

National Training Institute  
July 31/August 1, 2017

**Employment Rights  
Of Personnel With Military Service  
Obligations**

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Washington, DC

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**Uniformed Services Employment and  
Reemployment Rights Act (USERRA)**

1. Overview of USERRA
2. USERRA "Employers"
3. **JATC** Notice Posting Obligation
4. USERRA Entitlements/Benefits:
  - ★How Service Members Qualify
  - ★Benefits, if they qualify
5. Protection Against Discrimination
6. Enforcement
7. Help for You

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**YOUR RIGHTS UNDER USERRA**  
**THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT**

**WHAT YOU SHOULD KNOW:**

- You have the right to return to your job after military service.
- You have the right to receive the same benefits as your coworkers.
- You have the right to file a complaint if your employer discriminates against you.
- You have the right to file a lawsuit if your employer discriminates against you.

**WHAT YOU SHOULD KNOW:**

- You have the right to return to your job after military service.
- You have the right to receive the same benefits as your coworkers.
- You have the right to file a complaint if your employer discriminates against you.
- You have the right to file a lawsuit if your employer discriminates against you.

**FOR MORE INFORMATION:**

ESRR  
1-800-368-5888

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## Overview

- ◆ USERRA not really new
- ◆ First law protecting service member jobs enacted in 1940 – eve of WWII
- ◆ New laws added and changed over the years
- ◆ All laws consolidated, streamlined in 1994 into USERRA

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## Overview: USERRA'S PURPOSE

To ensure that all persons who serve in the military can **obtain, or return to**, civilian employment **without paying any penalty** for time spent performing military service.

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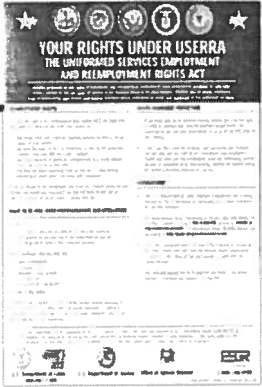
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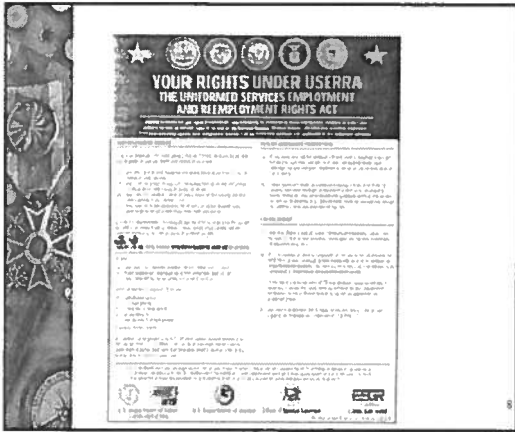
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### Overview

- ◆ Applies to every employer
- ◆ Broad definition of “Uniformed service:”
  - any type of service in the five traditional armed forces and their reserve components, and full-time National Guard duty.
- ◆ Broad pre-emption provisions
- ◆ Expanded definition of “employer”

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### USERRA “Employers”

- ◆ Unlike other federal laws: **All** civilian employers are covered.
  - Title VII: 15 employees
  - FMLA: 50 employees
  - USERRA: 1 employee
- ◆ USERRA includes actual employer, **and**:
  - **every** person or entity to which the actual employer has **delegated** the performance of **any** employment-related function.

38 U.S.C. § 4303(A) 10

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## USERRA "Employers" in Construction Industry

- ◆ Individual Contractor
- ◆ Multi-Contractor Group
- ◆ Local Union Operating Hiring Hall
- ◆ JATC
- ◆ Pension and Benefit Funds



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## USERRA NOTICE



- ◆ **Contractors, Unions, Apprenticeship Committees and Benefit Funds must post the Notice:**
  - In their *offices* for their own *employees*

**Also:**

- Contractors – on the job site
- Local Unions – in the *hiring hall* areas
- JATCs – in the *training hall*
- Funds – in the *Funds' offices for beneficiaries*

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## YOUR RIGHTS UNDER USERRA THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

**USERRA** protects the rights of members and family members of uniformed services who are called to military or naval service. It guarantees the rights of these individuals to the same level of benefits and pay as if they had not been absent.

