



# Reporting for Duty: Are you complying with USERRA?

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In recent years, the number of uniformed service members both deploying to and returning from service has greatly increased. Health care organizations, like other employers, must understand their legal responsibilities under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) in helping these men and women transition from military life back to the civilian workplace.

## The Law

The Department of Labor (DOL) administers USERRA through the Veterans' Employment and Training Service. The act applies to nearly all individuals who have served in the uniformed services, including, but not limited to, the Army, Navy, Marine Corps, Air Force, Coast Guard, Reserves, National Guard, Commissioned Corps of the Public Health Service and any other category of persons designated by the president of the United States in a time of war or emergency. USERRA also protects volunteers in the National Disaster Medical System.

For USERRA protections to apply to a returning service man or woman, the cumulative length of the absence from a position can't be more than five years. However, the law provides eight exceptions to the five-year rule. Commonly applicable exceptions include initial enlistments lasting more than five years, periodic National Guard and Reserve training duty, and involuntary active duty extensions and recalls, such as during periods of national emergencies.

## Reemployment Requirements

Under USERRA, the position to which you must reinstate an employee depends on the length of his or her military service:

1. **Up to 90 days.** Generally, you must reinstate an employee in a position the employee would have held if the employee had remained continuously employed, so long as the person is qualified for the position or can become qualified after you expend reasonable efforts to qualify him or her. If the employee isn't qualified and can't become qualified for such a position, you must reinstate the employee in the position in which the employee was employed on the date he or she commenced military duties. If the employee can't become qualified for either position, you must reemploy the employee in the position he or she can become qualified for or is qualified for that is the most similar to his or her original job.

2. **91 or more days.** You must follow reinstatement requirements similar to those for an employee who was absent for military service for up to 90 days, but there are some subtle differences. You must reinstate an employee in a position the employee would have held had the employee remained continuously employed or in a position of like seniority, status and pay — so long as the person is qualified for the position or can become qualified after you expend reasonable efforts to qualify him or her. If the employee isn't qualified and can't become qualified for such a position, you must reinstate the employee in the position in which the employee was employed on the date he or she commenced military duties — or in a position of like seniority, status and pay. If the employee can't become qualified for any such position, you can reemploy him or her in a position of lesser status and pay, but it must be in the position he or she can become qualified for — with full seniority that is the most similar to the above positions.

Regardless of how long your employee serves, you must provide refresher training and, in situations where the employee is no longer qualified due to technological advances, provide any necessary training to update his or her skills. USERRA also requires employers to make reasonable efforts to accommodate disabilities incurred or aggravated while in the uniformed services.

## Health and Pension Benefits

Military service is considered service with an employer for benefits purposes and the vesting of certain retirement benefits. Generally an employer is liable for funding any resulting benefit obligation. The law also protects employee health benefits. If an employee served for 30 days or less, he or she can't be required to pay more than the normal employee share of premiums. Employees who have served more than 30 days may elect to continue their employer's health care plan for up to 24 months, but may be required to pay up to 102% of the full premium.

## The Effect

USERRA's primary purpose is to protect the employment and reemployment rights of uniformed service members. You need to be aware of its requirements, both for your sake and the sake of returning employees.

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