



# Returning to Work From War

By Dennis Steinman, Esq.

The Uniformed Services Employment and Reemployment Rights Act (USERRA) is a federal law that affects almost all businesses. USERRA provides employment rights to military service members. The law will become even more important when many of those employees who are currently deployed in Afghanistan and Iraq come back to the United States and return to the workplace.

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### USERRA's Requirements

USERRA requires employers to meet three obligations: (1) reemployment, (2) protection of employee benefits, and (3) anti-discrimination and anti-retaliation. USERRA requires all employers to reemploy all employees who left their jobs in order to perform military service. The employment benefits of members of the uniformed service are also protected. USERRA also prohibits employers from discriminating or retaliating against employees because of their military service.

### USERRA Applies to All Employers

An employer with one or more employees has to comply with USERRA's provisions. This is different from many other federal employment laws that require a minimum number of employees before the employer is covered by the statute. Complying with USERRA, therefore, affects virtually all em-

ployers. Another difference from other employment statutes that deal with discrimination is that USERRA also applies to managers and supervisors. Not only can a company be held responsible for discrimination, but managers and supervisors who have employment-related responsibilities to service people can also be held personally liable for any discrimination or retaliation.

USERRA covers employees in all positions and there are no exclusions for executive, management, or professional employees. USERRA also applies to employees who have been laid off with recall rights, who are on strike, or who have taken a leave of absence. For example, if an employee was on a personal leave of absence and intended to come back to work and then went into the military service, that person would be entitled to benefits under USERRA. Also, USERRA applies to employees that hold temporary, part-time, probationary or seasonal positions as long as they had some indication that those positions would continue into the future.

### Reemployment Under USERRA

USERRA requires em-

ployers to promptly rehire employees who return from their military service. This reemployment must happen within two weeks of the employee's application for reemployment. But, reemployment also depends on the particular circumstances and the type of military service. For example, if an employee has been away for several years on active duty, an employer may have to reassign other employees or terminate other employees in order to create the opening for the returning service worker. USERRA also requires employers to place returning employees into the position they

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would have held if they had remained employed continuously instead of going into the service. Therefore, the employer is required to rehire the employee into a position that reflects the pay, benefits, seniority, and other job attributes that the employee would have had if it had not been for his period of military service. The employer must make a reasonable effort to train the employee to become qualified for the position that the returning service

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member is entitled to assume.

If a returning employee has become disabled as a result of the military service, the employer must make reasonable efforts to accommodate the disability. In this regard, accommodating a disabled employee might be no different than an employer would be required to do under the Americans with Disabilities Act.

In general, an employee may perform military service for up to five years and keep reemployment rights with the employer under USERRA. After the five-year period, the employee loses the right to be reemployed.

## Rights to Benefits

USERRA entitles employees who leave for military service certain rights for a continuation of their benefits that

they would have earned had they been on a leave of absence from employment. Depending on the employer's benefits program, this may affect the accrual of vacations, annual leave, pension benefits, health plan coverage, and other similar types of employment benefits.

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## Non-Discrimination

USERRA prohibits discrimination and retaliation against employees and applicants because of their military service. An employer may not refuse to hire, reemploy, promote, or deny any benefits to an individual because that person was a member of the military.

## Conclusion

USERRA covers a wide range of issues involving employees who return from military service. All employers need to be aware of their responsibilities

for reemployment of returning service members. Remember, each situation is different. If you are faced with an issue that may involve USERRA and a returning employee's reemployment rights, feel free to call us any time to go over your questions before you

If you have a question about how USERRA affects your business, please contact us.

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