**MEMBER-EMPLOYER RIGHTS**

The USERRA law is the best benefit law for members of unions. It gives members the right to the same level of benefits and pay as if they had not been absent.

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**USERRA NOTICE** 

- ◆ Download the Notice at:  
[www.dol.gov/vets/programs/userra/poster.htm](http://www.dol.gov/vets/programs/userra/poster.htm)
- ◆ Or Google "USERRA Notice" and click on [www.dol.gov/.../userra/USERRA](http://www.dol.gov/.../userra/USERRA)

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**REEMPLOYMENT ENTITLEMENTS:  
How do Service Members Qualify?**

1. Leave civilian employment *for military service*
2. Give employer advance notice 

*In Construction:*

- Member on out-of-work list when called up is still "leaving employment"
- Encourage apprentice to give **written** notice to contractor, JATC, benefit funds

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**Qualifying for Entitlements**

3. **Absence not to exceed 5 years per employer**

*In Construction:* 

- 5 years applies collectively to all contractors in multi-employer group

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**Qualifying for Entitlements**

**4. Release from service under honorable conditions**

- General Discharge is adequate

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**Qualifying for Entitlements**

**5. Return** 

(a) To same civilian employer;  
(b) within specified time period

(a) In construction, same employer is same:  
\*contractor,  
\*hiring hall, or  
\*JATC

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**5(b) Return within required time period**

Absence of less than 31 days	Promptly – next regular shift after 8 hrs rest
Absence of more than 30, but less than 181, days	14 days after completing service
Absence of more than 180 days	90 days after completing service

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**Qualifying for Entitlements**

**6. Give employer notice that return is from military service**

*In Construction:* 

- ▶ Give **written** notice
  - ▶ To employer, hiring hall or JATC, pension and welfare funds
  - ▶ First re-employer has obligation to notify pension & welfare

*Recommend:* Amend referral slips

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**Notifying the Reemploying Contractor**



☑ This will be my first employment following my return from military service.

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**Entitlements:  
While Still on Leave ....**

**1. Health Benefits**

- Orders < 31 days
  - Employee can elect to continue employer-sponsored health benefits at no additional cost.
- Orders > 30 Days
  - Employee can elect to continue employer-sponsored benefits at own expense for up to **24** months; employer can charge up to 102%.

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Entitlements:  
While Still on Leave ....

2. Any benefit received by any other employee on leave of absence

Examples:  
Production bonus  
Holiday bonus

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Entitlements:  
On Meeting All Eligibility Criteria

3. Prompt reinstatement

4. To the same job and status

5. Credit for continuous accumulation of seniority

\* *the "escalator principle"*

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**"Escalator" principle:**

Cannot suffer any loss of seniority while absent;

Must be treated as if "continually moving on an escalator" during entire absence.

*Fishgold v. Sullivan Drydock & Repair Corp., 328 U.S. 275 (1946).*

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**Post-Service Placement:  
Hiring Halls**

1. Job service member left is **ongoing:**   
\* entitled to same job,  
\* even if another employee is displaced.

2. Job service member left is **over:**  
\* may only be entitled to a spot on out-of-work list.

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**Hiring Halls**   
Where on the Out-of-Work List?

Long term absence: generally at the top

Short term absence: near persons who were working on the last job the veteran had before leaving, and who have not yet been referred to another job

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**JATC:**   
Placement of Returning Apprentices

If a second year apprentice is absent for military service for two years, must she/he be classified as a fourth period apprentice when she/he returns?

