

Prepared by: Benefits & Entitlements and Staffing & Development Branches,
Updated February 2006

For Additional Information: (703) 696-6301 or DSN 426-6301
FAX: (703) 696-4705 or DSN 426-4705

**Uniformed Services Employment and
Reemployment Rights Act
(USERRA) of 1994
Frequently Asked Questions**

Defense Civilian Personnel Management Service
Field Advisory Services Division
1400 Key Boulevard, Suite B-200
Arlington, VA 22209-5144

Q1. What is USERRA?

A1. USERRA stands for the Uniformed Services Employment and Reemployment Rights Act of 1994. The Act prohibits employment discrimination against persons because of their service in the Armed Forces Reserve, the National Guard, or other uniformed services, and protects the right of veterans, reservists, National Guard members, and certain other members of the uniformed services to reclaim their civilian employment after being absent due to military service or training.

Q2. Where can I find the USERRA regulations?

A2. USERRA is codified in the United States Code (U.S.C.) at Title 38, United States Code, at chapter 43 (Sections 4301 through 4333). Implementing regulations are contained in Title 5 of the Code of Federal Regulation, Part 353, Restoration to Duty from Uniformed Service or Compensable Injury. The Department of Labor has also posted the final USERRA regulations in “plain language,” question and answer format at <http://www.dol.gov/vets/regs/fedreg/final/2005023961.htm>.

Q3. Who is eligible for reemployment rights under USERRA?

A3. Civilian employees returning from uniformed service are eligible for reemployment if:

- they gave written or verbal notice prior to leaving for military training or service (except when giving notice was precluded by military necessity)(see Q&A 7);
- their cumulative service did not exceed 5 years (see Q&A 13);
- they were released from service under conditions other than dishonorable (see Q&A 12); and
- they report back to their civilian job in a timely manner, or submit a timely application for reemployment (see Q&A 14).

Q4. Do USERRA reemployment rights apply to voluntary military service?

A4. Yes, USERRA applies to voluntary as well as involuntary military service.

Q5. Do temporary and term employees have reemployment rights under USERRA?

A5. An employee on a time-limited appointment is entitled to finish out any unexpired portion of his or her appointment upon reemployment. The military activation period does not extend the civilian appointment. (5 CFR 353.207 & 209)

Q6. What is the status of an employee while absent for military service? What personnel action should I take?

A6. Unless the employee notifies you *in writing* that he or she does not intend to return after military service, you should place the employee on LWOP-US.

Q7. Do I need to have written documentation of the employee's enlistment or call to active duty to process a LWOP-US? Do I need anything such as an enlistment contract or is the employee's word sufficient that they are entering military service?

A7. While it is appropriate to ask for a copy of the employee's orders, the employee's word must be accepted, if that is all they can provide (5 CFR 353.102). Written documentation of service will be required before restoration (see Q&A 10, below).

Q8. How do I process personnel actions for an employee on LWOP-US?

A8. Any time a personnel action would normally be due, an SF-52 should be completed and filed on the right side of the OPF. Chapter 16 of the Guide to Processing Personnel Actions discusses the necessary actions to take to restore an individual to duty status. Table 16-B, Rule 7, explains how to process the restoration action and other actions that would have occurred while the individual was performing duty with the uniformed services.

Q9. While on LWOP-US, an employee applied and was selected for promotion. What effective date should I use for the promotion action?

A9. When the individual is restored, you would process the promotion action with the same effective that would have been used had the employee never left for uniformed service.

Q10. How are employees on LWOP-US treated during a reduction in force?

A10. An employee on military duty is not a competing employee for reduction in force. He or she may not be separated or demoted except for cause. If the employee's position is abolished during his or her absence, you must reassign the employee to another position of like status and pay (5 CFR 353.209).

Q11. When an employee asks for restoration, should I ask for proof that military duty was actually performed?

A11. Yes. In general, the following documents have been determined by the Secretary of Labor to satisfy proof of eligibility for reemployment: discharge papers, leave and earnings statements, school completion certificate, endorsed orders, or a letter from a proper military authority. Reemployment may not be delayed, however, if such documentation does not exist or is not readily available (5 CFR 353.206).

Q12. Is an employee whose discharge is characterized as “under other than honorable conditions” entitled to USERRA benefits and protections?

A12. USERRA protections do not extend to service members separated under other than honorable conditions, separated with dishonorable or bad conduct discharges, or commissioned officers dismissed or dropped from the rolls under 10 U.S.C. 1161 (a) & (b) (38 U.S.C. 4304 (1) to (4)).

Q13. Five years ago last month, an employee resigned to enlist in the military. He has just been discharged and has notified us that he wants to return to work. Hasn't his eligibility for reemployment expired?

A13. If all of his service counts towards the 5-year limit, then his eligibility has expired. However, certain types of service are excluded from the limit. You will need to subtract any periods of excluded service from the employee's total service to determine whether he is still eligible for reemployment. Exceptions to the 5-year limit can be found at 5 CFR 353.203(a).

