

Table of Contents

CHAPTER 1. BACKGROUND AND CONSTRUCTION OF USERRA

- § 1:1 What is USERRA?
- § 1:2 —USERRA’s effective dates
- § 1:3 —Amendments to USERRA
- § 1:4 Construction of USERRA
- § 1:5 —Using pre-USERRA cases as precedent
- § 1:6 —Relation to other laws
- § 1:7 —Relation to contracts, agreements, policies, and practices

CHAPTER 2. COVERAGE OF USERRA

- § 2:1 Employer coverage
- § 2:2 —Size of business and effect on commerce
- § 2:3 —Successor employers
- § 2:4 —Pension plans and other entities delegated employment-related duties
- § 2:5 —Joint or multiple employers
- § 2:6 —Liability of supervisors and other individuals
- § 2:7 —Hiring halls
- § 2:8 —States and local governments
- § 2:9 —Federal employers
- § 2:10 —Foreign employers
- § 2:11 —Native American tribes
- § 2:12 Employee coverage
- § 2:13 —Independent contractors

CHAPTER 3. RIGHTS AND BENEFITS DURING MILITARY SERVICE

- § 3:1 Furlough or leave-of-absence status
- § 3:2 Nonseniority rights and benefits
- § 3:3 —Most-favorable-treatment rule and leave comparability
- § 3:4 —Waiver of nonseniority rights and benefits
- § 3:5 Pay
- § 3:6 Accrued vacation and similar leave time
- § 3:7 Health plan benefits
- § 3:8 Family and medical leave rights of military families
- § 3:9 —Active-duty family leave
- § 3:10 —Servicemember caregiver leave

CHAPTER 4. ENTITLEMENT TO REEMPLOYMENT RIGHTS AND BENEFITS

- § 4:1 What an employee must prove regarding eligibility for reemployment rights
- § 4:2 Affirmative defenses of the employer
- § 4:3 Service in a uniformed service
- § 4:4 Character of military service
- § 4:5 Leaving work to perform military service
- § 4:6 Duration and expected duration of preservice employment
- § 4:7 Notice of service to the employer
- § 4:8 —Exemptions from notice requirement
- § 4:9 —Timeliness of notice
- § 4:10 Five-year service limit
- § 4:11 —Types of service exempt from computation of five-year limit
- § 4:12 —Pre-USERRA service
- § 4:13 Timely notice of intent to return to work
- § 4:14 —Length of service
- § 4:15 —Fitness-for-service examination; funeral honors duty
- § 4:16 —Service-related injury or illness
- § 4:17 Sufficiency of application for reemployment
- § 4:18 Documentation establishing eligibility for reemployment
- § 4:19 Impossibility or unreasonableness of reemployment
- § 4:20 Employer-imposed requirements
- § 4:21 Types of reemployment rights claims
- § 4:22 Waiver of reemployment rights

CHAPTER 5. JOB PLACEMENT OF REEMPLOYED PERSONS

- § 5:1 Length of military service
- § 5:2 Service-related disability
- § 5:3 Prompt reemployment
- § 5:4 Escalator position
- § 5:5 —Promotions and other types of advancement
- § 5:6 —Layoffs, reductions in force, and strikes
- § 5:7 —Pending disciplinary review
- § 5:8 —Status of escalator or equivalent position (working conditions, location, opportunities, shift assignments, rank, responsibility, etc.)
- § 5:9 Qualification for reemployment position
- § 5:10 —Employer's duty to make qualification efforts
- § 5:11 —Employer's duty to make disability-accommodation efforts
- § 5:12 —Undue hardship

TABLE OF CONTENTS

- § 5:13 Conflicting claims to same job; bumping rights
- § 5:14 Federal sector reemployment
- § 5:15 —Impossibility or unreasonableness of reemployment

CHAPTER 6. RIGHTS AND BENEFITS OF REEMPLOYED PERSONS

- § 6:1 “Seniority” rights and benefits
- § 6:2 Pay
- § 6:3 Vacations and other leaves of absence
- § 6:4 Pension and retirement benefits
- § 6:5 Family and Medical Leave Act rights
- § 6:6 Protection from discharge

