



U.S. Department of Labor
Veterans' Employment & Training Service



VETS USERRA FACT SHEET #2: Frequently Asked Questions – Reemployment Rights and Benefits for Returning Service Members under USERRA

The Department of Labor, through the Veterans' Employment and Training Service (VETS), provides assistance to all persons having questions or claims under the Uniformed Services Employment and Reemployment Rights Act (USERRA). USERRA was enacted in 1994 to protect civilian job rights and benefits for returning service members of both the Active and Reserve components, as well as to protect persons from discrimination based on military service. The following frequently asked questions provide general information concerning reemployment rights and benefits for returning service members under USERRA.

1. What general requirements must a service member meet so as to be eligible to receive USERRA reemployment rights?

A service member must give notice to their employer prior to the start of service (to the extent possible), not be absent for service beyond five years (exceptions apply), not leave the service with a disqualifying discharge, and make a request to return to the employer within certain timeframes. These requirements are discussed further below. 38 U.S.C. § 4312(a); 20 C.F.R. § 1002.32; 5 C.F.R. §§ 353.203-353.205.

2. How should a service member provide notice of military duty?

USERRA requires that the service member provide advance written or verbal notice to their employer for all military duty unless giving notice is impossible, unreasonable, or precluded by military necessity. A service member should provide notice as far in advance as is reasonable under the circumstances. 38 U.S.C. § 4312(a)(1); 20 C.F.R. §§ 1002.85-1002.86; 5 C.F.R. § 353.204.

3. Following the completion of orders, how long does a service member have to notify their employer that they are returning to work?

The period a service member has to make an application for reemployment or report back to work after military service is based on time spent on military duty. 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. 38 U.S.C. §§ 4312(a)(3), 4312(e); 20 C.F.R. § 1002.115; 5 C.F.R. § 353.205.

4. Does a service member lose reemployment rights under USERRA if they spend more than five years away from work on orders?

It depends. USERRA establishes that the cumulative length of time that a service member may be absent from work for military duty and retain reemployment rights is five years. 38 U.S.C. § 4312(b). However, there are important exceptions to the five-year limit, (see 38 U.S.C. § 4312(c) for a complete list), including:

- an initial enlistment lasting more than five years;
- periodic National Guard and Reserve training duty; and
- active duty extensions and recalls under certain circumstances (including because of a war or national emergency).

USERRA establishes that reemployment protection does not depend on the timing, frequency, duration, or nature of a service member's service as long as the basic eligibility criteria are met. 20 C.F.R. §§ 1002.99-1002.103; 5 C.F.R. § 353.203.

5. What position does the service member need to be reinstated into?

USERRA provides that a returning service member is reemployed in the job that they would have attained had they not been absent for military service (the "escalator" principle), with the same seniority, status and pay, as well as other rights and benefits determined by seniority. Should a service member be unqualified for the reemployment position to which they are returning, USERRA requires that an employer make reasonable efforts (such as training or retraining at no expense to the service member) to enable the returning service member to refresh or upgrade their skills and perform the essential tasks of the position. If after reasonable efforts by the employer the service member cannot qualify for the reemployment position, the law provides for alternative reemployment positions. 38 U.S.C. § 4313; 20 C.F.R. §§ 1002.191-1002.198; 5 C.F.R. § 353.207.

6. What protections does USERRA provide in the reemployment context related to service-incurred or service-aggravated disabilities?

If a service member returns to their work with service-incurred or service-aggravated disabilities, an employer must make reasonable efforts to accommodate the service member's disabilities and qualify them for the proper reemployment position. A service member convalescing from injuries received during service or training may have up to two years from the date of completion of service to report to their job (or, if they have been absent for more than 30 days, apply for reemployment). 38 U.S.C. §§ 4312(e)(2), 4313(a)(3); 20 C.F.R. §§ 1002.116, 1002.225-1002.226; 5 C.F.R. §§ 353.205(d), 353.207(c).

7. How does USERRA protect a reemployed service member's rights to health plan coverage?

A service member 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. 38 U.S.C. § 4317; 20 C.F.R. §§ 1002.163-1002.171; 5 C.F.R. § 353.106(c).

8. How does USERRA protect a reemployed service member's pension rights?

USERRA requires that a reemployed service member be treated as having been continuously employed with the employer and an employer must fund any resulting obligations to the pension benefit plan. Note that a reemployed service member with a contributory plan may make up their contributions within certain time frames; an employer is only required to make its contributions after this occurs. For more information, see VETS USERRA Fact Sheet 1: Employers' Pension Obligations to Reemployed Service Members under USERRA [here](#). 38 U.S.C. § 4318; 20 C.F.R. §§ 1002.259-1002.267; 5 C.F.R. § 353.106(c).

9. If an individual has a question related to any of these rights, where can they go?

The Department of Labor, through VETS provides compliance assistance to persons having questions about USERRA, and investigates formal claims filed with VETS under USERRA, including claims filed by Federal and Postal Service employees. 38 U.S.C. §§ 4321-4322; 20 C.F.R. §§ 1002.277, 1002.288-1002.290; 5 C.F.R. §§ 353.201, 353.210-353.211.

If resolution is unsuccessful following an investigation, the person may have their claim involving a private, state, or local government employer referred to the Department of Justice for consideration of representation in the appropriate District Court, at no cost to the claimant. Federal and Postal Service employees may have their claims referred to the Office of Special Counsel for consideration of representation before the Merit Systems Protection Board (MSPB), also at no cost to the claimant. If violations under USERRA are shown to be willful, the court may award liquidated damages. Individuals who pursue their own claims in court or before the MSPB may be awarded reasonable attorney and expert witness fees if they prevail. 38 U.S.C. §§ 4323-4324; 20 C.F.R. §§ 1002.291-1002.292, 1002.312; 5 C.F.R. § 353.211.

Service member employees of intelligence agencies are provided similar assistance through their agency's Inspector General. 38 U.S.C. § 4325; 5 C.F.R. §§ 353.102(2), 353.110(a)(iv).

Where to Obtain Additional Information:

For additional information, visit our Veterans' Employment & Training Service USERRA Website: <http://www.dol.gov/vets/programs/userra> and/or call our toll-free information and helpline, available 8:00am to 8:00pm (Eastern Time), at 1-866-4-USA-DOL (1-866-487-2365). The website includes links to the statute, regulations, and DOL's [USERRA guide](#), which provide more details on these issues.

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