VA for Vets USERRA Frequently Asked Questions

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An HR&A Initiative to invest in people development, workforce engagement and talent management for the delivery of high-quality healthcare, benefits and other services to Veterans and their families.

Department of Veterans Affairs

Contents

Introduction

The Department of Veterans Affairs' Veteran Employment Services Office (VESO) is the first of its kind in the federal government. VESO is dedicated solely to recruiting, retaining and reintegrating qualified Veterans into the VA workforce by supporting all veterans and providing special attention for severely disabled veterans. The VESO staff consists of thirteen Regional Veterans Employment Coordinators (RVECs) positioned at locations nationwide to provide a host of employment services for Veterans interested in pursuing careers at VA. Services include employment counseling, assistance in identifying transferable military skills (skills matching), qualifications and career assessment, assistance in drafting competitive resumes, instruction in developing comprehensive job search strategies, and direct job placement assistance.

One of the primary support tools offered by VESO is the *VA for Vets* program (VAforVets.VA.gov). *VA for Vets* provides centralized access to training, coaching, communications and career development tools for Military Service Members, supervisor, coworkers and the human resource (HR) professionals who support them all at VA. Training on the Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994 is one of the many ways the *VA for Vets* program supports Veterans and service members.

USERRA clarifies and strengthens the Veterans' Reemployment Rights (VRR) Statute. The Act itself can be found in the United States Code at Chapter 43, Part III, Title 38: http://www.dol.gov/vets/usc/vpl/usc38.htm.

Purpose

This document clarifies and answers some frequently asked questions (FAQ) regarding USERRA. It is intended to offer simple explanations for common questions. It is not intended as an interpretation or representation of legal strategy in the application of USERRA claims.

Questions

Any questions regarding this document or its intended use must be directed to the *VA for Vets* program at **1–855–VA4VETS** (1–855–824–8387) or VAforVets.VA.gov.

Any questions regarding the USERRA complaint process or the Form 1010 should be directed to your nearest Veterans Employment and Training Service (VETS) office: http://www.dol.gov/vets/aboutvets/contacts/main.htm.

USERRA FAQs

General Information

What is the law governing a service member's right to reemployment after completion of military training or service?

Since 1940, the Veterans' Reemployment Rights (VRR) has protected service members' right to reemployment after the completion of military training or service. On October 13, 1994, President Clinton signed the Uniformed Services Employment and Reemployment Rights Act (USERRA) into law which updated and revised the VRR. USERRA became fully effective December 12, 1994, and can be found in Title 38, United States Code, at chapter 43 (Sections 4301 through 4333).

What is "service in the uniformed services?"

USERRA defines "service in the uniformed services" as "…the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to any such duty, and a period for which a person is absent from employment for the purpose of performing funeral honors duty as authorized by section 12503 of title 10 or section 115 of title 32 (see Section 4303)."

Who is eligible for reemployment rights under USERRA?

To be eligible for employment and reemployment rights under USERRA, individuals must:

- Hold or have applied for a civilian job for a significant amount of time with a reasonable expectation that the position would continue.
- Have given written or verbal notice to their civilian employer prior to leaving the job for military training or service except when precluded by military necessity.
- Not have exceeded the 5-year cumulative limit on periods of service.
- Have been released from service under conditions other than dishonorable.
- Report back to the civilian job in a timely manner or submit a timely application for reemployment (see Section 4312).

Does USERRA protect reemployment rights for voluntary military service?

USERRA applies to voluntary and involuntary military service. It applies in peacetime as well as wartime.

Does USERRA protect reemployment rights for state callups?

USERRA does not protect individuals in:

- State militias.
- State Defense Forces.
- Members of a State Guard.

- Members of Naval Militias.

However, a service member's state may provide protections similar to USERRA for this kind of duty.

Does USERRA protect the employment rights of employees who are trying to join the uniformed service?

Yes, this includes time for mental and physical examinations as well as time needed to attend other meetings necessary to enlist.

What is the Servicemembers Civil Relief Act ("SCRA")?

