

**A Non-Technical Resource Guide  
to the  
Uniformed Services Employment and Reemployment Rights  
Act  
(USERRA)**

**The U.S. Department of Labor  
Veterans Employment and Training Service**

**October 2001**

## **About the Veterans' Employment and Training Service**

The Veterans' Employment and Training Service (VETS) is an independent agency within the Department of Labor. It assists veterans in making the transition from military to civilian life, provides grants that help veterans train for and find good jobs, and protects the employment and reemployment rights of veterans, reservists, and National Guard members. It also is responsible for investigating alleged failure of Federal agencies to grant veterans preference under the Veterans' Employment Opportunities Act of 1998 (VEOA).

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## **Introduction**

The Department of Labor's Veterans' Employment and Training Service provides this guide to enhance the public's access to information about the application of the Uniformed Services Employment and Reemployment Rights Act (USERRA) in various circumstances. Aspects of the law may change over time. Every effort will be made to keep the information provided up-to-date.

USERRA applies to virtually all employers, including the Federal Government. While the information presented herein applies primarily to private employers, there are parallel provisions in the statute that apply to Federal employers. Specific questions should be addressed to the State director of the Veterans' Employment and Training Service listed in the government section of the telephone directory under U.S. Department of Labor.

Information about USERRA is also available on the Internet. An interactive system, "The USERRA Advisor," answers many of the most-often asked questions about the law. It can be found in the "E-Laws" section of the Department of Labor's home page. The Internet address is <http://www.dol.gov>.

## **Disclaimer**

This user's guide is intended to be a non-technical resource for informational purposes only. Its contents are not legally binding nor should it be considered as a substitute for the language of the actual statute or the official USERRA Handbook.

At the time of providing the notice, the employee must be aware of the specific rights and benefits to be lost. If the employee lacks that awareness, or is otherwise coerced, the waiver will be ineffective.

Notices of intent not to return can waive only leave-of-absence rights and benefits. They cannot surrender other rights and benefits that a person would be entitled to under the law, particularly reemployment rights.

**Funding of benefits. Section 4316(b)(4).** Service members may be required to pay the employee cost, if any, of any funded benefit to the extent that other employees on leave of absence would be required to pay.

### **Pension/retirement plans**

**Pension plans, Section 4318,** which are tied to seniority, are given separate, detailed treatment under the law. The law provides that:

- **Section 4318(a)(2)(A).** A reemployed person must be treated as not having incurred a break in service with the employer maintaining a pension plan;
- **Section 4318(a)(2)(B).** Military service must be considered service with an employer for vesting and benefit accrual purposes;
- **Section 4318(b)(1).** The employer is liable for funding any resulting obligation; and
- **Section 4318(b)(2).** The reemployed person is entitled to any accrued benefits from employee contributions only to the extent that the person repays the employee contributions.

**Covered plan. Section 4318.** A "pension plan" that must comply with the requirements of the reemployment law would be any plan that provides retirement income to employees until the termination of employment or later. Defined benefits plans, defined contribution plans, and profit sharing plans that are retirement plans are covered.

**Multi-employer plans. Section 4318(b)(1).** In a multi-employer defined contribution pension plan, the sponsor maintaining the plan may allocate among the participating employers the liability of the plan for pension benefits accrued by persons who are absent for military service. If no cost-sharing arrangement is provided, the full liability to make the retroactive contributions to the plan will be allocated to the last employer employing the person before the period of military service or, if that employer is no longer functional, to the overall plan.

Within 30 days after a person is reemployed, an employer who participates in a multi-employer plan must provide written notice to the plan administrator of the person's reemployment. (4318(c))

**Employee contribution repayment period. Section 4318(b)(2).** Repayment of employee contributions can be made over three times the period of military service but no longer than five years.

**Calculation of contributions. Section 4318(b)(3)(A).** For purposes of determining an employer's liability or an employee's contributions under a pension benefit plan, the employee's compensation during the period of his or her military service will be based on the rate of pay the employee would have received from the employer but for the absence during the period of service.