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**JATC:** 

Placement of Returning Apprentices

***"A returning veteran cannot claim a promotion that depends solely upon satisfactory completion of a prerequisite period of employment training unless he first works that period."***

*Tilton v. Missouri Pacific Railroad. Co., 376 U.S. 169 (1964)*

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**JATC:**

Placement of Returning Apprentices

***But upon satisfactorily completing that period..., he can insist upon a seniority date reflecting the delay caused by military service."***

*Tilton v. Missouri Pacific Railroad. Co., 376 U.S. 169 (1964)*

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**JATC:**

Placement of Returning Apprentices

1. Employer does not have to credit missed training time;
2. Apprentice still entitled to:
  - \*Pension credit for term of absence;
  - \*Journey status back-dated once apprenticeship completed.

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6. Protection from Termination, Except for Cause

Absence of less than 31 days	No protection
Absence of more than 30, but less than 181, days	Protection for 180 days
Absence of more than 180 days	Protection for one year

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Entitlements (cont.):

7. Retraining

8. Accommodation for disability caused or aggravated by military service

9. Reinstatement of health care benefits

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Entitlements (cont.):

10. Pension Benefits

Escalator principle = no break in service.

Employer contributions must be funded upon employee's return.

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**Multi-Employer Pension Plans:**

**Employer Contributions** 

1. Liability can be allocated as "sponsor maintaining the plan shall provide."
2. If plan is silent, last employer to employ the service member before the military service is liable.
3. If last employer is out of business, the plan itself is responsible for the contributions.

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**Multi-Employer Pension Plans:**

**Notice to Plan of Worker's Return** 

**First employer** to reemploy the service member must notify plan within 30 days of notice of service member's return.

*Recommend:* Union/JATC should also give notice.

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**Pension Liability:**

Another Good Reason to Amend Referral Slips?



✎ This will be my first employment following my return from military service.

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### Pension Benefits

Employee Contributions

- Opportunity to make up missed contributions

Some Loss of Benefit is Permissible

- Employer not required to make contributions until the employee returns;
- Employee may therefore lose some investment income and forfeiture allocations.

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### Pension Benefits Review Question

- ◆ A Plan provides retroactive accrual of pension contributions once a service member:
  - Returns
  - Is discharged under honorable conditions, and
  - Works 300 hours for a contributing contractor w/in one year of return
- ◆ Is this legal?
  - USERRA, 38 USC 4302(b) -- Law/contract cannot be less generous than USERRA
    - *Shea v. Iron Workers District Council of New England Pension Fund*, 2016 WL 39383 (Feb. 1, 2016)

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### USERRA's Protections Against Discrimination

Bars discrimination because of any military service obligation: past, present or future

Protects persons not otherwise covered under USERRA:

- Applicants
- Temporary employees
- Persons in the delayed entry program
- Retired service members

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**USERRA Anti-Discrimination**

**General Rule:**

- Treat each person as if has no military service obligations

**Hiring Halls** 

- Can't honor employer's request not to refer anyone about to be called for active duty
- Can't honor employer's request not to refer veterans

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**Anti-Discrimination** 

**JATC: Apprentice Selection**

If, individual in the selection pool would have received indenture offer - but currently unavailable due to military service:

- JATC must offer a position for that individual to fill upon his or her return.
- *i.e.*, must be allowed to enter next class following return from uniformed service.

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**JATC:**

**Apprentice Selection** 

1. Applicant not entitled to enter class already in progress; can be required to wait until next class begins.
2. No special consideration given for military service for an applicant who was not ranked high enough to be selected in the first place.
3. If applicants are removed from the pool/must reapply after two years, may apply same rule to service-member applicants.

