

Uniformed Services Employment and Reemployment Rights Act (USERRA)

USERRA protects certain employment and benefit rights for those serving in the “uniformed services” (Army, Navy, Air Force, Marine Corps, and Coast Guard) and the National Guard.

Covered Employers

- Nearly all U.S. employers, regardless of size, including the Federal Government.

Eligible Employees

- All employees, including part-time and probationary.
- Applies specifically to persons serving in the uniformed services voluntarily or involuntarily.
- Employee must not have been released from service under dishonorable or other punitive conditions.

Employer Requirements

- Treat individuals that are members of the uniformed services no less favorably than other individuals.
- Reemploy individuals that are absent from a position of employment for reasons of service in the uniformed services.
- Restore seniority and other rights and benefits determined by seniority that the person had on the date of the commencement of service.
- Provide any additional seniority rights and benefits that such person would have attained if the person had remained continuously employed.

Health Benefits

- Plan must permit the employee to continue coverage during military leave, including coverage for dependents if the plan offers dependent coverage.
- Employee may continue coverage for the lesser of:
 - 24 months beginning on the date of military leave, or
 - The period beginning on the date of the military leave and ending on the date the employee fails to return from service or apply for reemployment.

- **Premiums:** Amount of premium will depend on length of military service.
 - *Less than 31 days:* Employer may not charge a premium higher than what is paid by a regular employee.
 - *31 days or more:* Premium can be up to 102% of the full premium under the plan (similar to COBRA).
- **Termination of Health Benefits**
 - Plan administrator may adopt reasonable rules allowing cancellation of coverage if timely payment is not made.
 - Employer may terminate coverage when employee departs for uniformed service if:
 - The employee does not provide advance notice of service and does not elect to continue coverage during leave.
 - Advance notice was impossible, unreasonable or precluded by military necessity, plan must retroactively reinstate coverage if employee later elects coverage and pays all amounts due.
 - No election is made, but must retroactively reinstate coverage if the employee later elects within the timeframes established by the plan and pays all amounts due.
- **Reinstatement of Health Benefits**
 - Employer may not impose any exclusions or waiting period in connection with reinstatement of coverage upon reemployment.
 - Employer may, but not required to, allow an employee to choose a delayed reinstatement of coverage until a date that is later than the employee's reemployment date.
- **Section 125 Cafeteria Plans**
 - Employers will not be deemed out of compliance with Section 125 rules because of compliance with USERRA or its regulations.
 - Cafeteria plan rules will not be violated if a plan provides for a new election either upon an employee's leaving for or subsequent return from military service.