



What Employers Need to Know About Reemploying Military Service Members

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Military service members make tremendous sacrifices while serving. The federal government passed the Uniformed Services Employment and Reemployment Relief Act of 1994 (USERRA) in order to prevent employers from discriminating against employees that leave to serve in the military. As military deployments have increased over the last 15 years, increasing attention has been paid to USERRA and its requirements. USERRA requires employers to reinstate employees who leave for service as a member of the Armed Forces, including the National Guard, if the absence is five years or less.

Under USERRA an employer must reemploy the service member if:

- The employee gave the employer advanced written or verbal notice of the military service, unless impossible or unreasonable due to military necessity;
- The employee's absence did not exceed five years, unless an exception applies such as a war or national emergency declared by the Congress or the President;
- The employee was given an honorable discharge or general discharge; and
- The employee promptly returns to work within specified time periods that relate to the employee's length of service; for example, for military duty of 1 to 30 days an employee must report back to work at the first shift beginning after safe travel time from the military duty site plus eight hours rest.

USERRA prohibits employers from simply reinstating service members into the same position they served in prior to entering the military. Instead, the position depends on the length of duty, and the employer must establish the appropriate position by determining what position the employee would have been in if continuously employed during military service.

- For military duty between 1 and 90 days, an employee is entitled to the same position he or she would have held had employment not been interrupted.

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- For military duty 91 days or more, an employee is entitled to the same position he or she would have held had employment not been interrupted, or a position of like seniority, status, and pay.

If an employee returning from service is not qualified, the employer must offer the employee training, including training to take into account technological advances. If, after training, the employee is unable to qualify for the position he or she would have held, then the employee must be placed in an equivalent position that the employee is qualified to perform. An employer cannot fire the service member employee without cause for up to six months if military services was 31 to 180 days and for up to 12 months if military duty was 181 days or more.

There are exceptions to a service member's right to reinstatement under USERRA, including:

- Workplace changes make it unreasonable or impossible to reinstate the employee;
- Reemployment of the returning employee creates an undue hardship on the employer; or
- The employment prior to service was brief and there was no reasonable expectation that employment would continue for a long period of time.

Michigan and many other states provide similar employment protections to service members. Protections under Michigan's statute, MCL 32.271, also cover service performed by members of the Michigan National Guard.

Employers can fulfill their obligation to provide notice to employees of their rights under USERRA by displaying the text of this notice where they customarily place notices for employees. (We have identified that the following link is no longer active, and it has been removed).

This brief summary covers many of the main USERRA points that employers should keep in mind, but it should be noted that state law, collective bargaining agreements and/or other statutory or contractual provisions may create additional rights for military personnel. Please contact Karl W. Butterer to make sure that your company's reemployment practices are compliant.