

The background of the slide is a stylized American flag. The stars are bright and glowing, and the stripes are wavy and layered, creating a sense of depth and movement. The colors are vibrant, with a deep blue for the field of stars and a rich red for the stripes.

**USERRA**

**Uniformed Services  
Employment and  
Reemployment Rights  
Act**

# USERRA'S PURPOSES

“The purposes of this chapter are:

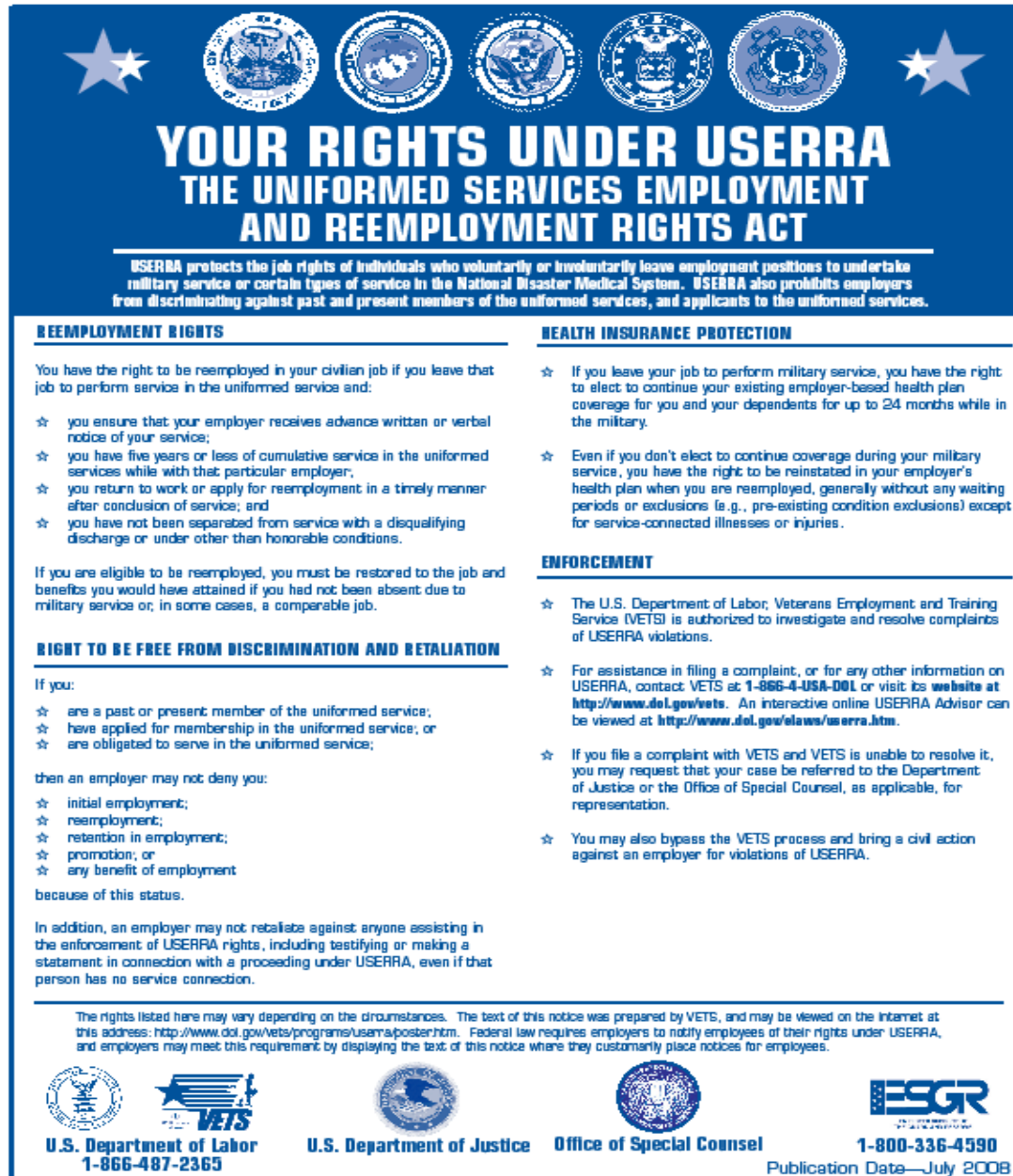
- (1) to encourage noncareer service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment which can result from such service;
- (2) to minimize the disruption to the lives of persons performing service in the uniformed services as well as to their employers, their fellow employees, and their communities, by providing for the prompt reemployment of such persons upon their completion of such service; and
- (3) to prohibit discrimination against persons because of their service in the uniformed services.”

See, 38 USC § 4301.

