

What Soldiers Need To Know about USERRA Part II

Sunday, March 13, 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. What Circumstances May Disqualify You from Asserting USERRA?

There are four (4) circumstances that would disqualify you from asserting your rights under USERRA. You should commit these to memory to avoid any unforeseen disqualifying situations. They are as follows:

- 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\(b\)](#)). Losing your right to assert USERRA upon returning to civilian life can have a devastating effect on the rest of your life and that of your family. Therefore, as a servicemember, you should be well aware of these possibilities before and during your service.

C. Documentation Upon Return

Under [USERRA](#), your employer has rights also. You would be misinformed if you believed USERRA protects you and only you. For example, if an employee has been absent for a period of service longer than thirty-one (31) days an employer has the right to request documentation showing:

- 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](#)).

Furthermore, if this documentation does not comply with USERRA because it is not readily available or simply does not exist, your employer **MUST** reemploy you. However, if you have been reemployed and this documentation later becomes available showing you have violated the requirements, your employer may terminate you. If you happen to be terminated, any benefits you may have been granted will also come to an end.

As you can see, you have an impressive amount of responsibility when it comes to asserting your rights under USERRA. It is imperative that you learn and understand this statute and its procedures.

Stay tuned for Part III:

- A. Your Position Upon Reemployment
- B. Disabilities Incurred or Aggravated While In Service
- C. Employer’s Defenses to Reemployment