

The logo for the U.S. Department of Veterans Affairs, consisting of the letters 'VA' in a bold, black, sans-serif font.

U.S. Department of Veterans Affairs

Office of the Chief Human Capital Officer

Fact Sheet – Uniformed Services Employment and Reemployment Rights Act (USERRA)

Purpose: To provide guidance to Human Resources (HR) Offices on the provisions of the Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994.

Purpose of USERRA: USERRA protects Veterans, Active Duty, Reservists and National Guard members of the United States Armed Forces or other uniformed services from employment discrimination resulting from their service in the military.

USERRA Requirements:

A returning employee has the right to any incident or advantage of employment that he/she would have received had he/she not been absent due to military service.

This includes seniority benefits that accrue with the passage of time such as within grade increases, rate of leave accrual, accrued time on probationary period, career tenure, flexible work schedules, location of employment, etc.

Employee Obligations:

- Be knowledgeable of USERRA rights and entitlements.
- Provide supervisor advance written or verbal notice of upcoming military service obligation.
- Notify supervisor of intent to return to employment.
- Upon receipt, provide documentation of reemployment request to supervisor in a timely manner.
- Must provide a DD Form 214 and orders to verify length and character of service.

Employer Obligations:

- Supervisors and VA HR practitioners must complete annual training on provisions of USERRA.
- Supervisors and VA HR practitioners must advise employees of rights, benefits and responsibilities under USERRA.
- Supervisors must approve requests for absence due to military service ([38 USC4316\(d\)](#)).

- Supervisors may request, but not require a copy of orders.
- VA HR practitioners must place employee in leave without pay (LWOP) status for duration of military service unless he/she requests other types of paid leave in conjunction with absence period.

Entitlements:

- USERRA protections cover 5 years of cumulative military service except that certain periods may be excluded from this limitation. (The clock restarts on cumulative service with each agency transfer).
- 15 calendar days/120 hours of paid military leave ([5 USC 6323\(a\)](#)) each fiscal year for active duty, active duty for training or inactive duty training for National Guardsmen or Reservists.
- 22 calendar days of paid military leave ([5 USC 6323\(b\)](#)) each calendar year specifically for service in support of a contingency operation as defined in 10 U.S.C., Section 101(a)(13) – entitlement to greater of military or civilian pay not both-charged military paid leave for days worked, excluding weekends and non-workdays.
- Use of any accrued annual leave, military leave, earned compensatory time off for travel or sick leave (if appropriate), during such service intermittently in conjunction with leave without pay.
- 5 calendar days of excused absence prior to returning to civilian service if called to active duty in support of the Global War on Terrorism or any other military operation established under Executive Order 13223 for at least 42 consecutive calendar days. Employees are entitled to excused absence only once in a 12-month period.

Reemployment Application:

- Report back to work or apply for reemployment as follows based on length of service.
- Less than 31 calendar days of service – report to work at the beginning of the next regularly scheduled duty day or if not possible, after 8 hours of rest upon completion of travel from military duty location back to residence.
- More than 30 but less than 181 calendar days – employee must apply for reemployment within 14 calendar days.
- More than 180 calendar days employee must apply for reemployment within 90 calendar days.
- The employee must receive prompt restoration to position of record or a similar position and pay immediately but no later than 30 calendar days after reemployment request, consistent with required timeframes.

Position Restoration:

- Non-disabled employee with service of 90 calendar days or less – If non-disabled service is 90 calendar days or less, restore/reemploy in the position employee would have attained had he/she never left or to prior position of record if unable to acceptably perform after reasonable efforts to train employee for the position he/she would have otherwise attained.
- Non-disabled employee with service of 91 or more calendar days – If non-disabled service is 91 days or more, option to restore/reemploy in the position employee held must be of like seniority, status and pay with full seniority.
- Disabled employee – If unable to place employee with disability in position of record, must place in a position for which he/she qualifies with same seniority, status and pay or nearest approximation.
- Employers are not required to reemploy a disabled employee if, after making efforts to accommodate the disability, such reemployment would impose undue hardship.

**Disability status is determined when a servicemember incurs an injury during military service.*

Appeal Rights:

- An employee who believes he/she is subject to a USERRA rights violation may file a complaint with the U.S. Department of Labor or the Merit Systems Protection Board.

References:

- [OPM USERRA \(November 10, 2020\)](#)
- [VA USERRA Guide](#)
- [VA for Vets – Deployment & Reintegration Resources page](#)

Questions:

- Contact Recruitment and Placement Policy Service for questions regarding reemployment rights under USERRA at vesovets@va.gov.
- Contact Worklife and Benefits Service regarding military leave or benefits-related USERRA questions at vaco058worklife@va.gov.

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