

Keep it Legal, Volume 2

You and USERRA

Being a member of the Air Force Reserve is demanding. Though fulfilling, it can oftentimes be a challenge balancing one's military career, family, and civilian career. Well-aware of the critical role Reservists play in our national defense, Congress recognized the inherent strain of our balancing act and gave us the Uniformed Services Employment and Reemployment Rights Act.

Commonly referred to by its acronym, USERRA is a federal statute that protects servicemembers' civilian employment rights. USERRA protects servicemembers from discrimination based on their military service, and, under certain conditions, requires civilian employers to put servicemembers back to work after military service.

You may have noted the "... under certain conditions" caveat above -- yes, an attorney wrote this article! However, it is important to know those "conditions" so that, if needed, we can use USERRA to protect our civilian careers. Specifically, to be protected, a Reserve (or National Guard) member must:

1. Have a civilian job;
2. Provide timely notification to his or her employer of any upcoming military duty; and
3. Report back to work in a timely manner.

The notification can be written or oral (although written is always best!). The military duty can be voluntary or involuntary, just as long as it is no longer than five years. Finally, the timeliness of reporting back is dependent upon the time gone: for service from 1 to 30 days, members must return to their civilian employment the beginning of the next regularly scheduled work day; for service from 31 to 180 days, the member must return within 14 days of their last duty day. And that is it -- USERRA protection!

Now, what do servicemembers get with USERRA on their side? Servicemembers' USERRA rights:

- Position: Upon returning from military leaves of absence, servicemembers must be promptly (within a matter of days, at maximum) reinstated to the jobs they would have held had they remained continuously employed (this includes any seniority and benefits once held, as well as any seniority that would have been attained if continuously employed).
- Health insurance: If the military absence is less than 30 days, then the employer must continue health insurance benefits; if 31 days or longer, then coverage stops unless the member elects to pay.
- Pension plan: Servicemembers have three times the length of time they were gone to contribute to their pension plans the amount that they could have contributed had they not

been absent, and the employer is liable for any resulting obligation they might have within the same timeframe.

- Discrimination: Finally, beyond retention and employment benefits after a tour of duty, USERRA also broadly prohibits employers from discriminating against servicemembers solely on the basis of their military status.

If you believe you have been discriminated against because of your military service, then you should visit your local legal assistance office. Additionally, for more information you can contact the National Committee for Employer Support of the Guard and Reserve, an entity that acts as the first step in the process of resolving employer-employee USERRA disputes (www.esgr.mil or 1-800-336-4590).

USERRA's rights can be thought as part of our benefits package as Reservists. Know and follow the prerequisites to its safeguards -- give you and your family the peace of mind of knowing its protections are there in the event they are needed.

The information provided in this article is for educational and general information purposes only. It is not legal advice. We recommend speaking with a licensed attorney before relying on the information contained within to make a decision or take any action.