



NAGDCA NOTES

How does The Uniformed Services Employment and Reemployment Rights Act (USERRA 38 U.S.C. 4301-4333) Affect You???

The Uniformed Services Employment and Reemployment Rights Act (USERRA) was developed to protect civilian job rights and benefits for veterans and members of Reserve components. However, USERRA continues to make major improvements in "protecting service member rights and benefits by clarifying the law, improving enforcement mechanisms, and providing federal government employees with Department of Labor assistance in processing claims."

USERRA expands the cumulative length of time that an individual may be absent from work for military duty and "retain reemployment rights for five years (the previous law provided four years of active duty, plus an additional year if it was for the convenience of the government)." There are important exceptions to the five-year limit, including initial enlistments lasting more than five years, periodic training duty, and involuntary active duty extensions and recalls, especially during a time of national emergency. USERRA clearly establishes that reemployment protection does not depend on the timing, frequency, duration, or nature of an individual's service.

USERRA provides improved protection for disabled veterans, requiring employers to make reasonable efforts to accommodate the disability. Service members convalescing from injuries received during service or training may have up to two years to return to their jobs (as opposed to the one year provided by the old law).

As under the previous law, USERRA provides that returning service-members are reemployed in the job that they would have attained had they not been absent for military service (the long-standing "escalator" principle), with the same seniority, status and pay, as well as other rights and **benefits** determined by seniority. However, USERRA also requires that reasonable efforts (such as training or retraining) be made to enable returning service members to refresh or upgrade their skills to help them qualify for reemployment. The law clearly provides for alternative reemployment positions if the service member cannot qualify for the "escalator" position. USERRA also reaffirms and clarifies that while an individual is performing military service, he or she is deemed to be on a furlough or leave of absence and is entitled to the non-seniority rights accorded other individuals on non-military leaves of absence.

Health and pension plan coverage for service members is clarified under USERRA. Individuals performing military duty of more than 30 days may elect to continue employer sponsored health care for up to 24 months; however, they may be required to pay *up to* 102 percent of the full premium. For military service of less than 31 days, health care coverage is provided as if the service member had remained employed. USERRA clarifies pension plan coverage by making explicit that **all pension plans are protected**.

The period an individual has to make application for reemployment or report back to work after military service is now based on time spent on military duty; not on the category of

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service performed. For service of less than 31 days, the service member must return at the beginning of the next regularly scheduled work period on the first full day after release from service, taking into account safe travel home plus an eight-hour rest period. For service of more than 30 days but less than 181 days, the service member must submit an application for reemployment within 14 days of release from service. For service of more than 180 days, an application for reemployment must be submitted within 90 days of release from service.

USERRA also requires that service members provide advance written or verbal notice to their employers for all military duty unless giving notice is impossible, unreasonable, or precluded by military necessity. Additionally, service members are able (but are not required) to use accrued vacation or annual leave while performing military duty.

Pension Plan Management

USERRA requires that returning service members who meet the law's eligibility criteria must be treated as if they had been continuously employed for pension purposes, regardless of the type of pension plan the employer has implemented. This applies to vesting (determining when the employee qualifies for a pension) and also benefits computation (determining the amount of the employee's monthly pension check). USERRA applies to plans sponsored by more than one employer as well as single employer plans. USERRA also applies to pension plans established by State and local governments. Absence for service is not considered a break in employment for pension purposes. Also, an employee who would have become eligible to participate in a pension plan during that individual's time in the service should be placed in the plan retroactive to the date of initial eligibility. If the employer contribution is contingent on the employee's contribution, then the employee must make his or her contribution before the employer is obligated to make its contribution.

Congress made it clear that differences between pension plans (e.g., defined benefit, defined contribution, and sometimes, a profit-sharing plan) do not affect the overall nature of the plan as a reward for length of service, rather than a short-term reward for work performed (i.e., a fringe benefit).

Normally an employer is not permitted to delay reinstatement of employment because of any lack of service documentation. If the individual is absent from the position of employment for more than 90 days, the employer may require documentation before treating the employee as not having incurred a break in service for pension purposes. As with reemployment, an employer may not demand documentation that does not exist or is not readily available, and may request it only to verify that the application for reinstatement is timely, that the service limits in the law were not exceeded, and that the individual's release from service was not under any of the instances listed in section 4304 (<http://www.dol.gov/vets/usc/vpl/usc38.htm>) of USERRA.

NOTE: In an extremely rare circumstance, a person may wish to file complaints under both the USERRA and Veterans' Preference (VP) statutes. If a person thinks that this situation applies, the individual must submit a separate complaint form for each statute allegedly violated (i.e., one for USERRA and one for VP). When this situation occurs, Veterans Employment and Training Services (VETS) will open two separate cases for investigation.

For specific questions on pension and retirement plans, you should contact your local VETS office <http://www.dol.gov/vets/aboutvets/contacts/main.htm>. The information here is only an overview, and may not fully address or resolve your individual situation. You may also contact NAGDCA Project Coordinator Robert T. Hansel at rhansel@amrinc.net or 859-514-9161 for other questions regarding the NAGDCA Note.