

## Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) and The Veterans Benefits Improvement Act of 2004 (VBIA)

USERRA imposes obligations on all public and private employers in the United States regardless of their size. There is no "small employer" exception as with COBRA. USERRA establishes certain reemployment and benefits rights for employees who experience an absence from work due to "service in the uniformed services". This includes active or reserve duty, whether voluntary or involuntary. These rights include:

- the right to continue coverage under the employer's group health plans while the employee is absent from work due to uniformed service;
- guaranteed reemployment following completion of the employee's uniformed service; and
- immediate reinstatement in an employer's group health plans if coverage was terminated as a result of uniformed service and the employee is reemployed following the completion of uniformed service

The Veterans Benefits Improvement Act of 2004 amended several provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994. Effective 3/10/05 employers are to provide a notice of the rights, benefits, and obligations under USERRA. The Department of Labor has issued the text of the notice as an interim final regulation and put the content into a poster format, entitled "Your Rights Under USERRA." This poster may be downloaded from <http://www.dol.gov/vets/programs/userra/poster.pdf>. A copy is also enclosed with this legislative update. Employers may provide the notice by posting it where employee notices are customarily placed. Employers are also free to provide this notice to employees in other ways such as handing out, mailing or distributing via electronic mail. The maximum coverage period for USERRA has been extended from 18 to 24 months for USERRA coverage elections that are made on or after 12/10/04.

If you have an employee who is entitled to continue their group coverage under USERRA you may contact The Conestoga Group for a sample USERRA Notice & Election form or if your company currently is contracted with The Conestoga Group as your Third Party COBRA Administrator, a USERRA Notice is part of our COBRA Service and will be sent when applicable, along with the COBRA Election Notice.

This legislative update is only a brief description of USERRA and VBIA. For more detailed information please go to The Department of Labor's e-laws website and the USERRA Advisor section at <http://www.dol.gov/elaws/userra.htm>.

*The Conestoga Group is an insurance, investment and employee benefits broker and consulting firm based in Frazer, PA. Conestoga specializes in providing financial products and services to small businesses and their owner/executives and other employees. Founder and President Brad Palmer is an Investment Advisory Representative of Commonwealth Financial Network-a registered investment advisor and member firm of the NASD/SIPC. Brad can be reached at 610-889-9500 extension 101 or at [brad.palmer@conestoga.biz](mailto:brad.palmer@conestoga.biz).*

### NOTICE

These legislative descriptions are our interpretations of information provided to us by various legal and other resources as of 3/18/05. It is possible the information was presented incorrectly or that we have misunderstood the presentation. The purpose of this communication is to provide you with basic summary information on the subject matter and assist you in determining whether or not you may need to seek further legal or other assistance. This communication should not be construed as legal, tax, investment, or other advice and does not take into consideration any specific factors that may be unique to the reader's situation.



# YOUR RIGHTS UNDER USERRA

## THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

**USERRA protects the job rights of individuals who voluntarily or involuntarily leave employment positions to undertake military service. USERRA also prohibits employers from discriminating against past and present members of the uniformed services, and applicants to the uniformed services.**

### REEMPLOYMENT RIGHTS

You have the right to be reemployed in your civilian job if you leave that job to perform service in the uniformed service and:

- ☆ you ensure that your employer receives advance written or verbal notice of your service;
- ☆ you have five years or less of cumulative service in the uniformed services while with that particular employer;
- ☆ you return to work or apply for reemployment in a timely manner after conclusion of service; and
- ☆ you have not been separated from service with a disqualifying discharge or under other than honorable conditions.

If you are eligible to be reemployed, you must be restored to the job and benefits you would have attained if you had not been absent due to military service or, in some cases, a comparable job.

### RIGHT TO BE FREE FROM DISCRIMINATION AND RETALIATION

If you:

- ☆ are a past or present member of the uniformed service;
- ☆ have applied for membership in the uniformed service; or
- ☆ are obligated to serve in the uniformed service;

then an employer may not deny you any of the following because of this status:

- ☆ initial employment;
- ☆ reemployment;
- ☆ retention in employment;
- ☆ promotion; or
- ☆ any benefit of employment.

In addition, an employer may not retaliate against anyone assisting in the enforcement of USERRA rights, including testifying or making a statement in connection with a proceeding under USERRA, even if that person has no service connection.

### HEALTH INSURANCE PROTECTION

- ☆ If you leave your job to perform military service, you have the right to elect to continue your existing employer-based health plan coverage for you and your dependents for up to 24 months while in the military.
- ☆ Even if you don't elect to continue coverage during your military service, you have the right to be reinstated in your employer's health plan when you are reemployed, generally without any waiting periods or exclusions (e.g., pre-existing condition exclusions) except for service-connected illnesses or injuries.

### ENFORCEMENT

- ☆ The U.S. Department of Labor, Veterans Employment and Training Service (VETS) is authorized to investigate and resolve complaints of USERRA violations.
- ☆ For assistance in filing a complaint, or for any other information on USERRA, contact VETS at **1-866-4-USA-DOL** or visit its **website at <http://www.dol.gov/vets>**. An interactive online USERRA Advisor can be viewed at **<http://www.dol.gov/elaws/userra.htm>**.
- ☆ If you file a complaint with VETS and VETS is unable to resolve it, you may request that your case be referred to the Department of Justice or the Office of Special Counsel, depending on the employer, for representation.
- ☆ You may also bypass the VETS process and bring a civil action against an employer for violations of USERRA.

**The rights listed here may vary depending on the circumstances. This notice was prepared by VETS, and may be viewed on the internet at this address: <http://www.dol.gov/vets/programs/userra/poster.pdf>. Federal law requires employers to notify employees of their rights under USERRA, and employers may meet this requirement by displaying this notice where they customarily place notices for employees.**



**U.S. Department of Labor**  
**1-866-487-2365**



**1-800-336-4590**

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