

SHRM - LEGAL REPORT

[12 pages]

Workplace Rights for Service Members: The USERRA Regulations Deconstructed

By James B. Thelen

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) is the federal law that establishes various rights and benefits for employees and applicants for employment who have served the nation in military or other forms of protected governmental service. Employers have corresponding obligations under USERRA to provide leaves of absence and to re-employ employees who enter military service while employed.

USERRA is the latest in a series of federal laws that have provided employment and re-employment rights to veterans since at least 1940. USERRA became law in its present form in October 1994 following the first Gulf War. It was enacted in part to address the concerns and complaints raised by veterans returning to civilian employment from military service in that conflict.

Although USERRA, as initially enacted, authorized the U.S. Department of Labor (DOL) to issue regulations further defining and clarifying the provisions of the law, the department did not exercise its authority until September 20, 2004, when it issued proposed regulations.

After considering 80 comments from individuals, law firms, members of Congress, employee benefit providers, professional organizations—including the Society for Human Resource Management—and others, DOL issued final regulations to implement and explain the law. They were published in the Federal Register on December 19, 2005, and became effective on January 18, 2006.

At the same time, DOL issued a companion final regulation to implement a USERRA notice requirement mandated by a December 2004 congressional amendment to USERRA.

This article summarizes and explains the new USERRA regulations. Rather than continually repeat phrases such as “The regulations provide...” or “According to the new regulations...,” the article simply paraphrases the main points of the regulations without further attribution.

Each subsection of this article includes a reference to the relevant sections of the regulations. The article does not discuss every section in detail. Readers are encouraged to read the regulations themselves, which are codified in Volume 20 of the Code of Federal Regulations, Part 1002, and are available on DOL’s web site.

Coverage Basics

USERRA’s coverage provisions, and their interpretation in the regulations, are sweeping. The statute and regulations address what employers, employees and types of service are covered.

Covered employers (1002.34-.39)

USERRA applies to any employer that either pays an individual a salary or wages to perform work or controls an individual’s employment opportunities. This broad definition includes an individual or organization to which an employer delegates the performance of any employment-related responsibilities. However an entity that performs only “ministerial functions,” such as personnel file maintenance or, presumably, paycheck processing, is not considered an employer.

Example: Consider the example of a security guard hired by a security company and assigned to a work site of another company. Both the security company and the site owner have USERRA obligations to the security guard employee. Even though the site owner is not the security guard's employer per se, it would be subject to USERRA liability if it caused the security guard's removal from the job because of the individual's service obligations.

Example: A hiring hall, whether operated by a union or an employer association, also is an employer under this definition. A hiring hall may be delegated the performance of employment-related responsibilities such as hiring or job assignments and thus would be a USERRA-covered employer.

Other covered employers include:

- States and their political subdivisions, such as counties, parishes, cities, towns and townships, villages, and school districts.
- Successors in interest, provided there is substantial continuity between their operations (including products or services produced), facilities, workforce, and working conditions and those of the former employer, a determination that is made on a case-by-case basis. A company can be covered as a successor in interest even without notice of any potential re-employment claims by employees of the predecessor company at the time of the merger, acquisition or other form of succession.
- Foreign employers with a physical location and employees in the United States.
- American employers with employees in foreign countries, as long as compliance with USERRA does not violate the law of the country in which the workplace is located.
- Employers with only one employee.

Covered employees (1002.40-.44)

Individuals who perform or have performed "service in the uniformed services" have USERRA rights regarding initial employment, re-employment after service, retention in employment (that is, protection from discharge), promotion or any other benefit of employment, provided they either seek to be employed after a period of covered service or were employed and took a leave of absence from their job to perform covered service. Only a person who is "employed," however, or who either seeks initial employment as an applicant or was a former employee, can invoke USERRA rights.

A company does not have USERRA obligations to individuals who perform services for the company under a legally defensible independent contractor arrangement.

Benefit of employment

A "benefit of employment" includes "any advantage, profit, privilege, gain, status, account, or interest (other than wages or salary for work performed) that accrues to the employee because of an employment contract, employment agreement, or employer policy, plan, or practice."

This definition includes rights and benefits under a pension plan, health plan or employee stock ownership plan, insurance coverage and awards, bonuses, severance pay, supplemental unemployment benefits, vacations, and the opportunity to select work hours (for example, shift or overtime assignments) or the location of employment.

