

USERRA Legal Rights for Federal Employees



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EMPLOYMENT ATTORNEYS

USERRA LEGAL RIGHTS FOR FEDERAL EMPLOYEES

Federal employees receive extensive legal protections against discrimination and harassment in the federal workplace due to several key laws. The Uniformed Services Employment and Reemployment Rights Act (USERRA) is one of these cornerstone human rights laws for federal employees. However, it has several distinctions compared to other anti-discrimination laws, like the Civil Rights Act of 1964 and the Rehabilitation Act of 1973.

If you are a federal employee with past, ongoing, or anticipated military service, then perusing this guide is worthwhile. We'll start by providing an overview of USERRA and its history and application. We'll then dive into who it protects, how you can file a USERRA claim, and how an attorney can assist you.

If you want to learn more, [set up an initial consultation](#) with one of our experienced federal employment lawyers. We can give you the guidance you need to vindicate your rights.

USERRA OVERVIEW

USERRA is a pivotal piece of U.S. legislation that seeks to guarantee that individuals who serve in the Uniformed Services can retain their civilian employment after completing their service. Furthermore, it outlaws employment discrimination against anyone because of their military service. This includes people with past, current, and anticipated military service.

USERRA also includes two other key protections:

- **Protection of benefits.** Military service members can participate in any benefits available to employees on leave. Employers must provide continuation of health benefits.
- **Protection from retaliation.** Employers cannot retaliate against anyone who assists in enforcing USERRA rights, regardless of whether those individuals share a connection to the Armed Forces. Protected activity includes testifying or

making a statement concerning a proceeding under USERRA.

Together, these protections aim to provide stability and equality to the lives of military service members.

HISTORY OF USERRA

The roots of USERRA began in 1940 with the passage of the Selective Training and Service Act (STS). STS was the first law that recognized the need for job protection for those serving in the armed forces and laid the foundation for future legislation. However, the limitations of STS became apparent as the Cold War began. The Vietnam War era brought about the Veterans' Reemployment Rights Act (VRR), which further expanded and clarified the reemployment rights of military personnel. VRR was the first act to take serious steps towards protecting veterans. Unfortunately, it lacked any enforcement mechanism. Therefore, it was difficult to protect military members against violations.

By the early 1990s, there was broad bipartisan support for veterans' rights reform because of the challenges reservists and other military members faced in retaining civilian employment and benefits upon returning from military service. Thus, Congress passed USERRA in 1994 to clarify, consolidate, and strengthen VRR. USERRA also provides enforcement mechanisms and clearer guidelines for employers and service members.

UNDERSTANDING THE SCOPE OF USERRA

USERRA protections apply to a wide [swath of individuals](#) connected to the military. These include:

- **Members of the Armed Forces.** This includes individuals who serve in the Army, Navy, Marine Corps, Air Force, Space Force, and Coast Guard. It also applies irrespective of whether the individual is on active duty, the Reserves, or the National Guard.
- **Members of the Commissioned Corps.** This group includes Public Health

Service Commissioned Corps individuals under the Department of Health and Human Services. It also includes people in any other special groups the President designates during a war or national emergency.

- **Individuals in training.** Anyone receiving training for any branch of the military gets USERRA protections. It does not matter whether the training is initial, recurrent, or anticipated.
- **Former military members.** USERRA's protections also extend to veterans. However, all veterans must receive an honorable discharge, and their service absence generally cannot be over five years.
- **Military service applications.** USERRA covers people who have taken steps to join a branch of the military but haven't yet begun active duty or training. Examples of actions that USERRA covers include attending interviews or undergoing examinations.

It's important to note that USERRA does not just protect full-time employees. It also protects part-time, probationary, or temporary employees. However, the employment must not be temporary or intermittent.

HOW TO FILE A USERRA COMPLAINT

If you believe your employer is violating your USERRA rights, you can file a complaint to seek redress. Here's a step-by-step approach to help you undertake this process:

1. **Document everything.** Ensure you have detailed, thorough records of the potential USERRA violation before you file. Include the dates of any conversations, emails, or communications that relate to your claim.
2. **Establish your eligibility.** Collect proof of your military service or obligations, such as copies of orders, discharge papers, or other relevant documentation.
3. **Contact an attorney.** It's best to contact an attorney before you file your USERRA complaint. They can provide a wide variety of benefits to your claim, including how to structure it.

