



**FORT SAM HOUSTON LEGAL ASSISTANCE OFFICE**  
**THE UNIFORMED SERVICES EMPLOYMENT AND**  
**REEMPLOYMENT RIGHTS ACT (USERRA)**

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) is a federal law which gives members and former members of the U.S. armed forces (active and reserves) the right to go back to a civilian job they held before military service.

**Who gets USERRA protection?** You probably qualify for USERRA protection if you meet all five of these tests:

1. **Job.** Did you have a civilian job before you went on active duty? *All jobs are covered, unless your employer can prove the job was truly a temporary position.* USERRA applies to all private employers, state governments, and all branches of the federal government.
2. **Notice.** **YOU (OR A RESPONSIBLE OFFICER FROM YOUR MILITARY UNIT) MUST GIVE ADVANCE NOTICE TO YOUR EMPLOYER BEFORE LEAVING FOR ACTIVE DUTY.** Notice can be oral or in writing, but you can best protect your rights by sending a letter by certified mail, or having your employer sign your copy of your letter, acknowledging receipt. Your legal assistance attorney has a sample letter.
3. **Duration.** You can be gone from your civilian job for up to five years (total). Any absences from your employer protected under the previous law (VRRRA) count towards your total. Most periodic and special Reserve and National Guard training does not count towards your five year total.
4. **Character of service.** If you are discharged, you must receive an honorable or general discharge. This test does not apply if you remain in the reserve component, but your employer can still require some proof from your unit that your period of service was honorable. A letter from your commander will suffice.
5. **Prompt return to work.** If you were gone up to 30 days, you must report back to the first shift which begins after safe travel time from your duty site plus eight hours to rest. If you gone 31 to 180 days, you must apply in writing for work within 14 days after completing military service. If you were gone 181 days or

more, you must apply in writing for work within 90 days. Tell your employer you worked there before, and you left for military service.

**You are entitled to protections both while you are gone and when you return to work.**

1. **Health insurance during service.** If you ask for it, your employer must continue to carry you and your family on the company health plan for up to 30 days of service, at the normal cost to you. *TRICARE does not cover family members for tours of 30 days or less.* You can get up to 18 months of coverage, but your employer can pass on the full cost (*including the company's share*) on to you.
2. **Prompt reinstatement.** You get your job back immediately if you were gone 30 days or less. After longer service, you must get your job back within a few days.
3. **Status and Seniority.** For purposes of status, seniority, and most pension rights (including pay rate) you are treated as if you never left for military service. If your peers got promotions or raises while you were gone, you do too.
4. **Training and other accommodations.** Your employer must train you on new equipment or techniques, refresh your skills, and accommodate any service-connected disability.
5. **Special protection against discharge other than for cause.** If you are fired within a protected period, your employer must prove the firing wasn't because of military service. Your protected period varies with how long you were gone.
6. **Immediate reinstatement of health benefits.** You and your family may chose to go back on the company health plan immediately when you return to your civilian job. There can be no waiting period and no exclusion of pre-existing conditions, other than for VA-determined service-connected conditions.
7. **Antidiscrimination provision.** USERRA prohibits discrimination based on military service or military service obligation.
8. **Other benefits.** USERRA guarantees you certain rights. It does not eliminate any *other* benefits you may have from state law, contract, or collective bargaining agreement.

**Enforcement.** [Websites: <http://www.ncesgr.osd.mil> and <http://www.dol.gov/dol/vets> .]

1. The U.S. Department of Defense National Committee for Employer Support of the Guard and Reserve (NCESGR), (800)336-4590 or (703)696-1400. Email: [ncesgr@osd.pentagon.mil](mailto:ncesgr@osd.pentagon.mil) . NCESGR provides ombudsmen who mediate reemployment issues between military members and their civilian employers.
2. The U.S. Department of Labor Veterans Employment and Training Service (VETS), 1-202-219-9110. The Department of Labor is responsible for resolving and/or investigating reemployment issues.

3. Contact your legal assistance attorney. Remember your military legal assistance attorney may not act as your personal attorney in reemployment disputes.
4. USERRA gives your the right to sue your employer in federal court. See 38 U.S.C. §§ 4301-33. If your lawsuit is successful, you may be able to recover court costs and attorney fees from your employer.

**Sample Employee's Active Duty Return Notification Letter to Employer**

[Employee's Home Address]

[Date]

[Employer's Business Address]\*

\*Send by Certified Mail, Return receipt requested

RE: Application for Reinstatement - Uniformed Services Employment and Reemployment Act, Title 38, U.S. Code Section 4312

Dear Sir/Madam:

On \_\_\_\_\_, 200\_, I entered active duty with the U.S Army. On \_\_\_\_\_, 200\_, I was honorably released from active duty with the service.

Please accept this letter as a formal request to be reinstated in my former job. With your permission, I plan to report to work on \_\_\_\_\_, 200\_. Please call me at the number listed below if this date is not convenient. Pursuant to the Uniformed Services Employment and Reemployment Act, Title 38, U.S. Code Sections 4301-33, I am entitled to be reinstated as soon as possible in my former position.

If you have any questions about the provisions of the Uniformed Services Employment and Reemployment Rights Act, the National Committee for Employer Support of the Guard and Reserve, toll-free telephone number 1-800-336-4590, will be happy to answer them.

Sincerely,

[Signature]

Original Received for Employer by:

\_\_\_\_\_  
[Printed Name and Signature]