Covered service (1002.54-.62)

USERRA's definition of "service in the uniformed services" covers all categories of military training and service, including duty performed on a voluntary or involuntary basis, whether in time of peace or war.

Covered service includes any active duty, active or inactive duty for training, National Guard duty under federal direction (but not under state direction), funeral honor duty, and any absence necessary for fitness for duty examinations for such service. Covered service also includes an employee's service as an intermittent disaster-response appointee upon activation of the National Disaster Medical System (NDMS) or as a participant in an authorized NDMS training program. For purposes of USERRA coverage only, NDMS-activated employees are treated as members of the uniformed services when they are activated to provide assistance in response to a public health emergency or to be present for a short period of time when there is a risk of a public health emergency, or, as noted, when they are participating in authorized training.

Also, in a time of war or national emergency, the president has authority to designate any category of persons called into the country's service at such times as a uniformed service member covered by USERRA's rights and protections.

Prohibitions Against Discrimination And Retaliation (1002.18-23)

USERRA has provisions that protect individuals from discrimination and retaliation that are similar to antidiscrimination and antiretaliation provisions in other equal employment opportunity laws such as Title VII, the Americans with Disabilities Act or the Age Discrimination in Employment Act.

USERRA specifically prohibits employers from:

- Discriminating against an employee or applicant for employment on the basis of membership, application for membership, performance of service, application for service or obligation for service in the uniformed services.
- Taking any adverse employment action against an individual in retaliation for exercising any USERRA rights, testifying or making statements in connection with a USERRA proceeding, assisting or participating in a USERRA investigation, or taking any other action to enforce a protection afforded to any person under USERRA.

These protections apply regarding any employment decisions affecting initial employment, re-employment, retention in employment, promotion, discipline or any other benefit of employment, such as overtime opportunities or participation in benefit plans.

USERRA even prohibits discrimination or retaliation against employees working in temporary or brief, nonrecurrent employment positions to which they would not have re-employment rights under USERRA.

An individual who alleges discrimination or retaliation under USERRA has the burden of proving that a status or activity protected by USERRA was at least one of the reasons that an employer made an adverse employment decision affecting that person. If the individual meets this burden, the employer can avoid liability for discrimination or retaliation only by proving that it would have made the same decision regardless of the USERRA-protected status or activity.

Rights and Benefits: On Leave

Notice of leave (1002.85-.88)

Unless military necessity prevents it, or it is otherwise impossible or unreasonable, employees must give the employer notice of their need for leave as far in advance as is reasonable under the circumstances.

Example: If the military directs the employee to report in an extremely short period of time to respond to an emergency situation, the employee may not have time personally to provide notice to the employer, or the employer's representative may not be available at that time.

Department of Defense guidelines recommend that employees give notice to their employers at least 30 days before departing for service "when it is feasible to do so."

The regulations require no particular form for the notice. It may be oral or in writing, it may be informal, and it need not follow any particular format. This means employers may not deny employees USERRA leave or protections simply because of their failure to give notice in the format or by the method the employer requests or expects. Further, the employer must accept the notice as long as it comes from the employee or an appropriate officer of the branch of uniformed service in which the employee's service will be performed.

The notice requirement is not a permission requirement. An employee does not need the employer's permission or approval to be USERRA-protected or to depart for service. Moreover, the notice is simply notice of the need to depart. An employee has no obligation to give notice of intent to return to employment (or not) after military service. Whether or not the employee states intentions about returning to work has no effect on the USERRA right to re-employment.

Caution: Even if an employee tells the employer at her departure that she is not planning to return to work, she still would have the right to be re-employed, provided she otherwise met USERRA's eligibility requirements.

Length, timing and status of leave (1002.99-.104)

Generally, an employee retains a USERRA right to re-employment as long as the individual's cumulative length of military service does not exceed five years with respect to a particular employer. In other words, an employee is entitled to up to a five-year absence with each employer.

USERRA's protections against discrimination and retaliation are not related to, nor dependent on, the length of the employee's leave.

Only the time the employee actually spends in uniformed service counts toward the five-year limit. The period between an employee's notice of the need for leave and the start date of the employee's service does not count against the limit, nor does the time between the employee's completion of service and the actual return to work.

USERRA sets forth eight types of service that do not have to be counted toward the five-year limit. They are restated in the regulations in section 1002.103.

