



COMPLIANCE @ WORK

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The Uniformed Services Employment and Reemployment Rights Act (USERRA) as applied by the Congressional Accountability Act

Section 206 of the [Congressional Accountability Act \(CAA\)](#) applies certain rights and protections of the [Uniformed Services Employment and Reemployment Rights Act of 1994 \(USERRA\)](#) to legislative branch employing offices and employees and was passed to replace the Veterans' Reemployment Rights Act to be more employee-friendly. USERRA was designed to encourage non-career uniformed service by minimizing the harms to civilian employment which can result from such service.

USERRA generally prohibits discrimination on the basis of military service and protects the employment rights of individuals who leave employment positions to undertake military service. Military service includes the active and reserve Armed Forces, the National Guard, the Public Health Service, and certain types of service in the National Disaster Medical System.

Under the CAA, an applicant to the uniformed services, a past or present member of the uniformed services, or an individual who is obligated to serve in the uniformed services has USERRA rights when working or applying for employment with any legislative branch employing office.

Basic Provisions/Requirements

USERRA's three main areas of protection include anti-discrimination, anti-retaliation, and reemployment rights. USERRA, as applied by the CAA, generally prohibits employing offices from taking any adverse action against any current or prospective employee, due in any part to the individual's past, present, or future military service, status, or obligations. In other words, employing offices cannot refuse to hire an individual, terminate, or otherwise deny an employee promotions or any other benefit of employment because of their military service. In addition, if a current employee with no prior military connection elects to enlist in the armed forces, the employing office would likewise be prohibited from taking any adverse action against that employee. USERRA also prohibits employing offices from taking adverse actions against any employee – regardless of their lack of military affiliation – for either asserting or helping another individual assert their rights under the statute.



To be eligible for reemployment rights under USERRA, the employee must meet the following five criteria:

1. be absent from civilian employment due to covered military service;
2. provide advance notice to the employing office;
3. limit military service with the employing office to five years cumulatively;
4. submit a timely application for reemployment; and
5. be without a disqualifying discharge.

This reemployment requirement provides that returning servicemembers are to be reemployed in the job that they would have attained with the same seniority, status, and pay had they not been absent for military service.

USERRA Discrimination

In 2011, the Supreme Court heard its first USERRA discrimination case. *Staub v. Proctor Hosp.*, 562 U.S. 411 (2011). The plaintiff was a hospital technician whose immediate supervisors said that his “military duty had been a strain on th[e] department” and conspired to “get rid of him.” Those supervisors issued him a corrective action for allegedly violating a hospital rule, and he was ultimately terminated by a more senior manager for leaving his work station without permission as required by the corrective action. Staub sued the hospital under USERRA and was awarded significant damages after the jury found that his military service was a motivating factor in his termination based upon the anti-military sentiments expressed by his immediate supervisors even though there was no evidence that the manager who terminated him had such animus.¹

Health Insurance Protection

USERRA’s health insurance provisions are very similar to those found in COBRA. Upon leaving a position with an employing office to perform military service, an eligible employee can choose to continue existing employer-based health plan coverage for up to 24 months while serving in the uniformed service. An eligible employee who discontinues the employer-based health plan coverage while serving in the uniformed service still has the right to be reinstated into that health plan upon returning to employment with the employing office, generally without any waiting periods or exclusions except for service-connected illnesses or injuries.

Enforcement

The CAA requires that a request for counseling be brought to the OOC within 180 days of an alleged USERRA violation. After the required period of counseling and mediation, an eligible employee may file an administrative complaint with the OOC or proceed with a civil action in district court. Relief for USERRA violations may include: compliance with USERRA; compensation for loss of wages or benefits; liquidated damages, if the violation was willful; or other remedies available under the CAA.

The Board of Directors of the OOC has adopted, for Congress’ approval, the USERRA regulations specifically tailored to the congressional workforce. While approval is pending, the Department of Labor’s USERRA regulations apply to cover legislative branch employees.

For more information on the Office of Compliance or the Congressional Accountability Act please call us at (202) 724-9250 or visit www.compliance.gov. All inquiries are strictly confidential.

¹ The Court held that if a supervisor performs an act motivated by antimilitary animus that is intended by the supervisor to cause an adverse employment action and that act is a proximate cause of the ultimate employment action, then the employer is liable.