



U.S. DEPARTMENT OF JUSTICE
**SERVICEMEMBERS &
VETERANS INITIATIVE**



GUIDE TO THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

OVERVIEW

- The Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301 *et seq.*, commonly referred to as "USERRA," protects members of the uniformed services from employment discrimination, failure to reemploy, or retaliation due to uniformed service.
- In passing USERRA, Congress intended to encourage non-career service in the military.
- The basic purpose of USERRA is to ensure that servicemembers who leave their civilian employment and serve honorably in support of the mission of the United States Armed Forces or uniformed services have the assurance that once their service is completed, they will be able to return to their civilian careers with as little disruption and difficulty as possible.

WHO QUALIFIES FOR USERRA'S REEMPLOYMENT RIGHTS?

You have the right to be reemployed in your civilian job if you leave that job to perform service in the uniformed service and:

- you ensure that your employer receives advance written or verbal notice of your service;
- you have five years or less of non-exempt 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 "shall be entitled to the reemployment rights and benefits and other employment benefits" guaranteed under USERRA.

38 U.S.C. § 4312.

The "uniformed services" are:

Armed Forces Active & Reserve Components
Army and Air National Guards
FEMA's "Disaster Assistance" teams
Commissioned Corps of the Public Health Service

"Performing Service in the uniformed service" includes:

Active duty
Active duty for training or special work
Weekend or weekday drill
Funeral honors
Fitness for duty examination

The service may be either **VOLUNTARY** or **INVOLUNTARY**.

To learn more, visit our website:
Servicemembers.gov



GUIDE TO USERRA



WHAT ARE AN EMPLOYER'S OBLIGATIONS UNDER USERRA?

- USERRA applies to virtually all civilian employers, including the federal government, state and local governments, and private employers, regardless of size. 20 C.F.R. § 1002.5(d).
- Servicemembers are "not required to ask for or get his or her employer's permission to leave to perform service in the uniformed services." 20 C.F.R. § 1002.87.
- Servicemembers who satisfy statutory notice and re-application requirements "shall be promptly reemployed" as directed by the statute. 38 U.S.C. § 4313(a).
- Employers are required to make "reasonable efforts" to enable returning employees to refresh or upgrade their skills to enable them to qualify for reemployment. 38 U.S.C. § 4313(a)(1)(B).
- Servicemembers who are disabled because of their military service in a "shall be properly reemployed" in position most nearly approximating their former position if they can no longer perform that job. 38 U.S.C. § 4313(a)(3).
- Servicemembers are entitled to immediate reinstatement of health insurance for the member and previously covered dependents with no waiting period and no exclusion or pre-existing conditions other than those that are military service related. 20 C.F.R. § 1002.168.

WHAT ARE AN EMPLOYEE'S RIGHTS UNDER USERRA?

- A person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation. 38 U.S.C. § 4311(a).
- An employer may not discriminate in employment against or take any adverse employment action against any person because such person (1) has taken an action to enforce a protection afforded any person under USERRA, (2) has testified or otherwise made a statement in or in connection with any proceeding under USERRA, (3) has assisted or otherwise participated in an investigation under USERRA, or (4) has exercised a right provided for in USERRA. 38 U.S.C. § 4311(b).
- In any determination of a person's entitlement to protection under USERRA, the timing, frequency, and duration of the person's training or service, or the nature of such training or service (including voluntary service) in the uniformed services, shall not be a basis for denying protection of USERRA. 38 U.S.C. § 4312(h).

HOW DOES THE DEPARTMENT OF JUSTICE ENFORCE USERRA?

- The Attorney General has the authority to bring lawsuits against private, state, and local government employers for violations of USERRA only upon receiving complaint referrals from the Department of Labor ("DOL").
- Prior to referral, DOL's Veterans' Employment and Training Service ("VETS") investigates and attempts to resolve servicemember complaints.
- If the Attorney General is reasonably satisfied that the servicemember is entitled to relief, the Attorney General may commence an action in federal court on behalf of the servicemember.
- If the employer is a state or state agency, the action is brought in the name of the United States. In all other cases, the United States files suit in the name of the servicemember.
- The Attorney General has assigned responsibility for handling USERRA referrals to the Civil Rights Division ("CRT") of the United States Department of Justice. Within CRT, USERRA referrals are assigned to the Employment Litigation Section, which often handles the referrals in cooperation with local United States Attorneys' Offices.
- USERRA currently allows for the recovery of lost wages, lost benefits, including pension payments, and liquidated damages up to double that amount.

PROTECT YOUR RIGHTS!

If you choose to file a USERRA claim you may file your lawsuit with an attorney of your choice in state or federal court, or you may electronically file a Form 1010 complaint with the Department of Labor (DOL) at:

<https://vets1010.dol.gov/>

To submit a hard copy, you can download Form 1010 to your computer, complete the items on the form that are relevant to your claim, print the form, sign and date the form, and then either mail it, fax it, or deliver it in person to the following VETS office only. It is important that you file with DOL or consult with a private attorney as soon as possible.

**Veterans' Employment and Training Service
U.S. Department of Labor
ATTENTION: Form 1010
61 Forsyth Street, S.W., Room 6T85
Atlanta, Georgia 30303
FAX: (404) 562-2313**

You may also seek the assistance of the Employer Support of the Guard and Reserve ("ESGR"). ESGR is a Department of Defense agency that maintains an Ombudsman Service Program that provides information counseling, and informal mediation of issues relating to USERRA compliance. You may reach the ESGR at 1 (800) 336-4590.