



# Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994

**August 2014**

**DOD, DOL, OSC & DOJ**

**Sponsored USERRA Training  
Services**



# Uniformed Services Employment and Reemployment Rights Act (USERRA)

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) is the federal law that establishes rights and responsibilities for members of the Uniformed Services and their civilian employers.

When employees serve in the uniformed services, USERRA affects:

- Employment
- Reemployment
- Retention in employment





# Federal Agency USERRA Statistics Reported through ESGR

Federal Department/Agency	2010	2011	2012	2013
United States Postal Service	69	43	22	25
Department of Justice	24	15	4	12
Department of Veterans Affairs	41	31	43	35
Department of Homeland Security	19	25	16	18
Department of Treasury	6	0	0	2
Department of Commerce	5	2	0	0
Department of Health and Human Services	5	1	0	2
Department of Interior	5	4	2	3
Department of Transportation	5	6	4	5
Department of Education	4	0	0	1
Department of Housing and Urban Development	2	1	0	1
Department of Agriculture	1	3	5	2
Department of Labor	1	0	1	2
Department of State	1	1	3	0
Department of Energy	1	1	3	0
Department of Defense (Other Agencies)	27	19	33	23
Department of Air Force	26	10	20	17
Department of Army	29	42	49	25
Department of Navy	16	19	12	19
US Marine Corps	2	5	2	1
Other	4	16	16	19
<b>Total</b>	<b>293</b>	<b>244</b>	<b>235</b>	<b>212</b>

3



# Pre-Deployment

- **The first stage of integration should take place well before an individual performs uniformed service.**
- **An agency should assess its workforce and identify employees who may be likely to perform uniformed service.**
- **An agency is likely aware of which employees have an obligation to the military that may result in active duty activation at some point during the employee's tenure.**



# During and After Deployment

## During Deployment

- During the deployment stage, the deployed employee's primary focus is on his/her military mission and service
- Continuous engagement (when practical) by agency reinforces the importance of deployed employee to the office

## Post-Deployment

- The post-deployment stage can be a time of stress for the returning employee and the agency.
- Successful agencies plan for the service member's return



# USERRA Eligibility

**In order to be eligible for reinstatement, an employee must:**



Give advance notice of military service

Leave employment for the purpose of military service

Be discharged from military service with a qualifying discharge

Five (5) years or less cumulative service with a particular employer, (unless service is exempted)

Report back in a timely fashion



# Employer Requirements

Providing that the service member meets all criteria, employers must provide:



Prompt Reinstatement in “escalator position”

Accumulation of all seniority and seniority related benefits

Reinstatement of health benefits

Training/retraining of job skills, including accommodations for the disabled

Protection against discrimination



# Common Service Related Issues

**Issue 1: Service members feel that they are not properly reinstated to the appropriate position upon completion of military service**

## Recommended training focus:

- [20 CFR 1002.191-199](#) and [5 CFR 353.207](#) to understand reinstatement position requirements
- [20 CFR 1002.193 \(b\)](#) and [5 CFR 353.106 \(c\)](#) regarding promotional opportunities

Federal agencies fail to reinstate returning service member due to position being filled or position being cut

Service members are not considered for promotional opportunities, miss interviews, face closed application periods upon return from military service





# Common Service Related Issues

## Issue 2: Request for orders w/service member's name/SSN to grant attendance before service or following service lasting less than 30 days

### Recommended training focus:

- Highlight [20 CFR 1002.85](#), [1002.121-123](#), [5 CFR 353.204](#) and [5 CFR 353.208](#)
- See [OPM Fact Sheet](#) regarding paid military leave benefits
- Service members still required to give verbal or written notification of service obligations and must leave for purpose of service [5 CFR 353.204](#)

Upon request, a returning employee absent for more than 30 days must provide the agency with documentation that establishes the timeliness, length and character of service. If documentation is unavailable, the agency must restore the employee until documents are available.

