

Facilitating the return to employment for uniformed service members

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As the nation welcomes members of the uniformed services back into the work force, we recognize that their return will be beneficial not only for them individually but also for their families, employers and overall communities. Attention currently is being directed at the numerous programs that are in place and being created which focus on their employment. There also is increased awareness of federal and, in some cases, state legislation that addresses the rights and obligations of service members and employers.

It is timely for employers to gain an understanding of available programs in which they can participate and of applicable laws that impact their organizations.

Hiring Our Heroes is an example of an initiative receiving national attention. This program was launched by the U.S. Chamber of Commerce with partners from the public, private and nonprofit sectors. It is helping veterans and military spouses find meaningful employment in hundreds of local communities. General Electric, a contributor to this endeavor, recently announced its intent to hire 5,000 veterans over the next five years. Other initiatives, Hero2Hire and the Veterans Job Bank, seek to improve employment opportunities for transitioning service members while enabling employers to tap into pools of potential employees. Information on these and other programs can be found on websites such as www.esgr.mil, www.nrd.gov, www.whitehouse.gov/joiningforces/resources, and www.uschamber.com/veterans.

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), as amended, is a federal law that employers need to understand. This legislation establishes rights and responsibilities for members of the uniformed services and for employers. It affects public, private and government employers of all sizes in regard to the employment, reemployment and retention of employees who serve or have served in the uniformed services.

Information about USERRA is available on the websites of federal agencies that include Employer Support of the Guard and Reserve (ESGR), www.esgr.mil, and the Department of Labor (DOL), www.dol.gov/vets.

The Employer Resource Guide is one of the tools that ESGR has developed to assist employers in understanding USERRA. Copies can be obtained by calling 1-800-366-4590 or e-mailing ESGR-PA@osd.mil.

The following are a number of “frequently asked questions” found in the Employer Resource Guide. Accessing this publication will provide additional information, including more comprehensive responses.

1. What types of military service are covered by USERRA? USERRA’s definition of “service in the uniformed services” covers all categories of military training and service, including duty performed on a voluntary or involuntary basis, in time of peace or war. Although most often understood as applying to Guard and Reserve military personnel, USERRA also applies to persons serving in the active components of the Armed Forces and the National Disaster Medical System.
2. Is there a limit on the total amount of service in the uniformed services that an employee may perform and still retain reemployment rights with the employer? In general, an employee may perform service in the uniformed services for a cumulative period of up to five years and retain reemployment rights with the employer.
3. Must an employee tell his/her employer prior to leaving that he/she will seek reemployment upon completion of military service? An employee is not required to tell the employer or to decide in advance of leaving a position whether he/she will seek reemployment after completing uniformed service.
4. When is an employee entitled to be reemployed by his/her civilian employer? An employer must promptly reemploy an employee upon return from a period of service if the employee meets USERRA’s eligibility criteria. Prompt reemployment means as soon as practical under the circumstances of each case. Absent unusual circumstances, it must occur within two weeks of an employee’s application for reemployment, as required.
5. What are the guidelines USERRA provides for an employee to return to work after completion of military service? To be eligible for protection, the service member must report back to work or apply for reemployment according to guidelines for days spent in military service. For example, an employee must apply within 90 days after completion of 181 or more days of service.
6. What position is the employee entitled to upon reemployment? Generally, an employee is entitled to reemployment in the job position, including pay and benefits, which would have been attained with reasonable certainty if not for the absence due to military service.
7. Can an employer discriminate based on past or present military service? An employer must not deny initial employment, reemployment, retention, promotion, or any benefit of employment on the basis of military service. The employer cannot retaliate or take adverse employment action against any individual who exercises rights under USERRA.

8. Does an individual have rights under USERRA even if he/she is an executive, managerial, or professional employee? USERRA applies to all of these employees.

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