The Servicemember's Civil Relief Act (SCRA) of 2003 expanded and improved the former Soldiers' and Sailors' Civil Relief Act (SSCRA) of 1940. The SCRA provides a wide range of protections for individuals entering, called to active duty in the military, or deployed service members. It postpones or suspends certain civil obligations so service members can devote their full attention to their military duty and relieve stress on their family members.

What is VETS?

The Department of Labor's Veterans' Employment and Training Service (VETS) supports Veterans, National Guard, and Reservists who may be activated for military service in many ways. For example, VETS has an online interactive computer program, the USERRA Advisor, which address the rights and responsibilities of individuals and their employers under the law. VETS can investigate potential USERRA violations, mitigate some service member concerns with their employer and provide guidance for Veterans on a myriad of topics. More information about VETS is available on their website: http://www.dol.gov/vets/.

What is the ESGR?

The Employer Support of the Guard and Reserve (ESGR) is a Department of Defense (DoD) organization established in 1972 to promote cooperation and understanding between Reserve component members and their civilian employers. ESGR assists in the resolution of conflicts arising from an employee's military commitment. It is the lead DoD organization for this mission under DoD Directive 1250.1 and operates through a network of thousands of volunteers throughout the United States, Guam, Puerto Rico, and the Virgin Islands. More information about ESGR is available on their website: http://www.esgr.mil/site/.

Pre-deployment

Can a service member be denied leave for military duty?

No, the employee can never be denied leave for military duty regardless of the impact on the employer.
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Advance Notice

Is a service member required to give their civilian employer advance notice of their leave to perform military service?

Yes. Service members must give written or verbal notice to their employer prior to their departure unless military necessity prevents the service member from doing so or if giving notice is otherwise impossible or unreasonable.

What constitutes military necessity is determined by the Department of Defense. It is reasonable to expect that situations where notice is not required will be rare. The law does not specify how much advance notice is required, but the Department of Defense advises members of the National Guard and Reserve that they should provide their employers as much advance notice as they can (see Section 4312).

Is the service member required to find a replacement for the time that he or she will be away from work performing military service?

No, the service member is not responsible for finding replacements, but he or she is responsible for giving advance notice to enable the organization to seek alternatives.

During Deployment

Are employers required to pay a service member for the period that he or she is away from work performing military service or training?

USERRA does not require employers to pay an individual for time not worked due to military service. Another Federal law (5 U.S.C. 6323) gives Federal civilian employees the right to 120 hours per fiscal year of paid military leave. Most states have similar laws for state and local government employees.

If a service member is exempt from the Fair Labor Standards Act (FLSA) overtime rules, employers are not permitted to make a deduction for the part of the pay period missed because of temporary military leave (see 29 Code of Federal Regulations 541.118(4)). This is an FLSA requirement, not a USERRA requirement.

May a service member be required to perform civilian work while on military duty?

If the service member is on full-time military duty, the answer is no.

What is the employee's status while he or she is performing military service?

USERRA requires that all employees performing military service be placed in an administrative leave status. For the Department of Veterans Affairs (VA), the correct status is Absent – Uniformed Service. An employee may not be separated from the rolls unless he or she expressly makes a knowing and voluntary request to separate from VA.

Proof of Service

Are service members required to provide a copy their military orders?

No. It is recommended that service members provide this documentation to their employers when it becomes available so supervisors and HR professionals have a record of the dates of the service member's assignment. Employers may request this information from the service member, but cannot require it.

Is an employer entitled to proof that military duty was actually performed?

Yes. USERRA protects an employer's right to documentation that establishes length and character of the service and the timeliness of the application for reemployment following periods of military service of 31 days or more. The returning employee must provide this documentation upon their employer's request.

Generally, the following documents are considered proof of eligibility for reemployment:

- Discharge papers.
- Leave and earnings statements.
- School completion certificate.
- Endorsed orders.
- A letter from a proper military authority.

Reemployment may not be delayed, however, if such documentation does not exist or is not readily available.