- 4. File a formal complaint with the Department of Labor (DOL) or the Merit Systems Protection Board (MSPB).** File a formal complaint with the DOL's Veterans' Employment and Training Service (VETS) or submit an appeal with the MSPB. You can complete a copy of [Form 1010](#) and submit it with all supporting documentation to begin a DOL complaint, and you can initiate an MSPB complaint by filing a complaint on their website.
- 5. Cooperate with the DOL investigation.** Once you've submitted your complaint, VETS will review it and may initiate an investigation. The investigator will communicate with both you and your employer to gather facts and attempt to facilitate a resolution.
- 6. Pursue your case with the Office of Special Counsel (OSC).** If the VETS investigator determines there has been a violation that it cannot resolve, they will refer it to the OSC. The OSC will then decide whether to take action against your employer.

If neither VETS nor OSC achieve a satisfactory resolution, you can take private legal action against your employer. If you reach this point, we highly recommend hiring an attorney with experience in USERRA cases to represent you through the litigation process.

REMEDIES UNDER USERRA

Assuming you prevail in your lawsuit, you can obtain different remedies under USERRA. These remedies aim to place you in the position you would have been in had there been no violation.

The most common USERRA remedy is reemployment, which is the cornerstone of USERRA's protections. If you are eligible for reemployment, your employer must restore you to the job you would have held if your continuous employment was not interrupted by military service. Many people call this the "escalator position." You can also recover lost wages and benefits. Employment discrimination includes pension plan benefits, health benefits, and other perks you would

have received had you not suffered the USERRA violation. You can even obtain additional seniority.

If a court finds that your agency willfully violated USERRA, you may receive an amount equal to the lost wages and benefits. This essentially doubles your recovery. Finally, you can receive attorney's fees, legal costs, and related expenses if you win your case.

HOW CAN AN ATTORNEY HELP?

An attorney can provide several benefits that often make the difference between a successful case and a failed one. Let's unpack these in greater detail:

- **Discerning applicable legal principles.** An attorney can help clarify your rights under USERRA, explaining the intricacies of the law in a straightforward manner. They can inform you of your entitlements regarding reemployment, benefits, and protections against discrimination.
- **Gathering and analyzing evidence.** A seasoned attorney can help you understand the necessary documentation and evidence to strengthen your case. This helps ensure you can meet all critical legal elements and lay the groundwork for a successful case.
- **Navigating the process.** An attorney can help you file your complaint correctly, guide you through any mandatory discussions, and represent you during investigations or hearings.
- **Negotiating with employers.** Many times, you can resolve your claim without initiating formal legal action. An attorney can negotiate with your employer so that you secure an amicable resolution that safeguards your rights without needless delay or cost.
- **Representing you in litigation.** If your case progresses to a lawsuit in federal court, an attorney will be your voice and advocate. They'll present evidence, argue your case, and strive for a favorable outcome.
- **Seeking remedies.** An attorney can advise you which remedies apply to your case, whether it's back pay, reinstatement, or other forms of compensation.

- **Maximizing compensation.** By corraling evidence and digging into the intricacies of your case, an attorney can help ensure you receive the full amount you deserve.

For all these reasons, you should consult with an attorney. And while many people worry about legal fees, many attorneys will agree to a contingency fee arrangement. This means you'll only have to pay them if you prevail.

USERRA LAWSUIT DEADLINES

Unlike most laws, USERRA does not have a statute of limitations. In other words, there is no timeline to file a lawsuit claiming a USERRA violation. However, you should always try to file your USERRA complaint as soon as possible. Evidence naturally degrades over time. Documents disappear, witnesses' memories fade, and key actors can relocate or pass away. Consequently, you must act sooner rather than later.

CONTACT OUR EXPERIENCED USERRA LAWYERS

Picking the right attorney is vital for maximizing your compensation. Fortunately, Pines Federal is an outstanding firm with decades of experience helping veterans overcome discrimination and USERRA violations. We can work together to secure justice for you while giving you peace of mind. [Contact us today](#) for assistance.