
USERRA Guide

Guide Contents

- Section 1. What is USERRA? Pg. 2*
- Section 2. Who is Eligible for USERRA? Pg. 3*
- Section 3. Qualifying for USERRA Pg. 4*
- Section 4. USERRA Employment Benefits Pg. 7*
- Section 5. When to Complete the USERRA
Certification Form Pg. 9*
- Section 6. How to complete the USERRA
Certification Form Pg. 10*
- Section 7. Other Military Acts Pg. 14*

Section 1. About USERRA

What is USERRA?

The Uniform Services Employment Reemployment Rights Act (USERRA) is a federal law. The law was enacted on October 13, 1994. The effective date was January 1, 1995. The Act is found under “Title 38 of the United States Code (USC), Chapter 43 – Employment and Reemployment Rights of Members of the Uniformed Services”.

USERRA is first and foremost a reemployment act. It protects the jobs of employees who are called to service, ensuring that they have employment to come back to after military duty.

USERRA also protects employment benefits, such as health insurance and retirement contributions.

It is up to the employer or agency to make the determination as to whether an employee qualifies under USERRA.

Additional Resources:

- <https://www.dol.gov/vets/regs/fedreg/final/2005023961.htm> (Title 20 Code of Federal Regulations, Part 1002 USERRA Regulations)
- http://arcweb.sos.state.or.us/pages/rules/oars_400/oar_459/459_tofc.html (OAR 459-011-0100, 459-075-0100, 459-080-0100)
- [http://www.oregon.gov/pers/EMP/docs/er_announcement/2005/er_announcement_33_update\(1-15-13\).pdf](http://www.oregon.gov/pers/EMP/docs/er_announcement/2005/er_announcement_33_update(1-15-13).pdf) (PERS Employer Announcement #33)

Section 2. Who is Eligible for USERRA?

USERRA applies to employees of a PERS participating employer who left a qualifying position to serve in the uniformed services and were then re-employed under the provisions of USERRA.

The following are the various uniformed services:

- National Guard service under Federal authority, including -
 - active duty
 - active duty training
 - active duty in lieu of training
 - inactive duty training

The National Guard has a dual status:

- It is a Reserve component for the Army or the Air Force
- It is a State military force subject to the call-up by the State Governor for duty not subject to Federal control. Note: USERRA does not apply to service under authority of State law.

(State call-ups of members of the Army or Air National Guard are not protected under USERRA, because the term "employer," as it applies to National Guard technicians, refers to the Adjutant General of the state. Therefore, National Guard technicians on other than active or inactive duty for training are considered to be state employees and are not afforded protection under USERRA.)

- Armed Forces -
 - Army
 - Army Reserve
 - Navy
 - Navy Reserve
 - Air Force
 - Air Force Reserve
 - Marines
 - Marine Reserve
 - Coast Guard
 - Coast Guard Reserve

Definitions:

- *The term “**service in the uniformed services**” means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes: active duty, active duty training, initial active duty for training, inactive duty training, full-time National Guard, a period for which a person is absent from a position of employment for the purpose of an examination to determine fitness of the person to perform any such duty, and a period for which a person is absent from a position of employment for purpose of performing funeral honors duty.*

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- The term "**uniform services**" means the Armed Forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training or full-time.
 - National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or national emergency.

Section 3. Qualifying for USERRA

The employee must have reported back to work or applied for reemployment with the same employer within time constraints prescribed by law.

Note: The State of Oregon as a whole is considered one employer. So, theoretically an employee could work for one agency, go out on military leave and return to work for another agency. However, by current practice the agency that employed the employee before leave would place them on leave without pay in the personnel system. Upon return, that agency would need to terminate them and the new agency rehire them. This would leave the agency that the employee was originally employed with being responsible for completing the USERRA Certification form and paying the retirement contributions for the time out on military leave. The two agencies may come to another agreement as long as one agency is responsible for making the employee's retirement plan whole.

The agency should retain copies of the original orders and the release from duty papers in the employees personnel file. This documentation supports any decision the employer makes concerning USERRA.

The agency is responsible for determining whether the employee meets all the requirements under USERRA and is eligible to receive retirement service credits and plan contributions upon returning to work.

USERRA during PERS Waiting Period:

When an agency hires an employee who is new to state service and has no prior PERS history, they must serve a 6-month waiting period before the agency can begin PERS contributions. To meet the qualifications for the waiting period, the employee must:

- Be hired into a qualifying position
- Not have a break in service of more than 30 working days
- Must be working on the 1st of the month following the completion of the waiting period.

