handled by the U.S. Attorney General or the Office of Special Counsel. Remedies may differ depending on which route is chosen.

**Potential remedies available through the administrative route can include:**

- Return to a job
- Back pay
- Lost benefits
- Corrected personnel files
- Lost promotional opportunities
- Retroactive seniority
- Pension adjustments
- Restored vacation.

A court can require the employer to comply with the law and restore all compensation referred to above. Where a violation is considered willful, the court may also double any amount due as liquidated damages.

Virtually every state also has a statute which protects service members, and the law which gives the greatest protection will take precedence. Additionally, the Federal Family and Medical Leave Act provides certain leave rights for relatives or next of kin of service members, as does Illinois law. Moreover, the Illinois Human Rights Act prohibits unlawful discrimination based on military service.

Should President Obama prevail on his pledge to end the war in Iraq, many employers will be faced with the obligation to reemploy returning service members. Being alert to these duties will help avoid potential enforcement action. **iBi**

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