**Section 4318(b)(3)(B).** If the employee's compensation was not based on a fixed rate, the determination of such rate is not reasonably certain, on the basis of the employee's average rate of compensation during the 12-month period immediately preceding such period (or, if shorter, the period of employment immediately preceding such period).

**Vacation pay Section 4316(d).**

Service members must, at their request, be permitted to use any vacation that had accrued before the beginning of their military service instead of unpaid leave. However, it continues to be the law that service members cannot be forced to use vacation time for military service.

**Health benefits Section 4317**

The law provides for health benefit continuation for persons who are absent from work to serve in the military, even when their employers are not covered by COBRA. (Employers with fewer than 20 employees are exempt for COBRA.) **Section 4317(a)(1).**

If a person's health plan coverage would terminate because of an absence due to military service, the person may elect to continue the health plan coverage for up to 18 months after the absence begins or for the period of service (plus the time allowed to apply for reemployment), whichever period is shorter. The person cannot be required to pay more than 102 percent of the full premium for the coverage. If the military service was for 30 or fewer days, the person cannot be required to pay more than the normal employee share of any premium.

**Exclusions/waiting periods. Section 4317(b).** A waiting period or exclusion cannot be imposed upon reinstatement if health coverage would have been provided to a person had the person not been absent for military service. However, an exception applies to disabilities determined by the Secretary of Veterans' Affairs (VA) to be service-connected.

**Multi-employer. Section 4317(a)(3).** Liability for employer contributions and benefits under multi-employer plans is to be allocated by the plan sponsor in such manner as the plan sponsor provides. If the sponsor makes no provision for allocation, liability is to be allocated to the last employer employing the person before the person's military service or, if that employer is no longer functional, to the plan.

**Protection from discharge**

Employer Obligations

Employer Obligations:	Yes	No	Comments	Reference
1. Did the service member give advance notice of military service to the employer? (This notice can be written or verbal)				Page 2
2. Did the employer allow the service member a leave of absence? The employer cannot require that vacation or other personal leave be used.				Page 11
3. Upon timely application for reinstatement, did the employer timely reinstate the service member to his/her escalator position?				Page 6
4. Did the employer grant accrued seniority as if the returning service member had been continuously employed? This applies to the rights and benefits determined by seniority, including status, rate of pay, pension vesting, and credit for the period for pension benefit computations.				Page 9
5. Did the employer delay or attempt to defeat a reemployment rights obligation by demanding documentation that did not then exist or was not then readily available?				Page 5
6. Did the employer consider the timing, frequency, or duration of the service members training or service or the nature of such training or service as a basis for denying rights under this Statute?				Page 2
7. Did the employer provide training or retraining and other accommodations to persons with service-connected disabilities. If a disability could not be accommodated after reasonable efforts by the employer, did the employer reemploy the person in some other position he/she was qualified to perform which is the "nearest approximation" of the position to which the person was otherwise entitled, in terms of status and pay, and with full seniority?				Page 8
8. Did the employer make reasonable efforts to train or otherwise qualify a returning service member for a position within the organization/company? If the person could not be qualified in a similar position, did the employer place the person in any other position of lesser status and pay which he/she was qualified to perform with full seniority?				Page 7
9. Did the employer grant the reemployed person pension plan benefits that accrued during military service, regardless of whether the plan was a defined benefit or defined contribution plan?				Page 10

<p>10. Did the employer offer COBRA-like health coverage upon request of a service member whose leave was more than 30 days? Upon the service member's election, did the employer continue coverage at the regular employee cost for service members whose leave was for less than 31 days?</p>				<p>Page 11</p>
<p>11. Did the employer discriminate in employment against or take adverse employment action against any person who assisted in the enforcement of a protection afforded any returning service member under this Statute.</p>				<p>Page 13</p>
<p>12. Did the employer in any way discriminate in employment, reemployment, retention in employment, promotion, or any benefit of employment on the basis of past or present membership, performance of service, application for service or obligation for military service.</p>				<p>Page 12</p>
<p>13. Did the employer satisfy the burden of proof where employment, reemployment or other entitlements are denied or when adverse action is taken when a service connection is the motivating factor in the denial or adverse action? Did the employer provide documentation that the action would have been taken in the absence of such membership?</p>				<p>Page 13</p>



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