Normally, during the PERS waiting period leave without pay would impact the completion of the waiting period and the Contribution Start Date (CSD) for the employee. Military leave without pay that qualifies under USERRA is the exception to this rule. USERRA does not allow an employee's retirement benefits to be harmed as a result of their service. As a result, being called to active duty during their waiting period does not extend the waiting period.

Example: Employee is hired 1/1/2015, the end of the waiting period and CSD would be 7/1/2015. If the employee goes out on active military service 3/1/2015, and returns to work 6/1/2015, their waiting period still ends on 7/1/2015 and their CSD will still be 7/1/2015. A USERRA Certification form would need to be completed for the 3/1/15-6/1/15 military leave period.

The USERRA qualification requirements are:

1. The employee gave their employer advance notification, either written or verbal, that they were being activated for military service. (The law is vague on what needs to be included in this notification or how "advanced" it needs to be.)
2. The employee requested reemployment upon completion of their military service, and has returned to work within the required time frames of the law as follows:
 - Military Leave was 30 days or less:
The employee must report to work on the first full calendar day of the regularly scheduled work period following the completion of the period of service. Note: The employee needs to have 8 hours before reporting to work, and time to travel safely from the location where they were discharged to their residence.
 - Military Leave was 30 days to 180 days:
The employee must submit an application for reemployment, or inform employer of their intent to return to work within 14 days of the completion of military service. If submitting the application or informing the employer is impossible or unreasonable through no fault of the employee they must do it the next first full calendar day it is possible.
 - Military Leave was 181 days or more:
The employee must submit an application for reemployment or inform employer of their intent to return to work within 90 days of the completion of military service.
3. The employee was released from active military service under an honorable or general conditions discharge.
4. The cumulative length of all military service does not exceed 5 years. There are some exceptions to this rule, as follows:

Exceptions are:

- The employee was unable to obtain orders releasing them from a period of service before the expiration of the five-year period and the inability was through no fault of the employee.
- The employee was required to fulfill additional training requirements determined and certified in writing by the Secretary concerned to be necessary for professional development, or for completion of skill training or retraining.

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- The employee was retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary concerned.
 - The employee was ordered to active duty (other than for training) in support, as determined by the Secretary concerned, of an operational mission for which personnel have been ordered to active duty.
 - The employee was ordered to active duty in support, as determined by the Secretary concerned, of a critical mission or requirement of the uniformed services, or called into Federal service as a member of the National Guard.

A person's entitlement to USERRA benefits terminates upon the occurrence of any of the following events:

- A separation of such person from such uniformed service with a dishonorable or bad conduct discharge
- A separation of such person from such uniformed service under other than honorable conditions, as characterized pursuant to regulations prescribed by the Secretary concerned
- A dismissal of such person permitted under section 1161(a) of title 10.
- A dropping of such person from the rolls pursuant to section 1161(b) of title 10

Provided that USERRA qualifications are met, upon returning to work the employee should:

- Be placed in the same position they were in prior to beginning military service,
- Be placed in a position that has similar duties and pay to the one the employee held prior to beginning military service,
- Be placed in a different position they qualify for.

Section 4. USERRA Employment Benefits

Employees returning to work after military service who qualify under USERRA will be treated by the retirement plan as though no break in service occurred. As such, employees are entitled to full retirement service credits, as well as all contributions that would have been earned during the time they were on active military duty.

Employee injured in the line of duty:

When an employee is injured during or an illness is aggravated by active military duty the employer is required to make "reasonable efforts" to accommodate employees returning to work with a disability.

The employee may be temporarily disabled, such as having broken their leg during Annual Training, or permanently disabled and not able to perform the job they held prior to deployment. The employee must be qualified to do their job or another job with similar status and pay in order to have reemployment rights.

Employee dies while on military duty:

Due to the passage of the HEART Act in 2008, employees who die while on military duty are now entitled to retirement benefits. The employee is reemployed on the PERS system to ensure that the employee was covered under the plan when they passed away.

USERRA & Layoffs:

If an employee is laid off and called into active military service, they are still eligible to be recalled back into employment with the state. The agency must follow the union contract recall process, administering who is recalled and when. Once recalled, the agency will enter the employee in the personnel system and immediately place them on military leave without pay.

Once the employee is released from military duty and returns to work, the agency will complete a USERRA Certification for the period of time the employee would have been employed after the recall. The agency is not to include the time the employee was on military duty prior to the recall to employment, as they were not an employee of the state at that time.

