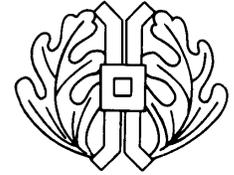


PREVENTIVE LAW SERIES

UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT



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WHAT IS THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT?

The *Uniformed Services Employment and Reemployment Rights Act (USERRA)*, prohibits discrimination against persons because of their service in the Armed Forces, the Reserves, or the National Guard. USERRA prohibits an employer from denying any benefit of employment on the basis of an individual's membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services. USERRA also protects the right of veterans, reservists, National Guard members, and certain other members of the uniformed services to reclaim their civilian employment after being absent due to military service or training.

WHO DOES USERRA PROTECT?

USERRA potentially covers 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, including Federal employers. The law seeks to ensure that those who serve their country can retain their civilian employment and benefits, and can seek employment free from discrimination because of their service. USERRA provides enhanced protection for disabled veterans, requiring employers to make reasonable efforts to accommodate the disability.

WHAT IS AN EMPLOYER REQUIRED TO PROVIDE TO A RETURNING SERVICEMEMBER UPON REEMPLOYMENT?

There are four basic entitlements:

- a. *Prompt reinstatement* (generally a matter of days, not weeks, but will depend on the length of absence).
- b. *Accrued seniority*, as if continuously employed. This applies to rights and benefits determined by seniority as well. This includes status, rate of pay, pension vesting, and credit for the period for pension benefit computations.
- c. *Training or retraining* and other accommodations. This would be particularly applicable in case of a long period of absence or service-connected disability.
- d. *Special protection against discharge*, except for cause. The period of this protection is 180 days following periods of service of 31-180 days. For periods of service of 181 days or more, it is one year.

WHAT IF A RETURNING SERVICEMEMBER IS DISABLED?

USERRA also requires the employer to make "reasonable efforts" to accommodate persons with a disability incurred or aggravated during military service. If a person returns from military service and is suffering from a disability that cannot be accommodated by reasonable employer efforts, the employer is to reemploy the person in some other position he or she is qualified to perform and which is the "nearest approximation" of the position to which the person is otherwise entitled, in terms of status and pay, with full seniority. A disability *need not be permanent* to confer rights under USERRA. For example, if a person breaks a leg during annual training, the

employer may have an obligation to make reasonable efforts to accommodate the broken leg, or to place the person in another position, until the leg has healed.

IF DISCRIMINATION IS ALLEGED:

USERRA provides that a denial of employment or an adverse action taken by an employer will be unlawful if a service connection was a motivating factor (not necessarily the only factor) in the denial or adverse action "unless *the employer* can prove that the action would have been taken in the absence of such membership, application for membership ... or obligation."

REMEDIES:

Remedies to a claimant under the law may flow from two different processes. The first is the administrative route (handled by the United States Department of Labor, VETS). 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.

Remedies available through the administrative route can include:

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|--------------------------------|-----------------------|---------------------|
| return to a job | back pay | lost benefits |
| lost promotional opportunities | retroactive seniority | pension adjustments |
| corrected personnel files | restored vacation | |

The claimant can only recover dollar-for-dollar that which was lost, with no recourse to any punishment of, nor penalty on, the employer. Remedies available through the litigation route include everything available administratively. The courts can require the employer to comply with the law, and restore all compensation referred to above. Where violation is considered willful the court may double any amount due as liquidated damages. The court may NOT, however, impose any punitive damages under USERRA.

WHO DO I CALL?

The Department of Labor, through the **Veterans' Employment and Training Service** (VETS) provides assistance to all persons having claims under USERRA, including Federal and Postal Service employees. *If resolution is unsuccessful* following an investigation, the service member may have his or her claim referred to the **Department of Justice** for consideration of representation in the appropriate District Court, at no cost to the claimant. For the first time, if violations under USERRA are shown to be willful, the court may award liquidated damages. Federal and Postal Service employees may have their claims referred to the **Office of Special Counsel** for consideration of representation before the Merit Systems Protection Board (MSPB). Individuals who pursue their own claims in court or before the MSPB may be awarded reasonable attorney and expert witness fees if they prevail. Service member employees of intelligence agencies are provided similar assistance through the agency's Inspector General. Questions or assistance regarding rights and obligations under USERRA should be referred to the nearest Veterans' Employment and Training Service office listed in the phone book under U.S. Government; Labor Department. You can also get the phone number of the nearest VETS Office by making a Legal Assistance Appointment.

LEGAL ASSISTANCE APPOINTMENTS:

For an appointment to see a legal assistance attorney, please contact the Legal Assistance Office, located in Building 610, Naval Air Station North Island, by telephone at (619) 545-6278.

RESOURCES:

<http://www.dol.gov/dol/vets/public/aboutvets/contacts/main.htm> – VETS Staff Directory by State.
www.elaws.dol.gov/userra/wren/page2.htm -- Employee and Employer Advisor

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