

U.S. Department of Labor Veterans' Employment and Training Service

BOLI Conference Presentation
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Eddie Abrams
Assistant Director, and Investigator Oregon



Agenda

- Uniformed Services Employment and Reemployment Rights Act (USERRA)
- Local Veteran Employment Representative (LVER)
- Hiring Veterans – Online Resources



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VETS Role in USERRA

- The Veterans' Employment and Training Service (VETS) administers and is responsible for the enforcement of USERRA.
- Informs & educates service members and/or employers on the USERRA law.
- Provides technical assistance and conducts formal investigations.



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Employer Support of the Guard and Reserve's Role in USERRA

- To gain and maintain support from all public and private employers for the men and women of the National Guard and Reserve.
- Informs & educates Service members and/or employers on the USERRA law.
- Informal Consultation and Mediation
- If mediation is unsuccessful then Ombudsmen refer veterans to USDOL VETS for formal investigation.

Dianne Nordhaus
dianne_nordhaus@gmail.com
 503-584-3445



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USERRA – Who is Covered

- Any person, institution, organization, or other entity that pays salary or wages for work performed or that has control over employment opportunities.
- Service in the Armed Forces: Active Duty, National Guard and Reserve
 - Voluntary or involuntary service performed under orders
 - Initial active duty for training, inactive duty training
 - An examination to determine the fitness for service
 - Funeral honors duty as authorized by section 12503



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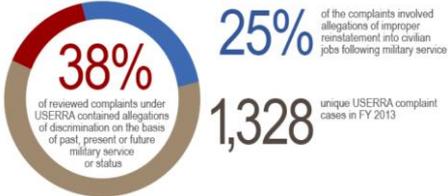
Discrimination and Retaliation

- An employer may not take any adverse action against an employee due in any part to employee's military service or obligations
- An employer may not take any adverse action against an employee for exercising his/her USERRA rights, or for rendering assistance in exercising those rights.
- 38 U.S.C 4311.



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USERRA Facts and Figures



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Discrimination

- Individual must show:
 - Protected status
 - Adverse employment action
 - Status was a "motivating factor" – not necessarily only reason
- If individual succeeds, burden shifts to employer.



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Example 1

- Jim as a member of the Oregon National Guard is required to work one weekend a month and two weeks a year for annual training. After returning from two weeks annual National Guard training to his employer, Jim was subsequently fired. His supervisor told him he was fired because he could not count Jim to be there when he was needed.
1. What is the potential USERRA issue in this example?
 2. What must Jim show?



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Reinstatement Criteria

- Protects reemployment rights with pre-service employers for Veterans, and Guard and Reserve Service members
- For reemployment eligibility, the employee must:
 1. Be absent from civilian employment due to service
 2. Provide advance notice to employer (oral or written)
 3. Have 5 years or less service (w/ exceptions)
 4. Submit timely application for reemployment
 5. Have no disqualifying discharge
- Only necessary to prove 5 eligibility criteria—does not need to prove discrimination



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Reinstatement

- Returning employee must be promptly reinstated in same position of **seniority, status, and rate of pay** s/he would have attained had s/he remained continuously employed.
- "Escalator Principle"



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Example 2

- Jane voluntarily left her job as a cashier at a local hardware store that had two other employees to join the Active Duty Airforce. She told her direct supervisor before leaving that she was joining the Airforce. She served 4 years, receiving an Honorable Discharge. 80 days after returning from military service, she called the company and asked for her job back.
- What is the criterion for reemployment eligibility?
- Using the above example determine if Jane is eligible for reinstatement.



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Protection Against Discharge

- If service was more than 30 days, he or she must not be discharged except for cause.
- If service more than 30 days but less than 181 days, protection period is 180 days from reinstatement.
- If service more than 180 days, protection period is one year from reinstatement.
- The employee may be discharged for cause based either on conduct or, in some circumstances, because of the application of other legitimate nondiscriminatory reasons.
- Employer bears the burden of proof.



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Example 3

- John work for a manufacturing company as industrial painter prior to serving in the military for 4 years. He meets the eligibility requirements for reinstatement under USERRA. Industrial painters receive a step increase (of \$1.50 per step). Prior to leaving for military service, John was step 3 (16.00 per hour). When hired, employees are place on swing shift, and with seniority, they bid for night shift and eventually days shifts. John had worked long enough prior to leaving for military service to get day shift.
- What position should John be reinstated to?
- What is his rate of pay?
- What shift should he be assigned to?



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Non-Seniority and Seniority Benefits

- Entitled to non-seniority benefits like others on leave of other kinds.
- Does not generally accrue vacation from civilian employer while away from work for service.
- Seniority and seniority-based rights
 - Absence from employment due to or necessitated by uniformed service is not considered a break in employment.



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Disabled Veterans

- Applies to disabled veteran otherwise entitled to reemployment.
- USERRA is in addition to and broader than Americans with Disabilities Act (ADA).
- Employer must make reasonable efforts to accommodate the disability.
- Right to ANOTHER job if disability cannot be accommodated.
- Employer must help employee become qualified to perform duties of one of these positions: a) equivalent position; or b) nearest approximation of equivalent position.



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USERRA Health Benefits

- Employee may elect to continue employer-sponsored coverage for 24 months upon leaving for active duty.
 - May be charged up to 102% of the premium
- Similar to COBRA, but no restriction on employer size
- Immediate Reinstatement
 - No waiting periods, no exclusions
- Health and Pension
 - Continuous pension credit
 - Regulations provide criteria and time frame for matching and make-up contributions



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Example 4

- John work for a manufacturing company as industrial painter prior to serving in the military for 4 years. He meets the eligibility requirements for reinstatement under USERRA. When John returned from military service and requested reinstatement, he was unable to perform the duties of the industrial painter position because of an injury that occurred while performing military service.
- What is the potential USERRA issue?
- What if anything must the employer do?



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Local Veterans Employment Representatives (LVER)

- LVER provides job development services.
- Provide assistance to employers with Federal Contracts to assist in meeting contract compliance for recruiting veterans.
- Notify employers of incentives to hire veterans.
- Help with the documentation process to apply for the Work Opportunity Tax Credit for veterans
- Assist in helping employer meet diversity goals and assist in translating military skill sets in a resume.



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Local Veterans Employment Representatives (LVER)

To set up an on-site visit contact:
 John Concepcion
 Oregon Employment Department
 Phone: 503-612-4238
 Email: john.t.concepcion@oregon.gov



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Hiring Veterans – Online Resources

- *Hiring Veteran's Step-by-Step Toolkit for Employers*
 - *Step 1 – Design a Strategy for Your Veterans Hiring Program*
 - *Step 2 – Create a Welcoming and Educated Workplace for Veterans*
 - *Step 3 – Actively Recruit Veterans, Wounded Warriors and Military Spouses*
 - *Step 4 – Hire Qualified Veterans and Learn how to Accommodate Wounded Warriors*
 - *Step 5 – Promote an Inclusive Workplace to Retain Your Veteran Employees*
 - *Step 6 – Keep Helpful Tools and Resources at Your Fingertips*

<http://www.americasheroesatwork.gov/forEmployers/HiringToolkit>



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