The 5-year limit

How long is a service member protected under USERRA?

Service members' basic employment and reemployment rights are protected under USERRA up to a cumulative 5-year limit of military service. When a person starts a new job with a new employer, he or she receives a fresh 5-year entitlement. USERRA's cumulative 5-year limit does not include certain kinds of military training or service.

How is the 5-year limit computed?

Service in the uniformed services counts toward the cumulative 5-year limit of military service a person can perform while retaining rights under USERRA. Some notable exceptions to this 5-year limit can be grouped into three broad categories:

- Unable (through no fault of the individual) to obtain release from service or service in excess of five years to fulfill an initial period of obligated service (generally imposed on Active component aviators or others who undergo extensive initial training in certain technical military specialties).
- Required drills and annual training and other training duty certified by the military to be necessary for professional development or skill training/retraining.
- Service performed during time of war or national emergency or for other critical missions/contingencies/military requirements. Involuntary service of this type is exempt from the 5-year limit. Voluntary service in support of the mission/contingency/military requirement is also exempt (see Section 4312).

Under USERRA, can a person serve an additional five years and maintain reemployment rights?

Not necessarily. USERRA provides that military service performed before December 12, 1994 will count toward the USERRA 5-year limit as long as it also counted against the limits contained in the old law. Additionally, a new 5-year timeframe begins every time a service member changes employers.

Use of Leave

Can an employee be required to use their annual leave while performing military service?

No. As under the Veterans' Reemployment Rights (VRR) Act, a person may not be forced to use earned annual leave. Employees are entitled to this leave in addition to time off to perform military service. A rare exception might be a standard event, such as a plant shutdown at a certain time of year that overlaps with a service member's military service when all employees must use their leave (see Section 4316).

Can an employee use sick leave while on military duty?

USERRA does not guarantee an employee the right to use sick leave while on military duty. However, most employers have policies that restrict the use of sick leave to medical or health related reasons. Sick leave may be allowed for employees on military duty if the employee is hospitalized or on "quarters" pursuant to the direction of military medical authorities.

Reporting Back to Work

What is the timeframe within which a person has to report back to work or apply for reinstatement?

For periods of service of up to 30 consecutive days, the employee must report back to work for the first full, regularly scheduled work period on the first full calendar day following the completion of the period of service and safe transportation home, plus an 8-hour period for rest.

If reporting back within this deadline is "impossible or unreasonable" through no fault of the employee, he or she must report back as soon as possible after the expiration of the 8-hour period.

After a period of service of 31-180 days, the employee must submit a written or verbal application for reemployment with their employer no later than 14 days after the completion of the period of service. If submitting the application within 14 days is impossible or unreasonable through no fault of the employee, he or she must submit the application as soon as possible thereafter.

After a period of service of 181 days or more, the employee must submit an application for reemployment no later than 90 days after completion of the period of service. These deadlines to report to work or apply for reemployment can be extended up to two years to accommodate a period during which a person was hospitalized for or convalescing from an injury or illness that occurred or was aggravated during a period of military service (see Section 4312).

In either case, the employee does not automatically forfeit the right to reemployment, but will be "subject to the conduct rules, established policy, and general practices of the employer pertaining to explanations and discipline with respect to absence from scheduled work" (see Section 4312).

Does an employee loose his or her right to reemployment or reinstatement if he or she does not return to work within the proscribed period after completing military service?

If an employee does not return within the time proscribed in USERRA, as determined by the length of his or her military duty, an employer cannot automatically deny the employee reinstatement or reemployment. The employer must apply its disciplinary policy to the period of absence following the proscribed return date.

For example, if under the employer's disciplinary policy, an employee could be terminated for 3 days of no call/no show, or issue lesser discipline for shorter period, an employee who was required to return on June 1, but did not return until June 3, could be disciplined, but not terminated. If the employee did not return until June 5, the employee could be denied reemployment.

Can an employee be required to return early once he or she has been released from military duty?

No.

What must the employee do to apply for reinstatement or reemployment?

