

Military Leave Proposed New Rules Effective - Pending

The Uniformed Services Employment and Reemployment Rights Act (USERRA) is considering some revisions to this law. USERRA applies to all employers – regardless of size. USERRA forbids employers from refusing to hire or promote an employee on the basis of the employee's military obligations. Employees generally must give written or oral notice to employers before taking military leave, but need not obtain an employer's permission

The following are proposed revisions to the law:

1. All employees are protected, including "exempt" employees, as well as temporary, part-time, probationary, and seasonal employees. However, independent contractors are not protected.
2. The "escalator principle" (the idea that employees continue to accrue job seniority during military leave) may go either "up" or "down." Thus, an employee returning from military leave may be entitled to a better position (e.g., due to a general increase in pay or benefits, or a scheduled promotion) or a worse position (e.g., due to a layoff or a general reduction in pay or benefits).
3. Employees in the National Guard are protected by USERRA while performing federal duties, but service performed under state laws is not protected by USERRA (although similar state laws may apply).
4. Employees may take time off before beginning their official duties to rest, travel, or prepare their affairs.
5. An employer must promptly reemploy workers returning from military leave. "Absent unusual circumstances, ... reemployment must occur within two weeks of [the employee's] application."

USERRA has no statute of limitations, and employees may collect attorney fees and litigation expenses if they must sue their employer to enforce their rights

View more information about these proposed changes in the law
<http://www.dol.gov/vets/regs/fedreg/proposed/2004020844.pdf>