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**SUMMARY:**

1. "Employers" Must Post USERRA Notice (Includes JATCI)
2. Referral/Placement
  - "Escalator Principle" for Hiring Halls
  - Training Exception JATCs
3. Non-Discrimination
  - Apprentice Selection
4. Amend Pension Plan
5. Apprentice should notify **all** in writing – when leaving and when coming back

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**USERRA ENFORCEMENT**

Informal Resolution of Claims:

National Committee for Employer Support of the Guard and Reserve  
(ESGR 1-800-336-4590)

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**USERRA ENFORCEMENT**

Formal Resolution of Claims

- Direct to Federal Court, or
- To Federal Court via the Department of Labor
- Employees of federal and state governments follow different process
- No statute of limitations

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**USERRA RESOURCES**

Employer Support of the Guard and Reserve (ESGR)  
1-800-336-4590;

<http://www.esgr.mil/USERRA>

- FAQs: (1) Employer; (2) Service Members
- Checklists for Service Members: (1) Pre-Mobilization; and (2) De-Mobilization
- On-line request for Information form

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**electrical training**  
IBEW - NECA ALLIANCE

National Training Institute  
July 31/August 1, 2017

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# YOUR RIGHTS UNDER USERRA

## THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

USERRA protects the job rights of individuals who voluntarily or involuntarily leave employment positions to undertake military service or certain types of service in the National Disaster Medical System. USERRA also prohibits employers from discriminating against past and present members of the uniformed services, and applicants to the uniformed services.

### REEMPLOYMENT RIGHTS

You have the right to be reemployed in your civilian job if you leave that job to perform service in the uniformed service and:

- ☆ you ensure that your employer receives advance written or verbal notice of your service;
- ☆ you have five years or less of cumulative service in the uniformed services while with that particular employer;
- ☆ you return to work or apply for reemployment in a timely manner after conclusion of service; and
- ☆ you have not been separated from service with a disqualifying discharge or under other than honorable conditions.

If you are eligible to be reemployed, you must be restored to the job and benefits you would have attained if you had not been absent due to military service or, in some cases, a comparable job.

### RIGHT TO BE FREE FROM DISCRIMINATION AND RETALIATION

If you:

- ☆ are a past or present member of the uniformed service;
- ☆ have applied for membership in the uniformed service; or
- ☆ are obligated to serve in the uniformed service;

then an employer may not deny you:

- ☆ initial employment;
- ☆ reemployment;
- ☆ retention in employment;
- ☆ promotion; or
- ☆ any benefit of employment

because of this status.

In addition, an employer may not retaliate against anyone assisting in the enforcement of USERRA rights, including testifying or making a statement in connection with a proceeding under USERRA, even if that person has no service connection.

### HEALTH INSURANCE PROTECTION

- ☆ If you leave your job to perform military service, you have the right to elect to continue your existing employer-based health plan coverage for you and your dependents for up to 24 months while in the military.
- ☆ Even if you don't elect to continue coverage during your military service, you have the right to be reinstated in your employer's health plan when you are reemployed, generally without any waiting periods or exclusions (e.g., pre-existing condition exclusions) except for service-connected illnesses or injuries.

### ENFORCEMENT

- ☆ The U.S. Department of Labor, Veterans Employment and Training Service (VETS) is authorized to investigate and resolve complaints of USERRA violations.
- ☆ For assistance in filing a complaint, or for any other information on USERRA, contact VETS at **1-866-4-USA-DOL** or visit its website at <http://www.dol.gov/vets>. An interactive online USERRA Advisor can be viewed at <http://www.dol.gov/elaws/userra.htm>.
- ☆ If you file a complaint with VETS and VETS is unable to resolve it, you may request that your case be referred to the Department of Justice or the Office of Special Counsel, as applicable, for representation.
- ☆ You may also bypass the VETS process and bring a civil action against an employer for violations of USERRA.

The rights listed here may vary depending on the circumstances. The text of this notice was prepared by VETS, and may be viewed on the internet at this address: <http://www.dol.gov/vets/programs/userra/poster.htm>. Federal law requires employers to notify employees of their rights under USERRA, and employers may meet this requirement by displaying the text of this notice where they customarily place notices for employees.



U.S. Department of Labor  
1-866-487-2365



U.S. Department of Justice



Office of Special Counsel



1-800-336-4590

Publication Date — April 2017