Q14. What is considered a timely return to work – are employees required to report back to work within certain timeframes?

A14. Generally, yes. The timeframes depend on the length of service and can be found in 5 CFR 353.205. After service of 181 days or more, the employee must submit an application for reemployment not later than 90 days after completion of the period of service. However, if reporting back within the deadline is impossible or unreasonable through no fault of the employee, he or she must report back as soon as possible. An employee who has been hospitalized or convalescent from a service-connected injury is allowed up to two years recovery time before reporting to duty.

Q15. Our employee did not report to work after discharge from military service within the timeframe established by USERRA. Has he forfeited his right to reemployment?

A15. If the required timeframes are not met, the employee does not automatically forfeit his right to reemployment, but is subject to your established disciplinary policies and practices regarding absence from scheduled work. (5 CFR 353.205(e)).

Q16. When an employee is returning from a military deployment of more than 180 days, do they have to notify us in writing prior to their ending date of their military orders that they plan to exercise the 90-day return rule?

A16. No, the employee does not have to advise the agency of his/her intent to exercise their restoration rights prior to the ending date of their military duty. Although the employee should notify his/her supervisor of his or her

plans to return as soon as possible, 5 CFR 353.205(c) provides 90 days for the employee to apply for reemployment.

Q17. I have a Defense Career Intern Program (DCIP) employee who plans on joining the reserves this summer and attending basic training and Officer's Candidate School. He estimates that it will take six months to complete. We understand that he will have restoration rights under USERRA. However, if he is gone for 6 months or more, it is very unlikely that he will be able to complete the training program in time to be converted as if he never left. Can we extend his DCIP appointment?

A17. Individuals may only hold a Federal Career Intern Program (FCIP/DCIP) appointment for 2 years. Extensions must be granted by OPM (5 CFR 213.3202(o)(2)). USERRA provides that individuals absent to perform uniformed service are generally entitled, upon restoration, to be treated as though they never left (5 CFR 353.107). Additionally, employees are entitled to be restored only for the unexpired portion of their time-limited appointment (5 CFR 353.207(b)). If your DCIP program has very specific training requirements that the employee will miss and you are interested in allowing him to complete the program and training to be eligible for conversion, you will need to request an extension (through CPMS) to cover the time he will be absent to perform uniformed service.

Q18. Where can I find more information about USERRA?

A18. The Department of Labor 's USERRA Advisor website, at <http://www.dol.gov/elaws/userra.htm>, provides information about employee eligibility and job entitlements, employer obligations, benefits and remedies under USERRA. Information on military service and Federal benefits is posted to the CPMS website at http://www.cpms.osd.mil/fas/benefits/pdf/mil_svc_eh.pdf; information on USERRA begins about halfway down the page.

AN OVERVIEW OF BENEFITS UNDER USERRA

Civilian Federal employees who are members of the Uniformed Services and who are called to active duty military service (or volunteer for active duty) may be entitled to the following rights and benefits:

Q1. While in LWOP-US to perform military service, will employees receive pay from their civilian employing agency?

A1. While in LWOP status, employees performing active military duty will receive compensation from the Armed Forces in accordance with the terms and conditions of their military enlistment or appointment. They will not receive any compensation from their civilian employing agency unless they elect to use available military leave or annual leave.

Q2. When employees enter active military duty, what will happen to their accumulated annual leave?

A2. Employees who enter into active military duty may choose (1) to have their annual leave remain to their credit until they return from active duty, or (2) receive a lump-sum payment for all accrued and accumulated annual leave. There is no requirement to separate to receive a lump-sum leave payment.

Q3. What are the provisions for an employee's health benefits coverage?

A3. Public Law 108-454 amended 38 U.S.C. 4317(a)(1)(A) to allow employees who are covered by the Federal Employees Health Benefits (FEHB) Program and are called to active duty, to continue their health benefits enrollment for a total of 24 months (as of December 10, 2004; prior to that it was 18 months). When the employee's military service is not in support of a contingency operation and he/she elects to continue FEHB coverage, the employee pays his/her share of the premiums and the Agency is responsible for paying the government share for the first 12 months of coverage. Thereafter, the employee pays 102% of the full premium for the last 12 months. After the 24-month period, the employee is not entitled to Temporary Continuation of Coverage.

P.L. 108-375 amended 5 U.S.C. 8905a and 5 U.S.C. 8906(e)(3) to allow Agencies to pay both the employee's share and the government share of the FEHB premium for up to 24 months for employees called or ordered to active duty in support of a contingency operation, on or after September 14, 2001, if all five of the following requirements are met: 1) the employee is enrolled in the FEHB program and elects to continue that enrollment; 2) the employee is a member of a reserve component of the armed forces; 3) the

employee is called or ordered to active duty in support of a contingency operation (as defined in section 101(a)(13) of title 10 U.S.C.; 4) the employee is placed on LWOP or separated from service to perform active duty; and 5) the employee serves on active duty for more than 30 consecutive days.

Q4. What are the provisions for life insurance coverage?

