

CHECKLIST | COMPLYING WITH USERRA

The Uniformed Services Employment and Reemployment Rights Act (USERRA) prohibits employment discrimination against a person based on their past military service, current military obligations or intent to serve in the military. USERRA also protects the job rights of individuals who leave employment positions for duty in the uniformed services. In general, individuals who are eligible for reemployment following uniformed service must be restored to the job, status, seniority and benefits they would have attained if they had not been absent due to military service.

USERRA applies to **all public, private and government employers in the United States**, regardless of size.

This checklist outlines key steps for employers to comply with the USERRA. Keep in mind that complying with USERRA may involve additional steps depending on the facts of a specific situation. Also, states often have their own laws regarding employment protections for military members that may provide broader protections to employees. Employers will need to comply with any applicable state laws and other federal laws, such as the Family and Medical Leave Act, when applicable.

General Requirements

USERRA General Requirements	Complete
Provide a notice to employees that explains their rights, benefits and obligations under USERRA. Employers may provide the notice (“Your Rights Under USERRA”) by posting it where employer notices are customarily placed, handing it out, mailing it or sending it via electronic mail.	☐
Confirm that your organization’s fair employment policies prohibit discrimination based on military service and that supervisors and managers receive training on USERRA’s protections. USERRA prohibits employment discrimination based on military service. This ban broadly extends to most areas of employment, including hiring, promotion, termination and benefits. USERRA prohibits discrimination against past members, current members and persons who apply to be a member of any branch of the uniformed services.	☐
Confirm that your organization’s leave policies treat employees taking USERRA-covered leave at least as favorably as similarly situated employees who take nonmilitary leave. USERRA provides that while an individual is performing military service, they are entitled to the rights and benefits accorded to other similarly situated individuals on nonmilitary leaves of absence.	☐

Military Leave

USERRA Leave Requirements	Yes	No
Is the employee taking leave for duty in the “uniformed services?” The “uniformed services” include the Army, Navy, Marine Corps, Air Force, Coast Guard and Public Health Service Commissioned Corps, as well as the Reserve components of each of these services. Federal training or service in the Army National Guard and Air National Guard also give rise to rights under USERRA. In addition, certain disaster response work (and authorized training for such work) is considered service in the uniformed services. “Duty” in the uniformed services includes active duty, active duty for training, inactive duty training (such as drills), initial active-duty training, and funeral honors duty performed by National Guard and reserve members, as well as the period for which a person is absent from a position of employment for the purpose of an examination to determine fitness to perform any such duty.	☐	☐
Did the employee provide advance notice of military service? Employees are required to provide their employers with advance notice of military service, with some limited exceptions. Notice may be written or oral. It may be provided by the employee or by an appropriate officer of the branch of the military in which the employee will be serving. There is not a specific deadline for providing this notice, although it is recommended that employees provide at least 30 days’ advance notice. No notice is required if military necessity prevents providing the notice or if providing notice is otherwise impossible or unreasonable.	☐	☐
Did the employee have an opportunity to elect to continue health plan coverage during their military leave? If an employee leaves their job to perform military service, they have the right to continue existing employer-based health plan coverage. If the employee is absent from work for less than 31 days, they may continue coverage by paying their regular premium. An employee who is absent for 31 or more days may elect to continue coverage for up to 24 months by paying a premium that is no more than 102% of the full premium under the plan.	☐	☐

Eligibility for Reemployment

USERRA Reemployment – Eligibility	Yes	No
Is the returning service member eligible for reemployment rights? An employer must reemploy a returning service member if the following five criteria are met: 1. The individual was absent from work on account of duty in the uniformed services. 2. The individual gave the employer advance notice of their military obligation (unless an exception applies).	☐	☐

USERRA Reemployment – Eligibility		Yes	No
3. The individual has been away for five years or less due to military obligations (with certain exceptions for situations such as call-ups during emergencies, reserve drills, annually scheduled active duty for training and initial periods of active duty). 4. The individual was not released from service under dishonorable or other punitive conditions. 5. The individual reported back to work in a timely manner (or submitted a timely application for reemployment) unless this was impossible or unreasonable. The time limit for returning to work depends on the length of the employee’s military service. See below for the applicable time limits. Note that the time limits are extended for up to two years for persons who are hospitalized or convalescing because of an injury or illness incurred or aggravated during the performance of military service. Also, an individual’s reemployment rights are not forfeited because they fail to report to work or reapply within the applicable time limit. In this case, the person is subject to the employer’s established rules for unexcused absences.			
If applicable, did the service member provide documentation showing that they are eligible for reemployment? An employer has the right to request that a person who is absent for a period of service of 31 days or more provides documentation showing that: • The person’s application for reemployment is timely; • The person has not exceeded the five-year service limitation; and • The person’s separation from service was other than disqualifying. If a person does not provide satisfactory documentation because it is not readily available or does not exist, the employer still must promptly reemploy the person. However, if, after reemploying the person, documentation becomes available that shows one or more of the reemployment requirements were not met, the employer may terminate the person and any rights or benefits that may have been granted.		☐	☐