CHAPTER 7. DISCRIMINATION AND RETALIATION

- § 7:1 Persons protected from discrimination
- § 7:2 Persons protected from retaliation
- § 7:3 Prohibited adverse actions
- § 7:4 —Hiring denial
- § 7:5 —Denial of reemployment
- § 7:6 —Discharge or other denial of retention in employment
- § 7:7 —Denial of promotion
- § 7:8 —Denial of “any benefit of employment”/miscellaneous adverse actions
- § 7:9 Burdens of proof in discrimination and retaliation cases
- § 7:10 —What is a discriminatory or retaliatory “motivating factor”?
- § 7:11 —Evidence of motivating factor
- § 7:12 — —Temporal proximity
- § 7:13 — —Inconsistencies
- § 7:14 — —Hostility
- § 7:15 — —Disparate treatment
- § 7:16 —Harassment or hostile environment claims
- § 7:17 —Disparate impact claims
- § 7:18 —Defendant’s burden of proof in discrimination and retaliation cases

CHAPTER 8. ENFORCEMENT (PRIVATE EMPLOYERS, STATES, LOCAL GOVERNMENTS)

- § 8:1 Veterans’ Employment and Training Service
- § 8:2 Government-assisted suits
- § 8:3 Private court actions

- § 8:4 Parties
- § 8:5 Jurisdiction and venue
- § 8:6 Timeliness of claims
- § 8:7 Right to jury trial
- § 8:8 Reinstatement and other equitable relief
- § 8:9 Monetary remedies
- § 8:10 —Duty to mitigate damages
- § 8:11 —Liquidated damages
- § 8:12 Attorney and expert witness fees
- § 8:13 Costs and litigation expenses
- § 8:14 Class actions
- § 8:15 Arbitration
- § 8:16 Notice of USERRA rights and obligations
- § 8:17 Discovery and spoliation

CHAPTER 9. ENFORCEMENT (FEDERAL GOVERNMENT)

- § 9:1 Executive agency employment
- § 9:2 —Regulations
- § 9:3 —Administrative complaints
- § 9:4 —Government-assisted actions
- § 9:5 —Private actions
- § 9:6 —Time limits for MSPB actions
- § 9:7 —Remedies in MSPB actions
- § 9:8 —Attorney fees and other litigation expenses
- § 9:9 —Federal Circuit review of MSPB decisions
- § 9:10 —Notice of and HR training on USERRA rights and obligations
- § 9:11 Intelligence agency employment
- § 9:12 Legislative and judicial branch employment
- § 9:13 Presidential employment

CHAPTER 10. VETERANS' EMPLOYMENT UNDER FEDERAL CONTRACTS

- § 10:1 Protected veterans and nonveterans
- § 10:2 Covered contracts and contractors
- § 10:3 Nondiscrimination requirements
- § 10:4 —Accommodation of disabled veterans
- § 10:5 —Medical inquiries and drug testing
- § 10:6 Affirmative action
- § 10:7 —Annual hiring benchmarks
- § 10:8 —Invitation to self-identify as covered veteran
- § 10:9 Retaliation and interference
- § 10:10 Reporting and recordkeeping requirements
- § 10:11 Compliance evaluations

TABLE OF CONTENTS

- § 10:12 Complaints
- § 10:13 Complaints—Section 503 of Rehabilitation Act
- § 10:14 Resolution procedures
- § 10:15 Enforcement proceedings
- § 10:16 Sanctions and penalties

APPENDICES

- Appendix A. Uniformed Services Employment and Reemployment Rights Act of 1994 (as Amended and Codified at 38 U.S.C.A. 4301 et seq.)
- Appendix B. USERRA Rights of Congressional and Presidential Employees
- Appendix C. Federal Statutes Related to USERRA
- Appendix D. Legislative History of USERRA
- Appendix E. USERRA Amendments Legislative History
- Appendix F. Labor Department USERRA Regulations 20 C.F.R. Part 1002
- Appendix G. USERRA Regulations by Other Agencies
- Appendix H. Department of Labor Regulations Implementing Protections for Veterans' Employment Under Federal Contracts
- Appendix I. Complaints
- Appendix J. Plaintiffs' Motions
- Appendix K. Defendants' Pleadings and Motions
- Appendix L. Plaintiffs' Discovery
- Appendix M. Defendants' Discovery
- Appendix N. Voir Dire
- Appendix O. Jury Instructions and Verdict Forms
- Appendix P. Post-trial Motions
- Appendix Q. State Laws Similar to USERRA
- Appendix R. Selected Government Documents Regarding USERRA
- Appendix S. USERRA's Antecedents, 1940-1994

Table of Laws and Rules

Table of Cases

Index