

How Will Military Service Affect Your Job?: The Protections of the Uniformed Services Employment and Reemployment Rights Act

The Uniformed Services Employment and Reemployment Rights Act (USERRA) was enacted in 1994 to protect individuals who join or have an obligation to serve in a branch of the military. USERRA ensures that such persons are not denied employment, reemployment, retention in employment, promotion, or any benefit of employment because of their military service obligation.

Reemployment Right. Any person whose leaves work because of military service is entitled to reemployment rights and benefits if: (a) that person has given advance written or verbal notice of such service to that person's employer; (b) the cumulative length of the absence (including all previous absences for service) does not exceed five years; and (c) that person reports to, or submits an application for reemployment to, that person's employer. The five-year limit, however, does not include a person ordered or retained on active duty because of a war or national emergency, or to provide support for an operational mission.

Right to Benefits. A person absent from employment because of military service is classified as being "on furlough or leave of absence," and is entitled to any other rights and benefits not determined by seniority as are provided by the employer to employees of similar status who are on furlough or leave of absence. Upon return to work, a person covered by USERRA is entitled to the seniority and other rights and benefits determined by seniority that the person had on the date of the commencement of service *plus* the seniority and rights and benefits that the person would have accrued had the person remained continuously employed.

The Act defines "benefits" as any "advantage, profit, privilege, gain, status, account, or interest that accrues by reason of an employment contract or agreement," and includes rights and benefits under a pension plan, insurance coverage and awards, bonuses, vacations, and the opportunity to select work hours or location of employment.

Notice to Employer of Intent to Return to Work. When a person completes their term of service, that person must notify their employer of his or her intent to return to work. The required notification depends on the length of the person's service. Failure to comply with these rules does not automatically forfeit the rights and benefits to which that person would otherwise be entitled, but does cause that person to be subjected to the employer's conduct rules, established policy, and general practices regarding employees' absence from scheduled work.

For periods of service less than 31 days, a covered person must report to the employer no later than the beginning of the first full work period on the first full calendar day following that person's arrival at their residence from their place of service. Individuals who have served more than 30 days, but less than 181 days, must submit an application for reemployment no later than 14 days after the completion of their period of service. If such notification is impossible or unreasonable, the notification must be completed on the next full calendar day when that notification becomes possible. Persons who have served longer than 180 days may submit an application for reemployment up to 90 days after their period of service is completed.

Reemployment Positions. Individuals who leave work for service in the military are entitled to reemployment in accordance with the provisions of the Act. Length of service determines the

positions in which a person can be reemployed. If a person has served less than 91 days, he or she may be placed in the position of employment in which the person would have been employed if the continuous employment of that person had not been interrupted because of service. If a person has served longer than 90 days, he or she may be placed in the position of employment in which the person would have been employed if the continuous employment of that person had not been interrupted because of service, or a position of like seniority, status, and pay. Regardless of length of service, if a person is not qualified to perform the duties of the above positions after reasonable efforts of the employer to qualify that person, he or she may be placed in the position of employment held on the date his or her military service commenced.

If two or more people are entitled to reemployment under the Act, and are both eligible for placement in the same position, the Act provides that the person who left the position first shall have the primary right to reemployment in that position. The other persons shall be reemployed as described above, and be placed in a position with similar status and pay with full seniority.

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