

HR COMPLIANCE OVERVIEW



Uniformed Services Employment & Reemployment Rights Act (USERRA)

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) prohibits discrimination against individuals on the basis of membership in the uniformed services with regard to any aspect of employment. In addition, employers must:

- Re-employ individuals who are absent from employment by reason of service in the uniformed services;
- Restore seniority and other rights and benefits that employees had when they commenced service in the uniformed services; and
- Provide any additional seniority, rights and benefits that employees would have attained if they had remained continuously employed.

Employers must also notify employees of their rights, benefits and obligations under USERRA.

LINKS AND RESOURCES

- DOL's [webpage](#) on USERRA
- DOL's [Employment Law Guide on USERRA](#)
- Sample USERRA [notice](#) (for employers to post in the workplace)

Re-employment Rights

- An employee who returns from military service has re-employment rights if certain requirements are satisfied.
- If an employee has re-employment rights, he or she must be restored to the job and benefits that he or she would have attained if not for the military service.

Health Plan Coverage

- An employee who leaves his or her job to perform military service has the right to continue group health plan coverage for up to 24 months.
- If an employee does not elect to continue coverage during his or her military service, the employee's group health plan coverage must be reinstated when he or she is re-employed.

HR COMPLIANCE OVERVIEW



Affected Employers

USERRA applies to **all employers**, regardless of size (including state, local and federal government employers).

USERRA applies to all public and private employers in the United States, **regardless of size**. It also applies in overseas workplaces that are owned or controlled by U.S. employers.

Protected Employees

USERRA protects all individuals that are members of the U.S. uniformed services, including the Armed Forces (for example, Army, Navy, Marine Corps, Air Force, Coast Guard), National Guard, commissioned public health service employees, National Oceanic and Atmospheric Administration and Federal Emergency Management Agency. Rights under USERRA are afforded to individuals who are volunteers, draftees or reservists.

USERRA gives protections to individuals who are absent from work for active duty, active duty for training, initial active duty for training (such as drills), inactive duty training, full-time National Guard duty and state active duty (under certain conditions). USERRA also covers a period for which a person is absent from a position of employment for the purpose

of an examination to determine the fitness of the person to perform any military duty.

Overview of USERRA Requirements

USERRA generally requires that employers treat individuals who are members of the uniformed services no less favorably than other individuals. In addition, employers must:

- Re-employ individuals who are absent from employment by reason of service in the uniformed services;
- Restore seniority and other rights and benefits determined by seniority that the person had on the date of the commencement of service in the uniformed services; and
- Provide any additional seniority, rights and benefits that the person would have attained if the person had remained continuously employed.

During any period where an employee was absent due to uniformed services, the employer must allow that employee to elect to continue health insurance coverage for themselves and their dependents. The employer must also contribute to any pension plan for the individual in the same manner and to the same extent as was made for other employees during the same period of service.

Employee Protections

Under USERRA, employers may not:

- Deny individuals who are members of the uniformed services employment, re-employment, retention, promotion or any other benefit of employment on the basis of that service;
- Take adverse action against individuals who are members of the uniformed services, unless the employer can prove that the action would have been taken anyway; or
- Discriminate or take adverse action against any person taking action to enforce rights under USERRA.

Re-employment Rights

To be eligible for re-employment, an individual generally must **not** have:

- ✗ Accumulated more than five years of uniformed service-related absences from a position of employment with this employer (with some exceptions); and

HR COMPLIANCE OVERVIEW



 Been released from service under dishonorable or other punitive conditions.

An employee generally must provide the employer with **advance notice of service obligations**, when reasonable. In addition, the employee must report to work or submit an application for re-employment to the employer within the following time frames:

Action	Length of Service	Time Allowed
Report to Work	Less than 31 days	By the beginning of the first regularly scheduled work period after the end of the calendar day of duty, plus time required to return home safely and an eight-hour rest period
Make Application for Re-employment	31 to 180 days	No later than 14 days after completion of uniformed service
	More than 180 days	No later than 90 days after completion of uniformed service

Certain exceptions apply to the requirement to report to work or to submit an application for re-employment, including circumstances where an individual is injured while performing uniformed services.

Is an Individual Entitled to Their Same Position?

Employees who return from uniformed service must be re-employed according to the following schedule of priority:

- If the employee's service was for less than 91 days, the employee should be placed in the position that would have been held had employment not been interrupted. If the employee does not qualify for such a position, the employee should be placed in the position held before beginning his or her tour of duty.
- If the employee's service was for more than 90 days, the employee should be placed in a position of similar seniority, status and pay.

Exceptions to Reemployment Rights

An employer is **not required to re-employ** an individual where the individual provides a written notice of his or her intent not to return to a position of employment following an absence. It must be clear that the individual understood that he or she was forfeiting rights and benefits afforded under USERRA.

In addition, an employer is not required to re-employ an individual where:

- The re-employment is impossible or unreasonable due to a change in circumstances;
- The accommodation or training necessary for re-employment would impose an undue hardship on the employer; or
- The individual's employment was for a brief, non-recurrent period in which no reasonable expectation of continued employment could have arisen.

HR COMPLIANCE OVERVIEW



Maintenance of Benefits During Leave

A person who is re-employed upon returning from completion of uniformed service is entitled to the rights and benefits they would have attained if they had remained continuously employed.

Health Benefits

An employer must allow individuals absent due to uniformed services to elect to continue health insurance coverage for themselves and their dependents. Health insurance coverage must be continued until the earlier of:

- 24 months beginning on the date when the absence began; or
- The day after the date the employee fails to apply for return to work following completion of their service.

Individuals who are absent from work for less than 31 days may not be required to pay more for coverage than the employee share charged to employees that are actively at work. Employers may charge all other individuals no more than 102% of the full premium under the plan.

If benefits are cancelled because the employee did not elect to continue coverage or failed to pay premiums, the employer must restore to the employee benefits equivalent to those the employee would have had if leave had not been taken, including family or dependent coverage. The employee cannot be required to serve a new waiting period, wait for open enrollment or pass a medical examination to obtain reinstatement of coverage.

Pension Benefits

Employers who re-employ individuals upon completion of uniformed services must provide benefits and make required employer contributions on behalf of the returning employee in the same manner, and to the same extent, as for similarly situated employees who were not absent on military leave. Pension accrual and vesting continue as though no break in service occurred. Individuals are only entitled to company matching contributions if the employee contributions are also made.

FMLA Benefits

A person who is re-employed upon returning from completion of uniformed service is entitled to leave under the FMLA to the same extent as if they had remained continuously employed. To determine whether an employee has satisfied the FMLA's eligibility requirements, months employed and the hours that were actually worked for the employer should be combined with the months and hours that would have been worked if not for the time spent in military service.

Other Types of Leave

If an employer has a formal leave policy that provides additional rights or continuation of benefits to employees who are absent from work, an employer must apply those policies to individuals absent from work due to their service in the uniformed services.

Employer Obligations

All employers must notify employees of their rights, benefits and obligations under USERRA. The DOL has prepared a [sample notice](#) for employers to use. Employers can fulfill USERRA's notice requirement by posting the DOL sample notice where the employer customarily places notices for employees.

HR COMPLIANCE OVERVIEW



Enforcement

The DOL Veterans' Employment and Training Service (VETS) investigates and resolves complaints of USERRA violations that are filed with VETS. Employees may also file lawsuits instead of using the VETS process. A court may require an employer to comply with USERRA's provisions and compensate an employee for lost wages or benefits due to the employer's noncompliance with USERRA. If the court determines that the employer's violation was willful, the award of wages or benefits may be doubled.