An employee granted military leave may be required to furnish a copy of order or other official evidence of duty performed

Service members may not always receive documentation in advance, or have been advised documentation cannot be required by an employer in advance of service

Employers assume since documentation is required to receive paid military leave, it should be required under all circumstances



# Common Service Related Issues

## Issue 3: Service members feel discriminated against due to past, present or future military service

Service members report that with knowledge of upcoming service, they are subjected to harassment, denied opportunities (i.e. training, consideration for advancement), and treated differently from their peers

Federal agencies must instill in managers and supervisors that discrimination is unlawful

### Recommended training focus:

[20 CFR 1002.18-23](#) and [353.202](#) defining anti-discrimination under USERRA



WARRIOR

CITIZEN



# Common Service Related Issues

**Issue 4: Both service members and federal employers have questions about what is or is not exempt from the five year service limit**

There are multiple exemptions to the five-year service limit

Orders typically indicate exemptions from the five year service limit

Much of service performed in the last ten years in support of a contingency operation is considered exempt service

**Recommended training focus:**

[5 CFR 252.203](#)





# Common Service Related Issues

## Issue 5: Federal Employers misunderstand timelines to report back to work

### Recommended training focus:

- [20 CFR 1002.115-1002.119](#) and [5 CFR 353.205](#) to understand that definitions of ‘application’ and ‘reemployment’
- Coordinate with OPM regarding status to determine if the service member maintain LWOP status until returned to work [5 CFR 353.106](#)
- Clarify with OPM that 5 days of Administrative leave starts when service member reports back to work, following the USERRA timelines

A statement from the returning employee to the employer that he or she intends to return to work within prescribed timelines suffices as a “timely application for reemployment”

An employee absent because of service in the uniformed services is to be carried on leave without pay unless the employee elects to use other leave

A person who does not report within the time limits does not automatically forfeit restoration rights, but, rather, is subject to whatever policy and disciplinary action the agency would normally apply for a similar absence without authorization.



# Common Service Related Issues

## Issue 6: Health benefits are not properly stopped, restarted with military service absences

### Recommended training focus:

- [20 CFR 1002.163-171](#) pertaining to stopping/starting benefits
- Coordination with OPM regarding what type of orders are eligible for continuation of benefits

Federal employers will continue health benefits when performing certain contingency missions, but sometimes fail to terminate benefits without affirmative action from the service member

Reinstatement of benefits can be delayed

Suspension of and reinstatement of vision / dental FEBH benefits must be done separately from health benefits, but are still covered by the law



# References and Training

Presidential USERRA  
Memo 19 July 2012

<http://www.whitehouse.gov/the-press-office/2012/07/19/presidential-memorandum-uniformed-services-employment-and-reemployment-r>

Fact Sheet 19 July  
2012

<http://www.whitehouse.gov/the-press-office/2012/07/19/fact-sheet-presidential-memorandum-supporting-veterans-employment-and-re>

DoL USERRA  
e-learning application

[http://hru.gov/course\\_catalog.aspx?cid=33&mgr=false](http://hru.gov/course_catalog.aspx?cid=33&mgr=false)

OPM USERRA Training

<http://www.chcoc.gov/Transmittals/TransmittalDetails.aspx?TransmittalID2525>

Code of Federal  
Regulations Part 1002

[http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title20/20cfr1002\\_main\\_02.tpl](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title20/20cfr1002_main_02.tpl)

38 United States Code  
Chapter 4301-4335

<http://www.dol.gov/vets/usc/vpl/usc38.htm>

5 Code of Federal  
Regulations Part 353

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=e6ef4ddc87def0be3011571fc31e0c18&rgn=div5&view=text&node=5:1.0.1.2.54&idno=5>



# For USERRA Assistance

- **US Department of Labor Veterans Employment and Training Service (VETS)**
  - Email: [Contact-Vets@dol.gov](mailto:Contact-Vets@dol.gov)
  - Phone: 1-866-487-2365
  
- **ESGR Customer Service Center**
  - Email: [OSD.USERRA@mail.mil](mailto:OSD.USERRA@mail.mil)
  - Phone: 1-800-336-4590, Option 1



# ESGR: We All Serve