USERRA states that an oral request for reemployment or reinstatement is sufficient to trigger the employee's right to return to work.

Benefits

Does USERRA give a service member the right to benefits from the civilian employer during military service?

Yes. USERRA gives an employee the right to elect continued health insurance coverage, for himself or herself and his or her dependents, during periods of military service. For periods of up to 30 days of training or service, the employer can require the person to pay only the normal employee share, if any, of the cost of such coverage. For longer periods of service, the employer is permitted to charge the person up to 102 percent of the entire premium. If the employee elects coverage, the right to that coverage ends on the day after the deadline for him or her to apply for reemployment or 24 months after the absence from the civilian job began, whichever comes first.

USERRA gives an employee and previously covered dependents the right to immediate reinstatement of civilian health insurance coverage upon return to the civilian job. The health plan cannot impose a waiting period and cannot exclude the returning employee based on preexisting conditions (other than for those conditions determined by the federal government to be service-connected). This right is not contingent on an election to continue coverage during the period of service (see Section 4317).

To the extent that an employer offers other non-seniority benefits (e.g., holiday pay or life insurance coverage) to employees on furlough or a leave of absence, the employer is required to provide those same benefits to an employee during a period of service in the uniformed services. If the employer's treatment of persons on leaves of absence varies according to the kind of leave (e.g., jury duty, educational, etc.), the comparison should be made with the employer's most generous form of leave. Of course, you must compare periods of comparable length. An employee may waive his or her rights to these other non-seniority benefits by knowingly stating, in writing, his or her intent not to return to work. However, such statement does not waive any other rights provided by USERRA (see Section 4316).

Are service members entitled to COBRA with their civilian employer during deployment?

Two laws protect a service member's right to continue health coverage under an employment-based group health plan: the Consolidated Omnibus Budget Reconciliation Act (COBRA) and the Health Insurance Portability and Accountability Act (HIPAA).

COBRA provides health coverage continuation rights to employees and their families after an event such as a reduction in employment hours. USERRA is intended to minimize the disadvantages that occur when a person needs to be absent from civilian employment to serve in the uniformed services. Both COBRA and USERRA generally allow individuals who leave work for military service to continue coverage for themselves and their dependents under an employment-based group health plan. COBRA provides for 18 months of coverage, with further extensions for certain events. COBRA applies to group health plans maintained by employers with 20 or more employees. USERRA, which applies to all employers, provides for 24 months of coverage. If military service is for 30 or fewer days, service members and their family can continue coverage at the same cost as before their short service. If military service is longer, service members and their family may be required to pay as much as 102 percent of the full premium for coverage. If a service member has a plan that is covered by COBRA, he or she should receive a notice from the plan explaining his or her rights.

HIPAA may give the service member and their family rights to enroll in other group health plan coverage if it is available (for example, if a spouse's employer sponsors a group health plan). Service members and their family have this opportunity to enroll regardless of the plan's otherwise applicable enrollment periods. However, to qualify, he or she must request enrollment in the other plan (for example, their spouse's plan) within 30 days of losing eligibility for coverage under their own employer's plan. After special enrollment is requested, coverage is required to be made effective no later than the first day of the first month following their request for enrollment. If he or she is on active duty more than 30 days, coverage in another plan through special enrollment is often cheaper than continuation coverage because the employer often pays a part of the premium.

For more information on health benefits rights and options, and the interaction of COBRA and HIPAA visit one of the following three publications:

- Retirement and Health Care Coverage - Questions and Answers for Dislocated Workers
- Your Health Plan and HIPAA...Making the Law Work For You
- An Employee's Guide to Health Benefits Under COBRA - The Consolidated Ombibus Budget Reconciliation Act of 1986

If a dependent wants to continue with a current doctor or hospital, can a service member elect COBRA continuation coverage for only that dependent during deployment?

Yes. Service members and their dependents have a separate, individual right to elect continuation coverage.

If a service member's family was already on COBRA when he or she was called for active duty, can they keep their COBRA coverage?