Example: Certain military specialties require an initial period of obligated service greater than five years in light of the amount of time or expense involved in training. Employees in such specialties have re-employment rights through the completion of the period of obligated service.

Example: Employees also have re-employment rights in excess of five years if ordered to, or retained on, active duty during a national emergency or in wartime or, notably, while held captive.

In no circumstances is the employee obligated to attempt to accommodate the employer's interests regarding the timing, frequency or duration of service. Nor can the employer refuse re-employment because of its own inconvenience or its belief that the timing, frequency or duration of the leave was unreasonable.

Employers are not without recourse in such situations, however. The USERRA regulations note that other U.S. Department of Defense regulations require military authorities to assist employers in addressing such issues.

Observation: Both USERRA and the regulations are generally silent on how an employer is expected to cover for an employee who is absent for protected USERRA service.

An employer must treat an employee absent from work for military or other covered service as if the employee were on a furlough or leave of absence from the employer. Accordingly, during the leave, the employee is entitled to any nonseniority-based rights or benefits that the employer generally provides to other employees with similar seniority, status and pay who are on furlough or a leave of absence for any other reason. This includes any rights or benefits that may become effective or be initiated during the employee's period of leave.

If the nonseniority benefits that employees are entitled to while on leave of absence vary depending on the type of leave, the employee on a USERRA-protected leave must be given the most favorable treatment with respect to the benefits for any other comparable type of leave.

Example: If the employer provides full pay to employees on a three-day funeral leave of absence, this is obviously a more favorable benefit than a lengthy unpaid leave of absence for covered military service. USERRA does not require the employer to provide full pay for a lengthy military service leave, however, because the presumed duration of the leave is not comparable with a brief funeral leave.

Example: By contrast, if the employer allowed an employee to accrue vacation leave during a six-month unpaid leave of absence for personal reasons, it would be required under USERRA to do so for an employee on a covered military leave of a comparable duration.

Exception: An employer is not obligated to provide nonseniority rights and benefits to employees on military leave if the employees knowingly give the employer written notice at the time of departure that they do not intend to return to employment with that employer after completion of service. Remember, however, that such employees retain the legal right to be re-employed at the end of the service because they cannot forfeit that right.

Pay (1002.149-.153)

Although employers may choose to do so, USERRA does not require employers to pay employees for any portion of a covered leave. However, providing full or partial pay for any period of covered leave does not relieve the employer of the obligation to provide the employee with any other nonseniority-based rights or benefits granted employees on any other comparable leave of absence.

Employees must have the option of using any accrued vacation pay or similar accrued leave pay to continue their pay once a covered leave begins. It is important to note that the employer cannot require the employee to do so but must simply make the option available. Even if an employer does not proactively inform employees of that option, it must allow an employee to use such leave pay on request.

In contrast, employees are not entitled to use accrued sick or illness leave pay during USERRA leave, unless the employer permits employees to use paid sick leave for any reason other than illness, or unless the employer allows employees to apply sick leave pay to other leaves of absence.

Health benefits (1002.163-.171)

USERRA does not require employers to establish or maintain group health plans for their employees. Nor does it require employers who do provide coverage to make it available to employees who take military leave for service if they did not already participate in the group coverage when the leave began.

In all other situations, however, USERRA provides that employees must have the opportunity to elect continuation coverage for the shorter of up to 24 months or the length of their leave. The new regulations provide both guidance and flexibility regarding how employees may elect and pay for the continuation of their coverage.

The opportunity for employees to elect health plan continuation coverage under USERRA is similar to that under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). There are important differences, however. COBRA applies only to employers with 20 or more employees; USERRA applies to all employers. And, while the duration of COBRA coverage varies depending on the nature of the qualifying event, USERRA's continuation period is set at 24 months.

More important, the USERRA regulations leave employers and health plan administrators with a great deal more flexibility than COBRA permits regarding the manner in which employees are to elect and pay for their continuation coverage. Indeed, the regulations leave such matters completely up to employers and health plan administrators, provided they develop reasonable rules for each that are consistent with both the terms of the group health plan and USERRA itself. The regulations make it optional even whether to develop such rules at all, but the failure to do so exposes employers and plan administrators to more significant coverage obligations in certain circumstances.