Time Off Before Military Duty:

USERRA regulations do not specify an exact amount of time that an employee can take off before reporting for military duty; however, they need to be given enough time to get their affairs in order.

Time Off After Military Duty:

- a) Up to 30 days of consecutive service: the employee must report back to work on the first full regularly scheduled work day following the completion of active duty. (Safe travel home, plus an 8 hour rest period must be taken into account.)
- b) 31 to 180 days of consecutive service: the employee must submit a written or verbal application for reemployment no later than 14 days after the completion of active duty. If the circumstances make it impossible to meet the 14 day deadline, they must submit the application as soon as possible.
- c) 181 days or more - the employee must submit a written or verbal application for reemployment no later than 90 days after the completion of active duty.

Decompression Time:

Decompression time is the time between when the employee was discharged from the military and when they report back to work. In most cases this time is covered under USERRA.

On the USERRA Certification this time would be included in the qualifying USERRA time. There would be no break from when the employee was discharged from military and the return to work day shown on the Certification.

These deadlines for submitting a reemployment application and reporting back to work can be extended up to 2 years to accommodate a period where the employee was hospitalized or convalescing from an injury or illness that occurred, or was aggravated while on active duty. The employee does not automatically forfeit their reemployment rights, but may be subject to the employer's policies, general practices or conduct rules for absence from work.

Note: Many state of Oregon employers work with employees as they are leaving and returning to ensure a smooth transition. Some employers may not require a written application, some may or they simply hold the position open with the understanding that the employee is planning on returning to employment. The decision on how to handle this is up to the agency.

Section 5. When to Complete the USERRA Certification

In order to report the qualifying USERRA timeframe to PERS, the agency must complete a PERS USERRA Certification form when the employee physically returns to work. The USERRA Certification form #459-451w can be found on the PERS website (link below).

<http://www.oregon.gov/pers/Documents/Form/451-Uniformed-Services-Employment-and-Reemployment-Rights-Act-USERRA.pdf>

If the employee went out on military leave, returned to work for any period of time (even one day) and went back out on military leave, the agency will need to complete a separate USERRA Certification for each leave occurrence.

Section 6. How to Complete the USERRA Certification Form

The USERRA Certification form provides detailed instructions on how to complete each section of the form, as well as other helpful information. The additional instruction provided below is intended to assist state agency employers in conjunction with the instructions included on the form.

USERRA Certification Form, Section "C" Qualifying time Period:

For PERS purposes the dates found in Section "C" on the Certification **all need to line up sequentially**. PERS system does not allow gaps in the segment when they are entered. Please list wages in the month in which they are earned, i.e., pay period, as noted below in the example:

Section C: Qualifying time period

Last date of employment or paid leave prior to USERRA-qualifying time: October (month), 21 (day), 2015 (year).

Time period that qualifies under USERRA: from October (month), 22 (day), 2015 (year) to January (month), 21 (day), 2016 (year).

First date of employment or paid leave following USERRA-qualifying time: January (month), 22 (day), 2016 (year).

Section D: Salary that would have been earned during each month of USERRA qualifying time

Year	Jan.	Feb.	March	April	May	June	July	August	Sept.	Oct.	Nov.	Dec.
2015										1,615.00	5,000.00	5,000.00
2016	3,692.80											

Last date of employment or paid leave prior to USERRA qualifying time:

The last day of employment could be a day physically worked, a day of paid leave, or a scheduled day off.

Time period that qualifies under USERRA:

The time period that the employee was out on military leave without pay. This could be a day, weeks, months or years. This time period must include any leave without pay taken prior to beginning formal military leave that was used to prepare for the military leave. It must also include any decompression time from when the employee was discharged from

the service and actually returned to work. The first day on this line needs to be the day following the date shown on Line 1, even if it doesn't correspond with the dates listed in PPDB.

First date of employment following USERRA qualifying time:

The first date of employment following the USERRA period must be the next day after the last day shown on Line 2. This means it could be the day the employee physically returned to work, a day of paid leave, or a scheduled day off.

USERRA Certification Form, Section "D": Salary that would have been earned during each month of USERRA qualifying time:

The agency should do their best to calculate the wages as close as possible using the calculation guidelines provided below. The 6% contributions, based on the subject salary the agency comes up with will be credited to the employees PERS Individual Account Program (IAP). The bigger picture is that this will also give the employee the missing retirement service credits and make a difference in their retirement calculation when they retire.

