



Electronic Dispatch

Labor and Employment/Employee Benefits Law Action Memo

March 2005

[Go to BS&K Employee Benefits Home Page](#)
[Go to BS&K Labor and Employment Law Home Page](#)

DEPARTMENT OF LABOR ISSUES MODEL NOTICE FOR EMPLOYERS TO POST UNDER THE VETERANS BENEFITS IMPROVEMENT ACT OF 2004

As we informed you in our February 2005 Employee Benefits Law Action Memo, the Veterans Benefits Improvement Act of 2004 ("VBIA"), which was enacted on December 10, 2004, extends the period of health continuation coverage available for eligible employees who are absent from work because of military service and requires employers to provide notice to employees of their rights under the Uniformed Services Employment and Reemployment Rights Act ("USERRA"). On March 10, 2005, the United States Department of Labor ("USDOL") issued an interim final rule providing the text of a model notice for employers to post in order to comply with the notice provisions of VBIA and USERRA. The USDOL's model notice is appended to this Information Memo, and can also be found at the following internet address: <http://www.dol.gov/vets/programs/userra/poster.pdf>.

An employer can satisfy the notice provisions of VBIA and USERRA by posting the model notice in the workplace where employee notices are customarily placed. However, an employer may also provide the notice to employees in other ways that will also ensure that the full text of the notice is provided, such as by handing out or mailing the notice to employees or by distributing the notice via electronic mail.

Although an employer's obligation to post the model notice set forth in the USDOL's interim final rule takes effect immediately, public comment on the interim final rule will be accepted by the USDOL until May 9, 2005. The USDOL will consider the comments received by that date, and will make adjustments to the text of the notice if necessary. Comments can be submitted via electronic mail to vetspublic@dol.gov, with "Docket No. VETS-U-05" included on the subject line of the message. Comments may also be submitted via facsimile to VETS at (202) 693-4754, or by mail to: Office of Operations and Programs, Docket No. VETS-U-05, Room S-1316, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

If you have any questions regarding your obligations under VBIA or USERRA, please contact:

Albany ■ Capital District ■ Nicholas J. D'Ambrosio, ndambrosio@bsk.com, 518-533-3000

Buffalo ■ Western New York ■ Richard C. Heffern, rheffern@bsk.com, 716-566-2800

Garden City ■ Long Island ■ Terry O'Neil, toneil@bsk.com, 516-267-6300

New York City ■ Metro Area ■ Louis P. DiLorenzo, ldilorenzo@bsk.com, 646-253-2300

Syracuse ■ Central New York ■ R. Daniel Bordoni, dbordoni@bsk.com, 315-218-8000





YOUR RIGHTS UNDER USERRA

THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

USERRA protects the job rights of individuals who voluntarily or involuntarily leave employment positions to undertake military service. USERRA also prohibits employers from discriminating against past and present members of the uniformed services, and applicants to the uniformed services.

REEMPLOYMENT RIGHTS

You have the right to be reemployed in your civilian job if you leave that job to perform service in the uniformed service and:

- ✧ you ensure that your employer receives advance written or verbal notice of your service;
- ✧ you have five years or less of cumulative service in the uniformed services while with that particular employer;
- ✧ you return to work or apply for reemployment in a timely manner after conclusion of service; and
- ✧ you have not been separated from service with a disqualifying discharge or under other than honorable conditions.

If you are eligible to be reemployed, you must be restored to the job and benefits you would have attained if you had not been absent due to military service or, in some cases, a comparable job.

RIGHT TO BE FREE FROM DISCRIMINATION AND RETALIATION

If you:

- ✧ are a past or present member of the uniformed service;
- ✧ have applied for membership in the uniformed service; or
- ✧ are obligated to serve in the uniformed service;

then an employer may not deny you any of the following because of this status:

- ✧ initial employment;
- ✧ reemployment;
- ✧ retention in employment;
- ✧ promotion; or
- ✧ any benefit of employment.

In addition, an employer may not retaliate against anyone assisting in the enforcement of USERRA rights, including testifying or making a statement in connection with a proceeding under USERRA, even if that person has no service connection.

HEALTH INSURANCE PROTECTION

- ✧ If you leave your job to perform military service, you have the right to elect to continue your existing employer-based health plan coverage for you and your dependents for up to 24 months while in the military.
- ✧ Even if you don't elect to continue coverage during your military service, you have the right to be reinstated in your employer's health plan when you are reemployed, generally without any waiting periods or exclusions (e.g., pre-existing condition exclusions) except for service-connected illnesses or injuries.

ENFORCEMENT

- ✧ The U.S. Department of Labor, Veterans Employment and Training Service (VETS) is authorized to investigate and resolve complaints of USERRA violations.
- ✧ For assistance in filing a complaint, or for any other information on USERRA, contact VETS at **1-866-4-USA-DOL** or visit its **website at <http://www.dol.gov/vets>**. An interactive online USERRA Advisor can be viewed at <http://www.dol.gov/elaws/userra.htm>.
- ✧ If you file a complaint with VETS and VETS is unable to resolve it, you may request that your case be referred to the Department of Justice or the Office of Special Counsel, depending on the employer, for representation.
- ✧ You may also bypass the VETS process and bring a civil action against an employer for violations of USERRA.

The rights listed here may vary depending on the circumstances. This notice was prepared by VETS, and may be viewed on the internet at this address: <http://www.dol.gov/vets/programs/userra/poster.pdf>. Federal law requires employers to notify employees of their rights under USERRA, and employers may meet this requirement by displaying this notice where they customarily place notices for employees.



U.S. Department of Labor
1-866-487-2365



1-800-336-4590

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