# USERRA Poster

Reemployment Rights

Right to be Free from Discrimination and Retaliation



**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-DO1 or visit its website at <http://www.dol.gov/vets>. An interactive online USERRA Advisor can be viewed at <http://www.dol.gov/eisaws/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  
1-866-487-2363

U.S. Department of Justice  
Office of Special Counsel

1-800-336-4590  
Publication Date—July 2008

Health Insurance Protection

Enforcement

# USERRA NON-DISCRIMINATION

- It applies almost universally to all employers-including the federal government-regardless of the size of their business
- A person who is a member of, applies to be a member of, has performed, applies to perform, or has an obligation to perform service in a uniformed service shall not be denied initial employment, reemployment, retention in employment, promotion, or any employment benefit by an employer.
- An employer shall be considered to have engaged in an act of discrimination if an individual's membership, application for membership, service, application for service, or obligation for service in the uniformed services is a motivating factor in the employer's action, **unless the employer can prove** that the action would have been taken in the absence of such membership, application for membership, performance of service, application for service or obligation.

# USERRA REEMPLOYMENT PREREQUISITES

If a military member leaves his civilian job for (voluntary or involuntary) service in the uniformed services, he is entitled to return to the job, with accrued seniority, provided he meet the law's eligibility criteria.

- The employee must have held a civilian job prior to service.
- The employee must have given prior notice of military service to the civilian employer.
- The employee's period of military service cannot exceed five (5) years.
- The employee's service must have been under honorable conditions.
- Employee must report back to work or apply for reemployment in a timely manner following military service.
- Reapplication only requires the employee to indicate that he formerly worked for employer, that he is returning from military service, and that he requests reemployment pursuant to USERRA. This request does not need to be in writing.

# USERRA REEMPLOYMENT ESCALATOR/SENIORITY

- **Prompt Reinstatement Period.** If the employee was gone for 30 or fewer days, the employee must be reinstated immediately. If the employee was gone for 31 or more days, the reinstatement should take place within a matter of days.
- **Seniority.** If the employer has a system of seniority, the employee must return to that system as if he or she had never left the employer's service.
- **Status.** The employee may object to the proffered reemployment position if it does not have the same status as his previous position.

# USERRA REEMPLOYMENT RETRAINING

- An Employer must make reasonable efforts to requalify the Employee for his job. **(IACP - Employing Returning Combat Veterans as Police Officers: Supporting the Integration or Re-Integration of Military Personnel into Federal, State, Local, and Tribal Law Enforcement)**
- Employer Must Offer Approximate Position and Pay When the old Position has become Something New
- Employer Must Offer Approximate Position and Pay When Employee cannot re-qualify for old Position due to Disability suffered during service

# USERRA HEALTH AND BENEFITS PROTECTIONS

- **Health Insurance**. The employee must be reinstated in the employer's health plan immediately upon return to the civilian job. The employer may not impose a waiting period or pre-existing exclusions except for service-connected injuries.
- **ERISA Pension Benefits**. A person reemployed shall be treated as not having incurred a break in service with the employer. Each period served by a person in the uniformed services shall, upon reemployment be deemed to constitute service with the employer for the purpose of determining the nonforfeitability of the person's accrued benefits and for the purpose of determining the accrual of benefits under the plan. An employer reemploying a person shall be liable to an employee pension benefit plan for funding any obligation of the plan to provide benefits and shall allocate the amount of any employer contribution for the person in the same manner and to the same extent the allocation occurs for other employees during the period of service.
- **Other Non-Seniority Benefits**. If the employer offers other benefits, not based upon seniority, the employer must make those benefits available to the employee on military service during such service. These benefits include items such as low-cost life insurance, Christmas bonus, holiday pay, etc.
- **Special Protection Against Discharge**. Depending upon the length of service, there are certain periods of post-service employment where, if the employee is discharged, the employer will have a heavy burden of proof to show discharge **for cause**. For service of 181 days or more, the protection lasts for a year. For service of 31 days to 180 days, the protection lasts for 180 days.

# USERRA ENFORCEMENT

- A person may commence an action for relief with respect to a complaint against a State (as an employer) or a private employer
  - In any action under this section, The court may require the employer to comply with the provisions of this chapter;
  - The court may require the employer to compensate the person for any loss of wages or benefits suffered by reason of such employer's failure to comply with the provisions of this chapter; and
  - The court may require the employer to pay the person an amount equal to the loss of wages or benefits amount as liquidated damages, if the court determines that the employer's failure to comply with the provisions of this chapter was willful.
  - No fees or court costs may be charged or taxed against any person claiming rights under this chapter.
  - In any action or proceeding to enforce a provision of this chapter by a person who obtained private counsel for such action or proceeding, the court may award any such person who prevails in such action or proceeding reasonable attorney fees, expert witness fees, and other litigation expenses.
- Inapplicability of State Statute of Limitations. No State statute of limitations shall apply to any proceeding under USERRA.