To begin the calculation:

- Look at the employee's monthly salary for the time the employee was on Military leave.
- If the employee is gone any length of time, or during a period where they would have received a cost of living or a step increase these amounts need to be included.
- Factor in any differentials that apply to the employee.
- If the employee is in a position where they would normally work overtime, the agency should consider this in the calculation. It is up to the agency to make the determination if this needs to be added.
 - Any overtime amount to be added to the base salary would be an average of what they employee has worked in overtime for the same amount of time in the past.
 - If the employee is out for only days instead of a month or more, the agency may not want to factor in overtime, as the employee may likely actually work it in their normal work days/weeks.
 - If the agency feels that adding overtime into the calculation is necessary, to calculate an overtime amount the agency would need to look at the past.

As an example: if the employee is gone 3 months, the agency would look at the prior 12 month period, add all the overtime in that period up, then divide it by 12. This is the average overtime per month. This amount multiplied by the numbers of months gone would be added to the base pay.

When completing the USERRA Certification, provide the wages for each month the employee was out on military leave. Partial months need to be prorated. If the employee receives other wages while on military leave such as; clothing allowance, donated military leave, or 88 hours of paid military leave for annual training, do not report these wages on the USERRA form, these wages are already reported to PERS via the monthly payroll process.

Where to send the form:

Upon Completion of the form, send to the **DAS Centralized PERS Services Team**, not directly to PERS as indicated on the form. It can be sent by:

- US mail or shuttle:
Department of Administrative Services
Attn: Centralized PERS Services Team
155 Cottage Street NE
Salem, OR 97301
- Fax to 503-378-4596
- *Email to Central.PERSServicesTeam@oregon.gov

*For confidentiality purposes, please be sure to redact the first five digits of the SSN prior to sending via email.

Once received, the Centralized PERS Services Analyst will take the following actions:

- EPPT employees – for each affected pay period, wages, hours and contributions will be added to the PERS system. The agency will be invoiced for both the employee and employer contributions.
- MPPT employees – Guidance for member paid contributions is in the development process. Please contact Shauna Tobiasson, Senior Centralized PERS Analyst, for more information.
- P&F units contributions - if the employee was purchasing units prior to leaving for military duty, upon their return to work the employee can make up the contributions they would have made had they not been on military duty. They need to work with PERS directly to make purchase arrangements.

Note: Employers have asked if they can contribute more to the retirement plan for a returning employee. The amount of retirement contributions cannot be more than what the employee would have earned had they continued to work.

Section 7. Other Military Reemployment Acts

The first major federal legislation that established veterans re-employment rights was the "Selective Training and Service Act of 1940". At the time most states also enacted similar legislation that supplemented the federal law. This law was later amended and extended coverage to servicemen called to duty.

In 1941 the "The Protection of Persons in Military and Naval Service Act" was enacted. Minor amendments were made to it in 1943. In 1953 it was repealed and replaced with the Veteran's Reemployment Rights Act.

Veteran's Reemployment Rights Act (VRRRA) of 1953

The law stated: "If such person is still qualified to perform the duties of his former position, he shall be restored to that position or to a position of like seniority, status and pay. If he is not so qualified as a result of disability sustained during his service, or during the determination of his fitness for service, but is nevertheless qualified to perform the duties of another position, under the control of the same employer, he shall be reemployed in such other position: Provided, That such position shall provide him with like seniority, status, and pay, or the nearest approximation thereto consistent with the circumstances of the case."

In order to be eligible for the benefits of this act, an applicant must comply with the following requirements:

1. Employee must furnish a receipt of an honorable discharge, report of separation, certificate of satisfactory service, or other proof of having satisfactorily completed their service. If rejected, the employee must furnish proof of orders for examination and rejection.
2. Employee must make written application to the employer or their representative within ninety days of the date of separation or release from training and service. If rejected, the employee must apply within thirty days from date of rejection.
3. If, due to the necessity of hospitalization, while on active duty, the employee is released or placed on inactive duty and remains hospitalized, they are eligible for the benefits of this act: Provided, That such hospitalization does not continue for more than one year from date of such release or inactive status: Provided further, That the employee applies for their former position within ninety days after discharge from such hospitalization."

Heroes Earning Assistance and Relief Tax Act of 2008 (HEART Act) - (became law in June 2008)

This act includes provisions relating to death, disability and pension benefits. Employers are required to treat workers as if they were rehired the day before they died or became disabled thereby ensuring that the worker was covered by the plan at the time of death or disability.

If you have any questions about the information contained in this document, please contact the Centralized PERS Services team via email at Central.PERSServicesTeam@oregon.gov.