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Federal Employment Benefits for Servicemembers (USERRA)

The purpose of the Employment and Reemployment Rights of Members of the Uniformed Service Act is to minimize life disruption of Servicemembers and their employers by providing prompt reemployment upon completion of service, and to prohibit discrimination against Servicemembers because of their service.

Who Qualifies?

The benefits of the Employment and Reemployment Rights of Members of the Uniformed Service Act extend to persons in the uniformed service and are terminated when the Servicemember is separated from the uniformed service by any means other than honorable conditions. (38 U.S.C.A. § 4304).

Employers Cannot...

Employers cannot deny employment to or discriminate against a Servicemember or applicant to the uniformed services. Employers may not discriminate in anyway

which impacts a Servicemember's initial employment, reemployment, retention, promotion, or any benefit of employment, because of an individual's status as a Servicemember. (38 U.S.C.A. § 4311).

Reemployment Rights:

Any uniformed Servicemember who is absent from employment because of the uniformed service shall be entitled to reemployment rights and benefits if the Servicemember gave advanced notice to the employer, the length of absence does not exceed five (5) years, and the Servicemember timely submits an application for reemployment to the employer. (38 U.S.C.A. § 4312).

Private Reemployment Position:

A Servicemember entitled to reemployment shall be promptly reemployed as follows: 1) If the service was for less than 91 days, the Servicemember shall be given the same position as before the term of service, if the Servicemember is still capable of performing the job functions; 2) If service was for more than 90 days, either the same position as the Servicemember had before the term of service, or an equal position of similar seniority, status, and pay, if the Servicemember is still capable of performing such a job; and 3) If the Servicemember is no longer qualified to perform the former position/job, then the employer shall give the Servicemember the nearest approximation to the position in terms of seniority, status, and pay as the Servicemember is capable of performing. (38 U.S.C.A. § 4313).

Federal Reemployment Position:

A Servicemember is entitled to reemployment by the Federal Government to the same position as the Servicemember held prior to the service term. Or, if the position is no longer available, or the agency no longer exists, the Servicemember shall be employed to a position of like seniority, status, and pay at another Federal executive agency. (38 U.S.C.A. § 4314).

Other Rights, Benefits, and Obligations:

A reemployed Servicemember under this section is entitled to the seniority and other rights as the Servicemember had before the commencement of service, plus the additional seniority that such Servicemember would have attained during the period of his absence. However, if a Servicemember chooses not to return to his job, he is not entitled to these rights. Reemployed Servicemembers cannot be terminated, without cause, within one (1) year of the date of reemployment, if the service term was more than 180 days. Or, if the service term was more than thirty (30) days but less than 181 days, Servicemembers cannot be terminated within 180 days of reemployment. (38 U.S.C.A. § 4316).

Employer Health Plans:

Servicemembers may elect to continue health insurance coverage. A Servicemember who elects to continue health insurance coverage cannot be required to pay more than 102% of the full premium. (38 U.S.C.A. § 4317).

Employee Pension Plans: Servicemembers reemployed under this Act shall be treated as not having incurred a break in service. An employer shall continue to

contribute to a Servicemember's pension plan during the period of service. This contribution may not differ from the employer's contribution to other employees. (38 U.S.C.A. § 4318).

Enforcement of Rights:

If an employer refuses to comply with this Act, the Servicemember may file a complaint with the Secretary of Labor. The allegations must be in writing and contain the name and address of the employer. (38 U.S.C.A. § 4321).

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