Yes. COBRA continuation coverage cannot be terminated because a service member receives health coverage as an active duty member of the uniformed services and their family receives health coverage under a government program such as TRICARE.

Is a service member's period of active duty considered a break in service with his or her employer and impact their eligibility to participate in their employer's retirement plan?

No. USERRA requires that the period of military duty be counted as covered service with the employer for eligibility, vesting, and benefit accrual purposes. Returning service members are treated as if they had been continuously employed regardless of the type of retirement plan the employer has adopted. However, a service member who is reemployed is entitled to accrued benefits resulting from employee contributions only to the extent that he or she actually contributes to the plan.

Are employers required to continue contributions deployed service members' 401(k) plans?

There is no requirement for an employer to make contributions to a service member's retirement plan while he or she is on active duty. However, once he or she returns from military duty and is reemployed, his or her employer must make the employer contributions that would have been made if the employee had been employed during the period of military duty. If employee contributions are required or permitted under the plan, the employee has a period equal to three times the period of military duty or five years, whichever ends first, to make up the contributions. If the employee makes up the contributions, the employer must make up any matching contributions. There is no requirement that the employer contributions include earnings or forfeitures that would have been allocated to the employee had the contributions been made during their military service.

May a service member participating in a retirement plan give his or her spouse or another individual the authority to change investment allocations through a power of attorney or other legal document? Can that individual also apply for a participant loan or hardship withdrawal on the service member's behalf?

The terms of the plan would generally govern this situation. However, if some employees are permitted to designate individuals to act on their behalf in other contexts when they are away from work, the employer should permit the service member to designate someone to act on his or her behalf.

Are members of the uniformed services able to participate in the Thrift Savings Plan?

The Thrift Savings Plan (TSP) website (http://www.tsp.gov) provides information about the benefits available to TSP participants. Members of the uniformed services will participate under most of the same rules and receive the same benefits as civilian TSP participants. However, the contribution rules are different for uniformed services members.

Because the TSP record keeper must maintain separate accounts for civilian and uniformed services participants, participants who are both federal civilian employees and uniformed services members (i.e., Reservists) may have two separate accounts. If a service member has two accounts, he or she will need

to review information about his or her accounts separately in the civilian and the uniformed services sections of the website.

Are creditors required to drop interest charges down to 6 percent on debt owed by those called to active duty under the Servicemembers Civil Relief Act?

Yes. Under the Servicemembers Civil Relief Act (SCRA), creditors, including a pension plan, are required to drop interest rates down to no more than 6 percent on debt owed by those entering military service for the period of such military service. Additionally, under the Employee Retirement Income Security Act (ERISA), the loan will not fail to be a qualified loan because the interest rate is capped by SCRA. Under SCRA, a plan fiduciary could petition a court to retain a higher rate based upon the individual's ability to pay. Under USERRA, a plan may, but is not required to, suspend the obligation to make regular loan repayments to the plan during the period of active military service.

Can an employee's annual performance and merit pay raise review date be adjusted to make-up for the time spent on military service?

No. An employee's performance or merit raise review date cannot be adjusted because the employee was on military duty during the part or all of the review period.

Can the time spent on military duty affect the size of an employee's pay raise?

No. If the employee performed work during the rating period, the employee's annual review and merit increase, if any, must be based on the work performed.

Can an employee's raise be pro-rated based for the period the employee actually worked?

No. Any merit increase cannot be reduced because the employee did not work the full year due to military service.

Can an employee voluntarily waive his or her USERRA protections and benefits?

With one exception, and employee cannot waive his or her USERRA rights. For example, even if an employee resigns from employment on entering military service, he or she still has reemployment rights as long as the service does not exceed the statutorily prescribed 5 year period. An employee who voluntarily makes a knowing decision to resign from employment when entering military service rather than go into an Absent – Uniformed Service status, may waive certain benefits of employment such as his or her right to bid on positions or apply for promotions or assignments while he or she is on military duty.

Employer Responsibilities

What is an employer required to provide to a returning service member upon reemployment?

