

JOB RIGHTS FOR VETERANS AND RESERVE COMPONENT MEMBERS

OFFICE OF THE COMMAND JUDGE ADVOCATE

CAMP SHELBY JOINT FORCES TRAINING CENTER

CAMP SHELBY, MS.

**The Uniformed Services Employment and Reemployment Rights Act of 1994
(USERRA 38 U.S.C. 4301-4334)**

The Department of Labor, through the Veterans' Employment and Training Service (VETS), provides assistance to all persons having claims under USERRA.

The Uniformed Services Employment and Reemployment Rights Act (USERRA) clarifies and strengthens the Veterans' Reemployment Rights (VRR) Statute.

USERRA protects civilian job rights and benefits for veterans and members of Reserve components. USERRA also makes major improvements in protecting service member rights and benefits by clarifying the law, improving enforcement mechanisms, and adding Federal Government employees to those employees already eligible to receive Department of Labor assistance in processing claims.

USERRA establishes the cumulative length of time that an individual may be absent from work for military duty and retain reemployment rights to five years (the previous law provided four years of active duty, plus an additional year if it was for the convenience of the Government). There are important exceptions to the five-year limit, including initial enlistments lasting more than five years, periodic National Guard and Reserve training duty, and involuntary active duty extensions and recalls, especially during a time of national emergency. USERRA clearly establishes that 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.

USERRA 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 may have up to two years from the date of completion of service to return to their jobs or apply for reemployment.

USERRA provides that returning service-members are reemployed in the job that 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. The law clearly provides for

alternative reemployment positions if the service member cannot qualify for the "escalator" position. USERRA also provides that while an individual is performing military service, he or she is deemed to be on a furlough or leave of absence and is entitled to the non-seniority rights accorded other individuals on non-military leaves of absence.

Health and pension plan coverage for service members is provided for by USERRA. Individuals performing military duty of more than 30 days may elect to continue employer sponsored health care 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, health care coverage is provided as if the service member had remained employed. USERRA clarifies pension plan coverage by making explicit that all pension plans are protected.

The period an individual has to make application for reemployment or report back to work after military service is based on 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 safe 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.

USERRA also 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 are not required) to use accrued vacation or annual leave while performing military duty.

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. 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). If violations under USERRA are shown to be willful, the court may award liquidated damages. 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.

For more information see the following websites:

<http://www.dol.gov/elaws/userra.htm>

<http://www.osc.gov/userra.htm>

<http://www.esgr.org/userra.asp>

For more information about U.S. Department of Labor employment and training programs for veterans, contact the Veterans' Employment and Training Service office nearest you, listed in the phone book in the United States Government under the Labor Department or visit our site:

<http://www.dol.gov/vets/aboutvets/contacts/main.htm>.

All information compiled from materials provided by the Judge Advocate General's School of the Army and Legal Assistance website, as well as, information provided by other Army Legal Assistance Offices and by the U.S. Department of Labor.