

What Soldiers Need To Know about USERRA Part III

Monday, May 9, 2011

A. Overview of Part I:

- *Notice To Employers* – You have an obligation under the law to provide advance written or verbal notice to your employers for all military duty (exceptions apply).
- *Important Time Considerations* – You must adhere to strict time lines when applying for reemployment or reporting back to your civilian job (based on the time you spent on duty).

B. Overview of Part II:

- *What Circumstances May Disqualify You From Asserting USERRA?* - 1) Dishonorable and/or bad conduct discharge; 2) “Other than honorable” discharge (each branch of the military has **specific rules** governing this type of discharge); 3) Dismissal of a commissioned officer via court martial or a Presidential order in time of war (**see 10 U.S.C. 1161(a)**); and 4) Dropped from the rolls by the President for being absent without authority for more than three (3) months or imprisonment by a civilian court (**see 10 U.S.C. 1161(b)**).
- *Documentation Upon Return* - 1) Your timely application for reemployment; 2) You have not exceeded the five (5) year service limitation; and 3) Your separation from service was other than disqualifying (**see 38 U.S.C. 4304**).

C. Part III:

Although you're re-employment should be safe and secure if you follow the rules, your employer does have defenses to rehiring you. The defenses your employer may utilize are called affirmative defenses. This means that the employer has the burden of proving them by a preponderance of the evidence (i.e. anything over 50%). Two affirmative defenses your employer may utilize are:

1. **Changed Circumstances:** Re-employment may be excused if the employer's circumstances have changed so that re-employment of the service member would be impossible or unreasonable. An example of this scenario would be a reduction-in-force that would have included the service member.
2. **Undue Hardship:** Employers are excused for making any effort to qualify the returning service member or from accommodating individuals with service-related disabilities only when doing so would be of such difficulty or expense as to cause "undue hardship" on the employer.

If you have any questions or concerns about your re-employment or lack thereof you will find information and technical assistance provided by the Veteran's Employment and Training Service (VETS) of the Department of Labor (see **VETS**). VETS investigates complaints and attempts to resolve them. Filing of complaints with VETS is entirely optional. You may therefore freely choose to pursue a claim with private counsel.