



# LEGAL ASSISTANCE PRACTICE ADVISORY

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## **Subj: USERRA DOES NOT PERMIT AN EMPLOYER TO DELAY OR DENY REEMPLOYMENT TO UNIFORMED MEMBERS LACKING BENEFITS ELIGIBILITY DOCUMENTATION**

The Uniformed Services Employment and Reemployment Rights Act (USERRA) requires employers re-employ individuals in their civilian jobs after military service.

### **How long does a Service Member have to apply for re-employment?**

The period a Service Member has to make application for reemployment or report back to work after military service is based on the length of military duty.

For service of less than 31 days, the Service Member must return to their civilian employment at the beginning of the next regularly scheduled work period on the first full day after release from service. For service of more than 30 days but less than 181 days, the Service Member must submit an application for reemployment within 14 days of release from service. For service of more than 180 days, a Service Member must submit an application for reemployment within 90 days of release from service. 38 U.S.C. § 4312(e).

It is important to note that a Service Member does not have to wait 90 days or even 14 days to apply for re-employment. A Service Member can apply for re-employment immediately after being released from military service.

### **Is there a specific application format to request re-employment?**

No. An application for reemployment does not have to follow a specific format. According to Department of Labor regulations, the employee may apply orally or in writing. The application should indicate that the Service Member is a former employee returning from service with the uniformed services and seeking reemployment with their pre-service employer. 20 CFR § 1002.18

### **Is there any documentation required for re-employment?**

Necessary documentation to establish eligibility for reemployment can vary from case to case. Upon the request of an employer, a Service Member is required to provide documentation that shows that 1) the application for reemployment is timely, 2) the service limitations have not been exceeded, and 3) the Service Member's USERRA entitlements have not been terminated. 38 U.S.C. § 4312(f)(1). The most common document requested is a copy of the Service Member's DD-214, Certificate of Release or Discharge from Active Duty.

**Can an employer deny reemployment to a Service Member who lacks a DD-214 or any other document that proves USERRA benefits eligibility?**

No. An employer cannot delay or deny an application for reemployment by demanding documentation that does not exist or is not readily available. 38 U.S.C. § 4312(f)(3).

If after reemployment, documentation becomes available that shows that the Service Member was not entitled to USERRA benefits, the employer may terminate the employment of the Service Member.

**Is USERRA applicable to all employers?**

Yes, USERRA does not have any threshold for applicability. Any employer with at least one employee is covered under this statute. *See Cole v. Swint*, 961 F.2d 58, 60 (5<sup>th</sup> Cir. 1992).

For any questions regarding these matters, please contact the Legal Assistance POCs using the contact information in the sidebar.