



Fact Sheet USERRA (Military Leave)

Who's covered?

Employees who serve or have served in, or applied to, the uniformed services

What's provided?

- Reemployment rights
- Benefits rights
- Retention rights

What's prohibited?

- Discrimination based on service, past or present, in the uniformed services
- Retaliation based on the exercise of USERRA rights

What are an employee's reemployment rights?

An employee who is absent due to military service is entitled to reemployment into the same or a comparable position, as though s/he had been continuously employed

What are an employee's benefits rights?

- The same rights and benefits the employee had on the date of commencement of service, plus additional seniority-based rights and benefits as though s/he had been continuously employed
- Treated as though s/he is on a leave of absence and is entitled to the same rights and benefits as other employees on leaves of absence — an employee may, but cannot be required to, use accrued vacation or paid leave during a period of absence due to service
- The ability to elect to continue health insurance coverage for up to 24 months, at no more than 102% of the cost of the full premium under the plan
- The same pension benefits as though he or she had been continuously employed

What are an employee's retention rights?

- An employee who is absent due to military service can't be terminated except for cause within:
- 1 year of reemployment if employee's period of military service prior to the reemployment lasted more than 180 days or
- 180 days of reemployment if employee's period of service prior to the reemployment lasted more than 30 days but less than 181 days

What are an employee's obligations?

- To provide advanced notice of the service obligation, unless such notice is impossible or unreasonable
- To submit an application for reemployment in a timely manner after the conclusion of service
- An employee is entitled to reemployment rights if he or she has 5 years or less of cumulative service in the uniformed services

Are employers required to provide notice?

- Employers are required to provide notice of the rights and benefits provided under USERRA
- Employers should have a policy or section in their Employee Handbook offering guidance regarding Military Leave requests

What are the potential penalties?

- Reinstatement
- Back pay
- Liquidated damages
- Attorneys' fees

Note:

There are additional leave protections afforded to both military personnel and military spouses under the Family Medical Leave Act (FMLA)