The regulations closely follow USERRA's requirements for how much employees on leave may be required to pay for their coverage. The employer may not require employees on leave for 30 days or less to pay any more than their regular share of the premium. If employees normally pay no portion of the premium they cannot be required to make a premium contribution while on leave.

Employees on leave for 31 or more days may be charged no more than 102 percent of the full premium for the plan.

Employers and plan administrators have a number of options for dealing with employees departing for a covered leave who either fail to elect or to pay for continuing coverage. The options are dependent on whether the employee was able to provide advance notice of the need for leave and whether the plan has reasonable rules for how employees are to elect and pay for continuation coverage. The options are as follows:

Employee neither gives advance notice nor elects coverage. The plan administrator may cancel the employee's coverage upon the employee's departure. If it is later determined that the employee was unable to provide advance notice of leave because of military necessity, or that it was impossible or unreasonable to do so, the plan administrator must reinstate coverage on the employee's election and payment of all unpaid premium amounts due.

Employee gives notice but fails to elect coverage. The plan administrator may cancel the employee's coverage on departure but must reinstate coverage retroactive to that date if the employee elects coverage within the time established by the plan's reasonable rules for doing so. If the plan has not developed such rules, the employee may elect retroactive coverage continuation at any time during the 24-month coverage period or during the leave,

Employee elects coverage but does not pay. Plan administrators may develop and enforce reasonable rules for cancellation of coverage if an employee who elected continuation coverage fails to make timely payments.

The regulations provide additional rules and clarification for multi-employer health plans.

Pension benefits

Employers that maintain pension plans must treat employees who take USERRA-covered leaves (including any time after completion of service but before the employee becomes re-employed, and up to two additional years if the employee is recovering from an illness or injury incurred in or aggravated by the service) as not having any break in service for purposes of plan participation, vesting and accrual of benefits.

Most of the specific requirements regarding pension contributions and related benefits or obligations are dependent on the employee's re-employment. They are discussed further below.

Rights and Benefits: On Re-employment

Eligibility (1002.32-.33)

An employee who has been absent from work for covered military or other service has a right to be re-employed under USERRA provided the following conditions are met:

- The employer had advance notice of the leave in conformity with the notice requirements described earlier.
- The duration of the employee's leave (or cumulative protected leave) does not exceed five years, unless one of the exceptions to the five-year limit applies.
- The employee was not separated from service with a disqualifying discharge or under other than honorable conditions. Employees on covered leave lose their USERRA re-employment rights if they are separated from service with a dishonorable or bad-conduct discharge or on any condition other than honorable (as each military branch may define). Employees on leave who are absent from service without authority for more than three months, or who are imprisoned in a civilian court, also may be denied re-employment. Finally, a commissioned officer dismissed in the context of a court martial or by order of the president in time of war may be denied USERRA re-employment rights.
- The employee must return to work (or apply for re-employment) within the required time periods described below.

Provided employees on covered leave meet these four eligibility requirements (including as they are further described below), their right to re-employment is absolute, and the employer may not impose any other conditions on their return.

Time and manner of returning (1002.115-.123)

Employees seeking re-employment following a period of covered USERRA service must either return to work or submit an application for re-employment within a specified time, depending on the duration of their leave, as follows:

Thirty days or less. Employees are eligible for reinstatement as long as they report for work by the first regular workday that occurs at least eight hours after their physical return to their residence after completion of military service. Employees can report as soon as reasonably possible if they cannot make the above deadline through no fault of their own. The same rules apply for a leave period of any length for the purpose of a fitness examination.

Thirty-one to 180 days. Employees must submit an oral or written application for re-employment no later than 14 days after completing service, or, if unable to do so through no fault of their own, by the next day that it is reasonably possible to submit an application.

More than 180 days. Employees must submit an oral or written application for re-employment no more than 90 days after completing service.

An application for re-employment need not follow any particular format, and employees may apply orally or in writing. Also, the regulations note that employees must submit their application to any agent or representative of the employer who has apparent authority to receive it, for example, a human resource officer or a first-line supervisor.

The above deadlines may be extended for up to two years (or more in circumstances beyond the employee's control) if an employee is unable to return to work within the required time period because the employee is hospitalized or convalescing from an illness or injury incurred or aggravated during military service.

If an employee fails to return to work or submit an application for re-employment within these periods, the employer may enforce its established policies or work rules regarding employee absences from work, as appropriate to the situation.