There are four basic entitlements (assuming the individual is eligibility for protection under USERRA):

- Prompt reinstatement (generally a matter of days, not weeks, but will depend on the length of absence).

- Accrued seniority, as if continuously employed. This applies to rights and benefits determined by seniority as well. This includes status, rate of pay, pension vesting, and credit for the period for pension benefit computations.
- Training or retraining and other accommodations. This would be particularly applicable in case of a long period of absence or service-connected disability.
- Special protection against discharge, except for cause. The period of this protection is 180 days following periods of service of 31-180 days. For periods of service of 181 days or more, it is one year (see Section 4313).

Reemployment

What does it mean to "submit an application for reemployment?"

Depending on the length of military service, returning employees should make explicit written or verbal applications for reemployment so employers understand the service member's intention to return to civilian employment. Employers cannot treat service members' reinstatement as if he or she is applying for a new job.

Is the returning employee always entitled to have the same job back?

No. USERRA provides that, if the period of service was less than 91 days, the employee is entitled to the job he or she would have attained absent the military service, provided the employee is, or can become, qualified for that job. If unable to become qualified for a new job after reasonable efforts by the employer, the employee is entitled to the job he or she left.

For periods of service of 91 days or more, the employer may reemploy the returning employee as above (i.e., position that would have been attained or position left), or in a position of "like seniority, status and pay" the duties which the employee is qualified to perform (see Section 4313).

What if a service member is not qualified for the reemployment position?

If a service member has been gone from the civilian job for months or years, civilian job skills may have been dulled by a long period without use. An employee must be (or become) qualified to do the job to have reemployment rights, but USERRA requires the employer to make "reasonable efforts" to qualify that employee. "Reasonable efforts" means actions, including training, that do not cause undue hardship to the employer. If an employee cannot become qualified in the positions after reasonable efforts by the employer, and if not disabled, the employee must be employed in any other position of lesser status and pay, which he or she is qualified to perform, with full seniority (see Section 4313).

What if a returning service member is disabled?

USERRA also requires the employer to make "reasonable efforts" to accommodate employees with a disability incurred or aggravated during military service. If an employee returns from military service and is suffering from a disability that cannot be accommodated by reasonable

employer efforts, the employer is to reemploy the employee in some other position he or she is qualified to perform and which is the "nearest approximation" of the position to which the employee is otherwise entitled, in terms of status and pay, with full seniority.

A disability need not be permanent to confer rights under USERRA. For example, if an employee breaks a leg during annual training, the employer may have an obligation to make reasonable efforts to accommodate the broken leg, or to place the employee in another position, until the leg has healed (see Section 4313).

If a provision of a labor agreement is incompatible with USERRA, which prevails?

USERRA preempts all contracts, including collective bargaining agreements. Any provision of a collective bargaining agreement that impinges on a right or benefit protected by USERRA is unenforceable to the extent that the employer takes action contrary to the labor agreement to comply with USERRA.

Are employers required to reinstate the returning employees even if the position has been back filled for a long period?

Yes. The right to reemployment is not contingent upon the existence of a vacancy. Sometimes it is necessary to displace another employee in order to reemploy the returning veteran. Congress recognized that this law imposes burdens on employers, and that sometimes those burdens can be severe. Congress decided that imposing such burdens on employers is justified by the national defense needs of our nation.

Discrimination

How does the new law address discrimination by an employer or prospective employer?

Section 4311(a) of USERRA provides as follows:
"A person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in the uniformed services shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation."

Section 4311(c)(1) further provides:
"An employer may not discriminate in employment against or take any adverse employment action against any person because such person has taken an action to enforce a protection afforded any person under this chapter, has testified or otherwise made a statement in or in connection with any proceeding under this chapter, has assisted or otherwise participated in an investigation under this chapter, or has exercised a right provided for in this chapter."

These two provisions provide a very broad protection against employer discrimination, much broader than the VRR law provided. The second provision prohibits, for the first time, reprisals against any person, without regard to military connection, who testifies or otherwise assists in an investigation or other proceeding under USERRA (see Section 4311).

