

Military Leave Under USERRA: Know Your Obligations

AS THE GLOBAL WAR ON TERRORISM CONTINUES, MANY CONTRACTORS AND OTHER EMPLOYERS find themselves grappling with the issues associated with the employment of service men and women, including members of the National Guard and the Reserves.

The Uniformed Services Employment and Reemployment Rights Act (USERRA) gives members of the armed services military leave and other rights designed to ensure that they are not penalized with respect to work and career opportunity. It is critical for employers to understand their USERRA obligations. This federal statute is complex, and even well-intentioned employers can get tripped up. Here are a few key concepts:

- USERRA applies to virtually all employers—there is no “minimum employee” threshold.
- The statute makes an impact on every aspect of the employee relationship, including hiring, retention, promotion, reemployment, and benefits. Discrimination against employees and job applicants based on past, present, or expected future participation in the military is prohibited.
- USERRA’s protections are triggered at the initial hiring stage. For instance, an employer cannot refuse to hire an applicant because of a concern that he will regularly miss work to fulfill his National Guard obligations.
- Under USERRA, employers are expected to bear certain burdens to accommodate the absence of an employee on military leave. This could include paying overtime to other

employees to cover the employee’s workload or hiring a temporary replacement.

- Military leave under USERRA is unpaid. However, the employers can be more generous if they choose.
- An employee on military leave is entitled to the same benefits provided to employees on comparable leaves of absence. For example, if employees on non-military leave continue to accrue vacation time, that same benefit must be provided to an employee on military leave.
- An employee is entitled to elect to continue his health insurance while on military leave, for a period of up to 24 months. USERRA provides guidance concerning who must pay the premiums, depending on the length of the employee’s leave.
- As a general rule, once an employee finishes his military duty, he is entitled to be reinstated to his prior position. USERRA contains rules governing how long employees have to report back to work.
- Upon returning to work, an employee cannot be discharged except “for cause” for a period of time that varies depending on the length of the employee’s military duty.
- Employers are required to notify their employees of their USERRA rights by posting appropriate notices.



F. Keith Covington

Keith Covington is a partner in the Birmingham office of Bradley Arant Boult Cummings LLP, where he practices in the areas of labor and employment and construction law. His work includes advising contractors and other employers on OSHA compliance, union avoidance, labor relations, immigration matters, and equal employment opportunity issues. Covington regularly litigates in both state and federal courts and handles matters before the National Labor Relations Board. He has been active in ABC for over 15 years. Covington holds a B.S. degree in mechanical engineering from Auburn University and a J.D. degree from the University of Alabama School of Law.



ALABAMA OFFICES:

BIRMINGHAM
One Federal Place
1819 Fifth Ave North
Birmingham, AL 35203-2119
T: 205.521.8000 F: 205.521.8800

HUNTSVILLE
200 Clinton Ave West Suite 900
Huntsville, AL 35801-4900
T: 256.517.5100 F: 256.517.5200

MONTGOMERY
Alabama Center for Commerce
401 Adams Ave Suite 780
Montgomery, AL 36104
T: 334.956.7700 F: 334.956.7701

babc.com