

# **RETURNING TO CIVILIAN EMPLOYMENT**

## **REPORTING BACK TO WORK**

*Time limits* for returning to work now depend, with the exception of fitness-for-service examinations, on the duration of a person's military service.

- **Service of 1 to 30 days.** The person must report to his or her employer by the beginning of the first regularly scheduled workday that would fall eight hours after the end of the calendar day. For example, an employer cannot require a service member who returns home at 10:00 p.m. to report to work at 12:30 a.m. that night. But the employer can require the employee to report for the 6:00 a.m. shift the next morning. If, due to no fault of the employee, timely reporting back to work would be impossible or unreasonable, the employee must report back to work as soon as possible.
- **Service of 31 to 180 days.** An application for reemployment must be submitted no later than 14 days after completion of a person's service. If submission of a timely application is impossible or unreasonable through no fault of the person, the application must be submitted as soon as possible. If the 14th day falls on a day when the offices are not open, or there is otherwise no one available to accept the application, the time extends to the next business day.
- **Service of 181 or more days.** An application for reemployment must be submitted no later than 90 days after completion of a person's military service. If the 90th day falls on a day when the offices are not open, or there is otherwise no one available to accept the application, the time extends to the next business day.
- **Disability incurred or aggravated.** The reporting or application deadlines are extended for up to two years for persons who are hospitalized or convalescing because of a disability incurred or aggravated during the period of military service. The two-year period will be extended by the minimum time required to accommodate a circumstance beyond an individual's control that would make reporting within the two-year period impossible or unreasonable.

## **RIGHTS OF REEMPLOYED PERSONS**

### ***Seniority rights***

- Reemployed service members are entitled to the seniority and all rights and benefits based on seniority that they would have attained with reasonable certainty had they remained continuously employed.
- A right or benefit is seniority-based if it is determined by or accrues with length of service. On the other hand, a right or benefit is not seniority-based if it is compensation for work performed or is subject to a significant contingency.

### ***Rights not based on seniority***

Departing service members must be treated as if they are on a leave of absence. Consequently, while they are away they must be entitled to participate in any rights and benefits not based on seniority that are available to employees on nonmilitary leaves of absence, whether paid or unpaid. If there is a variation among different types of nonmilitary leaves of absence, the most favorable treatment must be accorded the service member. The returning employees shall be entitled not only to non-seniority rights and benefits available at the time they left for military service, but also those that became effective during their service.

### ***Forfeiture of rights***

If, prior to leaving for military service, an employee knowingly provides clear written notice of an intent not to return to work after military service, the employee waives entitlement to leave-of-absence rights and benefits not based on seniority. 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***

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

- A reemployed person must be treated as not having incurred a break in service with the employer maintaining a pension plan;
- Military service must be considered service with an employer for vesting and benefit accrual purposes;
- The employer is liable for funding any resulting obligation; and
- 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***

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***

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.

### ***Employee contribution repayment period***

Repayment of employee contributions can be made over three times the period of military service but no longer than five years.

### ***Calculation of contributions***

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.

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).

## **PROTECTION FROM DISCHARGE**

Under USERRA, a reemployed employee may not be discharged without cause as follows:

- For one year after the date of reemployment if the person's period of military service was for more than six months (181 days or more).
- For six months after the date of reemployment if the person's period of military service was for 31 to 180 days.
- Persons who serve for 30 or fewer days are not be protected from discharge without cause.

## **ASSISTANCE**

If you have a question about reemployment right or a concern with returning to work, you can contact the National Committee for Employer Support of the Guard and Reserve at 1-800-336-4590 or check on line at [www.esgr.org](http://www.esgr.org).