Who has the burden of proof in discrimination cases?

The employer or prospective employer. USERRA provides that a denial of employment or an adverse action taken by an employer will be unlawful if a service connection was a motivating factor (not necessarily the only factor) in the denial or adverse action "unless the employer can prove that the action would have been taken in the absence of such membership, application for membership or obligation" (see Section 4311).

Where can you go to find more information or assistance?

VA employees may contact the Department of Veterans Affairs Veteran Employment Services Office (VESO) to speak with a Reintegration and Retention coach for assistance. Non-VA employees and employers should contact the Employer Support of the Guard and Reserve (ESGR) toll-free at (800) 336-4590. ESGR has ombudsmen who are trained to provide information and informal mediation services concerning civilian job rights of National Guard and Reserve members. As mediators, they act as neutrals, with a goal of helping bring about solutions to conflicts that are legal and equitable to each of the parties involved.

Sometimes, employers are particularly inconvenienced by the timing of proposed military duty by an employee-Reservist. For example, a scheduled drill weekend by a "key" employee may disrupt a major project, special product promotion, annual inventory, etc. Regardless of this perceived inconvenience, employers cannot request adjustments to military service requirements.

Filing a Complaint

How does the Department of Justice enforce USERRA?

A service member who seeks the Department of Justice's (DOJ) assistance must first file a complaint with the Department of Labor (DOL). DOL will investigate the complaint, determine whether it has merit and attempt to voluntarily resolve meritorious complaints. If DOL cannot resolve a USERRA complaint, the person filing the complaint has the right to have DOL forward his or her complaint to the Department of Justice for review. The DOJ is responsible for enforcing the provisions of the USERRA against state and local government employers and private employers. If DOJ takes the case, it will serve as the service member's attorney if he or she works for a private employer or a local government. If the service member works for a state government, DOJ may bring a lawsuit in the name of the United States.

What can a service member do if he or she suspects he or she is the victim of employment discrimination based on their military service?

Service members who believe that they have been victims of an employment discrimination based on their military service may file a complaint with the Department of Labor (DOL) or file their own lawsuit in federal or state court. If he or she chooses to file with DOL, he or she may file one of two ways: submit a signed hard copy of Form 1010 (http://www.dol.gov/libraryforms/forms/vets/vets-1010.pdf) or electronically file.

To submit a hard copy, service members can download Form 1010 to their computer, complete the items on the form that are relevant to their claim, sign and date the form, and mail it to the nearest

VETS office (http://www.dol.gov/vets/aboutvets/contacts/main.htm). To submit the form electronically, service members can complete and submit the online form (https://vets1010.dol.gov/).

Note: Some courts have held that a lawsuit must be filed within a certain period after the alleged USERRA violation, so it is important to file with DOL or consult with a private attorney as soon as possible.

Service members may also seek the assistance of the Employer Support of the Guard and Reserve (ESGR). ESGR is a Department of Defense agency that maintains an Ombudsman Service Program. That program provides information, counseling and informal mediation of issues relating to USERRA compliance. They are available by phone at the following toll-free number: 1-800-336-4590.

Service members always reserve the right to file a USERRA lawsuit with their own private counsel or on their own, as well.

Can service members seek representation from the Attorney General on their USERRA claim?

Yes. In order to have a USERRA case reviewed by the Attorney General, a service member must first file a complaint with the Department of Labor (DOL). DOL will investigate the complaint and may attempt to voluntarily resolve the complaint. If DOL cannot resolve the complaint, upon the complainant's request, DOL will forward the complaint to the Department of Justice (DOJ). DOJ will then review the case to determine whether representation is appropriate.

What should a service member do who suspects his or her rights have been under the SCRA?

Service member who suspect their rights have been violated under SCRA should contact their nearest Armed Forces legal assistance program office to see if the SCRA applies. Dependents of service members can also contact or visit local military legal assistance offices where they reside.