Documentation of eligibility (1002.121-.123)

Service greater than 30 days. At the employer's request, employees must provide documentation showing all of the following:

- Their application for re-employment was timely.
- Their length of service did not exceed the five-year limit.
- Their separation from service was not for any disqualifying reason.

The required documentation may seem to cover information that would be readily available to an employee's preservice employer, but the information may be less accessible and very important if an employee is returning from a long military deployment to an employer or successor-in-interest that experienced a merger, buyout, or other operational reorganization during the employee's leave.

That said, an employer may not deny initial re-employment to an employee who has not yet supplied the requested documentation or to whom the documentation is not readily available. The employee must be returned to work as required by USERRA while the employer awaits the documentation. If the documents later show that the employee was not eligible for re-employment, the employer may at that time terminate employment and any other rights or benefits it may have granted the employee.

Service greater than 90 days. The employer may require the employee to submit documentation showing entitlement to re-employment before treating the employee as not having had a break in service for pension purposes.

The re-employment position (1002.180-.226)

Employees who are eligible for re-employment are to be “promptly re-employed,” which the regulations define as generally within two weeks of the employee’s application for re-employment.

A returning employee may not be entitled to prompt re-employment, however, if the employer’s circumstances have changed during the employee’s leave.

Example: Employees who would have been laid off during the period of leave if they had not gone on leave need not be re-employed unless (or until) they would have recall rights in accordance with the employer’s normal policies or any applicable collective bargaining agreement.

Example: Employees who were employed in temporary, fixed-term contract or similar nonrecurring or nonpermanent positions have no re-employment rights if their employment would have ended before the end of the service period if the employee had not gone on leave.

Both with respect to the position into which returning employees must be re-employed and the pay they must receive upon re-employment, USERRA and the regulations follow the so-called “escalator” principle. In practice, the escalator principle requires employers to return employees to work in the job position with the pay and benefit rates that they would have attained if they had not taken military leave—provided the position or rate can be determined with reasonable certainty.

USERRA itself defines with some specificity the range of jobs positions for which a returning employee must be considered under the rubric of the “escalator” principle:

Leaves of 90 days or less. Employees must be placed in the position they would have attained but for the leave or, if the employee cannot become qualified for or is unable to perform that job despite the employer’s reasonable efforts to qualify the employee, in the job held prior to service. If the employee is unable to perform the latter position as well, again despite the employer’s reasonable effort to qualify the employee, then the employee may be placed in any other position that he is qualified to perform that most closely approximates one of the above two positions in terms of seniority, status and pay.

Leaves of more than 90 days. Employers must follow the same general framework as above, except that they may consider other positions that closely approximate the job employees would have held or attained in terms of seniority, status and pay.

Special accommodation rules that also follow the escalator principle apply if the employee returning from leave needs an accommodation due to an illness or injury incurred in or aggravated by his or her military service.

Observation: The regulations provide some long-needed clarity regarding the application of the escalator principle in certain situations.

One possible application of the “escalator” principle, for example, involves determining whether an employee on leave would have been promoted to a new position if the employee remained continuously employed. If promotion would have been based on a skills test or examination the employee missed while on service leave, the regulations clarify that the employee should be placed in an appropriate re-employment position, allowed time to adjust, then given an opportunity to make up the test.

If the employee passes the test and it can be determined that the employee consequently would have been promoted, the employee then should be promoted. Benefits of the promotion—for example, the pay rate—are to be retroactive to the date (to the extent it can be ascertained with reasonable certainty) the employee would have received the promotion but for the service leave.

All applications of the “escalator” principle presume that the employer can determine with “reasonable certainty” the position, pay rate or seniority-based benefits that the returning employee would have attained but for taking a protected leave. In such situations, “reasonable certainty” is defined as a high probability that the employee would have received the seniority or seniority-based right or benefit if continuously employed.

“Reasonable” certainty does not mean “absolute” certainty. Employees need not show that there is no doubt that they would have attained the job position or benefits at issue but for the leave.

One way employees can show with reasonable certainty that they would have received a benefit is to show that other employees with similar seniority have received the right or benefit.

Health and pension benefits (1002.259-.267)

If health coverage for an employee and/or dependents was cancelled due to the employee’s service, coverage must be reinstated on the employee’s re-employment without any exclusion or waiting periods. The regulations clarify that USERRA permits, but does not require, employers to allow a returning employee to delay reinstatement of coverage until a later date.