Time Limits for Returning to Work	
Length of Service	Deadline
Less than 31 days	The employee must report back to work by the first regularly scheduled work period that begins on the next calendar day following completion of service, plus the time required to return home safely and an eight-hour rest period. If this is impossible or unreasonable, the employee must report back as soon as possible.
31 to 180 days	The employee must apply for reemployment (written or verbal) no later than 14 days after completion of military service. If this is impossible or unreasonable through no fault of the employee, the employee must apply as soon as possible.

Time Limits for Returning to Work	
Length of Service	Deadline
More than 180 days	The employee must apply for reemployment (written or verbal) no later than 90 days after completion of military service.

Reemployment Protections

USERRA Reemployment – Protections	Complete
Promptly reinstate the returning service member to the job that they would have attained if the absence for military service did not occur. USERRA requires that each returning service member be reemployed in the position the person would have occupied with reasonable certainty if the person had remained continuously employed. The position may not necessarily be the same job the person previously held. This requirement is known as the “escalator principle.” Employers must provide refresher training and any other training necessary to update a returning employee’s skills so that they have the ability to perform the essential tasks of the escalator position. A returning employee who cannot qualify for this escalator position (despite the employer’s reasonable efforts) must be reemployed as follows: • A returning employee whose military service lasted one to 90 days must be reemployed to their pre-service position. • A returning employee whose military service lasted 91 or more days must be reemployed to their pre-service position or a position of similar seniority, status and pay. If the employee cannot become qualified for this position, they must be reemployed in any other position that most nearly approximates the escalator position or the pre-service position (in that order) that the employee is qualified to perform with full seniority. Employers are not required to reemploy returning service members in limited circumstances, such as when the employer’s circumstances have changed so that reemployment would be impossible or unreasonable or if the pre-service position was for a brief or non-recurrent period and there was no reasonable expectation that employment would continue indefinitely or for a significant period.	☐
If applicable, provide training or other accommodations to an employee with a service-connected disability to help the employee become qualified to perform the duties of the reemployment position. If the disabled employee cannot become qualified for the reemployment position despite reasonable efforts by the employer to accommodate them, the employee must be reemployed in some other position that they are qualified to perform the nearest approximation of the position to which they were otherwise entitled, in terms of status and pay, and with full seniority.	☐

USERRA Reemployment – Protections	Complete
Employers can be excused from accommodating individuals with service-connected disabilities when doing so would be so difficult or expensive that it would cause an undue hardship.	
Grant accrued seniority as if the returning service member had been continuously employed. Reemployed service members are entitled to the seniority and all rights and benefits based on seniority they would have attained with reasonable certainty had they remained continuously employed. A right or benefit is seniority-based if it is determined by or accrues with the length of employment. A right or benefit is not seniority-based if it is compensation for work performed or is made available without regard to the length of employment.	☐
If your organization sponsors a retirement plan, treat the returning service member's leave of absence as continuous employment for purposes of eligibility for participation, vesting and accrual of benefits.	☐
If applicable, restore health plan coverage upon a returning service member's request. If health coverage was canceled because the employee did not elect to continue coverage or failed to pay premiums, the employer must restore the employee's coverage upon request when they are reemployed. The employee cannot be required to serve a new waiting period or wait for open enrollment to obtain this coverage.	☐
Protect a returning service member from discharge without cause for the applicable time period. Under USERRA, a reemployed employee may not be discharged without cause for: • One year after the date of reemployment if the person's period of military service was for 181 days or more • One hundred eighty days after the date of reemployment if the person's period of military service was for 31 to 180 days. Persons who serve for 30 or fewer days are not protected from discharge without cause. However, they are protected from discrimination because of military service or obligation.	☐

Use this checklist as a guide when reviewing your organization's compliance with USERRA. For assistance, contact ETC HR.