

Uniformed Services Employment and Reemployment Rights Act

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The Uniformed Services Employment and Reemployment Rights Act ("USERRA") is a federal law that provides reemployment rights to returning veterans and other members of uniformed services. Under USERRA, an individual who leaves his or her civilian job for military service is entitled to return to the job with accrued seniority if he or she satisfies the eligibility requirements set forth under USERRA. USERRA applies to all employees regardless of the size of their employer.

Eligibility Requirements for Reemployment under USERRA

Under USERRA, a service member is eligible for reemployment following a period of military service if he or she can prove the following:

1. The service member held a civilian job with the employer;
2. The employer was given advance notice of the military service prior to the employee's military leave of absence;
3. The length of such absence does not exceed five years;
4. The service member was released from service under honorable conditions; and
5. The service member timely submitted an application for reemployment or returned to work in a timely manner.

Reemployment Rights under USERRA

An employee who satisfies the eligibility requirements under USERRA is entitled to prompt reemployment and the same seniority, status, and pay that the employee would have attained but for the military service obligation.

Reinstatement Rights for Disabled Service Members

An employer must provide reasonable accommodations for an employee who suffers an injury or disability or whose disability becomes aggravated during the period of military service. In particular, employers are required to make reasonable efforts to help disabled employees returning from service become qualified to perform the duties of the job they would have attained had they been continuously employed. If a particular disability cannot be accommodated, the employer must reemploy the returning disabled veteran in a comparable position that provides like seniority, status, and pay. An employer who does not provide such accommodations to a returning disabled veteran will be liable for violating USERRA.

Returning service members who were disabled during military service but do not have a cause of action under USERRA, should look to the Americans with Disabilities Act ("ADA") which provides a cause of action for individuals who are discriminated against by employers because of their disabilities.

Additional Rights and Protections under USERRA

In addition to reemployment rights, USERRA also prohibits employers from discriminating against employees because of their service in the National Guard, Armed Forces or any other uniformed

service. In particular, employers are prohibited from firing, failing to hire, or denying employment benefits to an employee because of the employee's membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services.

Employers are also prohibited from retaliating against an employee who files a complaint under USERRA, testifies in a USERRA proceeding, participates in a USERRA investigation, or exercises a right under USERRA.

Burden of Proof for Plaintiff in USERRA Cases

To prevail in a USERRA case, an employee must prove by a preponderance of the evidence that the employee's military service was a motivating factor in the employer's decision to take an adverse employment action against the employee. If the employee meets this burden, he or she will prevail on a claim for discrimination unless the employer can prove that it would have taken the same adverse action in the absence of the employee's military service.

If the employee prevails, he or she can recover back pay, front pay, lost benefits, litigation costs, and reasonable attorney fees.

Procedure for Filing a USERRA Complaint

Employees who believe they were discriminated against on the basis of their military service may pursue an administrative remedy or may file a complaint directly in court. If an employee chooses to pursue an administrative remedy, he or she must file a complaint with the Department of Labor's Veterans' Employment and Training Service (VETS). Within 90 days of receiving the complaint, the VETS must investigate and attempt to resolve the dispute. If the VETS fail to resolve the complaint, the employee may request that the VETS refer the complaint to an Attorney General. An employee who chooses not to file with the Department of Labor or is refused legal representation by the Attorney General, will not be precluded from filing a private action in federal court. It is also important to note that USERRA provides the right to a jury trial.

Selecting a Lawyer

There are many rules and exceptions governing USEERRA claims. Therefore, it is critical to retain skilled counsel familiar with the subtleties of USERRA to litigate your USERRA claim.

Additional Resources:

<http://www.osc.gov/userra.htm>

<http://www.dol.gov/elaws/vets/userra/mainmenu.asp>