As noted earlier, employers must offer returning employees pension plan benefits as if no break in employment had occurred. Further, an employer may not cause an employee to forfeit any accrued benefits under the plan and may not require a returning employee to requalify for participation.

In pension plans that require or allow employee contributions (whether or not matched by the employer), employees are permitted—but cannot be required—to make up any missed contributions from their leave period. The time for making up such contributions begins with the employee’s re-employment and continues for a period up to three times the duration of the leave, but not to exceed five years.

If an employee cannot or does not make up any missed contributions, the employer is not required to contribute any matching contribution associated with the employee’s missed contributions that are not made up. Consequently, the employee’s resulting retirement benefit may be less.

Any pension plan contributions—by employee or employer—that are calculated on the basis of the employee’s compensation must be calculated on the rate of compensation the employee would have earned or attained if continuously employed. An employer has up to 90 days after the employee returns to employment to make contributions attributable to the employee’s period of service. If meeting that deadline is impossible or unreasonable in the circumstances, the employer must make up the contributions as soon as practical.

Protection against discharge (1002.247-.248)

Employees re-employed after an absence for covered service of more than 30 days have protection from discharge without just cause for a limited time following their re-employment.

Service between 31-180 days. The employer may not discharge the employee except for cause during the first 180 days following re-employment.

Service greater than 180 days. The employer may not discharge the employee except for cause for one year after the date of the employee's re-employment.

This just-cause protection applies even if the employer otherwise maintains an employment-at-will relationship with its employees.

Notice Requirements

A December 2004 amendment to USERRA imposed a notice obligation on employers, requiring them to provide all "persons entitled to rights and benefits" under USERRA with a notice of the rights, benefits and obligations that they and employers have under the law. On March 10, 2005, the DOL issued an interim rule and model workplace poster that set forth proposed text meeting the notice requirements. The DOL's final regulations slightly modified the rule and poster.

Practically speaking, all employees must be provided with the required notice. The most obvious way for employers to meet the notice requirement is to post the DOL's model poster in the place where legally required workplace postings are customarily displayed.

While posting the DOL's model poster is the suggested way for employers to meet the notice requirement, it is not mandatory that the DOL's model poster be used as long as the employer provides the required notice content in some other form. Employers also can meet the notice requirements, for example, by handing out or mailing copies of the model poster to all employees, or—in workplaces where all employees use e-mail—by e-mailing them the required notice content or the poster itself.

The text of the required notice and the DOL's model USERRA poster are available on the DOL's web site. [Click here to view it](#)

Enforcement and Remedies (1002.288-.292; .303-.314)

The regulations outline two options for employees who believe their USERRA rights have been violated:

- Aggrieved employees may file a complaint (in writing or online) with DOL's Veterans' Employment and Training Services (VETS)
- They may file a private lawsuit in an appropriate federal or state court.

VETS is charged with investigating any complaints by employees who claim USERRA violations. In conducting an investigation, VETS has subpoena power but, ultimately, has no further legal power or authority to order an employer to comply with USERRA or to issue any relief—such as back pay or damages—to the employee.

If VETS determines that the employee's complaint has merit, it will make reasonable efforts to ensure future USERRA compliance and to address the employee's concerns. If unsuccessful, VETS must notify the employee of the results of its investigation and of the employee's right to pursue private legal action.

Upon receipt of the VETS notice described above, the employee may either pursue private legal action or ask VETS to refer the complaint to the U.S. attorney general. In the latter instance, the attorney general reviews the complaint for merit and, in his discretion, may initiate legal action on the employee's behalf to attempt to obtain legal relief.

In a legal action, whether brought by the attorney general or by the employee privately, a court is authorized to order compliance with USERRA and to award damages for any lost back pay or benefits, liquidated damages in an amount equal to any lost back pay or benefits (for willful violations), attorneys' fees and litigation costs, and any other equitable relief that seems appropriate to vindicate the employee's rights and/or losses.

There is no statute of limitations for bringing a USERRA complaint. The regulations specifically recognize, however, that one federal court has applied a four-year statute of limitations and further recognize that equitable defenses may be available to the employer if the employee delays in bringing a complaint for an unreasonably long period of time so as to prejudice the employer's ability to defend against the claim.

Finally, of some note, the regulations also specifically recognize that employers may not bring legal actions under USERRA.

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