A4. An employee covered by the Federal Employees' Group Life Insurance (FEGLI) who is placed in LWOP or who separates to perform military service, will continue to be covered under the basic and all forms of optional coverage for up to 12 months at no cost. After 12 months, the coverage is terminated and the employee has a 31-day temporary extension of coverage for conversion to a non-group policy.

Q5. Do employees retain their retirement benefits under USERRA?

A5. An employee placed in LWOP continues to be covered by the retirement laws. The period of military service is creditable subject to the normal rules for crediting military service (see section below on National Guard service). Death benefits will be paid as if he or she were still in the civilian position. If the employee becomes disabled for his or her civilian position during the LWOP and has the minimum amount of civilian service necessary for title to disability benefits (5 years for Civil Service Retirement System (CSRS), 18 months for Federal Employees Retirement System (FERS)), the employee will become entitled to disability benefits under the retirement law. Upon eventual retirement from civilian service, the period of military service is creditable under either CSRS or FERS, subject to the rules for crediting military service. In some cases it will be necessary to make a military deposit for the period of military service in order for that period to be credited towards retirement eligibility and annuity computation.

If an employee separates to enter active military duty, he or she generally will receive retirement credit for the period of separation when the employee exercises restoration rights to his or her civilian position. If the separated employee does not exercise the restoration right, but later re-enters Federal civilian service, the military service may be credited under the retirement system, subject to the normal rules governing credit for military service.

Q6. Is National Guard service creditable?

A6. Service in the National Guard, except when ordered to active duty in the service of the United States (under title 10 USC), is generally not creditable. However, an employee may receive credit for non-Federal National Guard service (under title 32 USC), followed by Federal civilian reemployment that occurs after August 1, 1990, when all of the following conditions are met. The service must interrupt civilian service creditable under the Civil Service

Retirement System (CSRS) or Federal Employees Retirement System (FERS). It must be full-time, active duty, and you must be entitled to pay from the U.S. (or have waived pay from the U.S.) for the service.

Q7. What are the provisions for using military leave?

A7. Under 5 U.S.C. 6323(a), an eligible full-time employee accrues 15 calendar days of military leave each fiscal year. Employees who elect to use their 15 days of military leave will receive full compensation from their civilian position for each workday charged to military leave, in addition to their military pay for the same period. Any unused military leave remaining at the end of the year, limited to 15 calendar days, is carried forward for use in addition to the 15 days credited at the beginning of the new fiscal year.

Under 5 USC 6323(b), an employee who is a member of a Reserve Component or the National Guard is called to active duty in support of a contingency operation, on and after October 23, 2003, is entitled to 22 days of military leave per calendar year. However, military leave under 6323(b) is subject to the provisions of 5 USC 5519, which provides that military pay received for service for days on which civilian pay is also received, must be offset.

Q8. Are employees entitled to use their accrued annual and sick leave?

A8. Employees who perform active military duty may request the use of accrued and accumulated annual leave to their credit. Requests for sick leave may be granted if appropriate under the normal requirements for such leave. Employees who use annual leave or sick leave will receive full compensation from their civilian position for all hours charged to annual or sick leave in addition to their military pay for the same period. Employees do not earn annual or sick leave while in an extended non-pay status.

Q9. Are post-56 military service deposits computed any differently under USERRA?

A9. Prior to USERRA, service credit deposits were based on a set percentage (7% for CSRS and 3% for FERS) of the amount of military base pay, plus interest. The rules for charging interest have not changed. The law now states that in any case where military service interrupts creditable civilian service and reemployment pursuant to chapter 43 of title 38 occurs on or after Aug 1, 1990, the deposit payable may not exceed the amount that would have been deducted and withheld from basic pay during civilian service if the employee had not performed the period of military service. In computing the amount of the military deposit, the agency must make two calculations (1) 3% or 7% of the military base pay, for FERS and CSRS respectively, and (2) an alternative calculation of what the CSRS or FERS employee contributions

would have been for the civilian service had the individual not entered into the military. The employee's deposit is the lesser of the two. Employees should carefully review military deposit estimates provided by the personnel office. Interest begins to accrue yearly subsequent to a 2 year interest-free grace period. Employees can eliminate the additional interest cost of such a deposit by making the deposit during the interest free grace period

Q10. What are the provisions for an employee's Thrift Savings Plan (TSP) under USERRA?

A10. For the purposes of the Thrift Savings Plan (TSP), no contributions can be made, either by the agency or the employee, for any time in a LWOP status or for the period of separation. However, if the employee is subsequently reemployed in, or restored to a position covered by FERS or CSRS pursuant to 38 U.S.C. chapter 43, they may make up missed contributions. FERS employees are entitled to receive retroactive Agency Automatic 1% Contributions and, retroactive employee contributions would be subject to applicable Agency Matching Contributions. An agency must give an employee at least two (not to exceed four) times the length of his/her military service to make up the contributions. The employee is allowed to contribute the maximum amount he/she would have been allowed to contribute, subject to statutory maximums. All TSP contributions must be through payroll deductions. Lump sum payments or rollovers are not permitted.