



**ROA**<sup>TM</sup>

**Reserve Officers Association of the United States**  
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# POSITION PAPER

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## UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA)

### Requested Action:

ROA encourages Congress to support amendments to the Uniformed Services Employment and Reemployment Rights Act that will protect the civilian jobs of Reserve Component members and encourage compliance by employers. While the December 2005 regulations and recent changes to USERRA positively affect enforcement, many other things can be done to improve USERRA by:

- Making it unlawful for an employer to ask a job applicant about Reserve Component membership.
- Making federal agencies, as employers, subject to the same remedies, including liquidated damages for willful violations that are imposed on private employers.
- Expanding USERRA's definition of "service in the uniformed services" to include an employee's need to be absent from work for purposes of medical treatment (from Department of Defense or Department of Veterans Affairs facilities) for a wound, injury, or illness incurred or aggravated during a period of service in the uniformed services.
- Amending Title 38, U.S.C. 4323 (d)(1)(C)—the "liquidated damages" provision to require employers who have violated USERRA to remunerate to the service member an amount of \$20,000 or the amount equal to the actual damages, whichever is greater.
- Providing a provision in section 4324 allowing for liquidated damages when the employer is a federal executive agency and the violation was willful, such as found in section 4323 as it applies to states, political subdivisions of states, and private employers.
- Amending Title 38, U.S.C. 4323 (e) to mandate (rather than simply permit) injunctive relief to prevent or correct a USERRA violation.
- Amending Title 38, U.S.C. 4302 (b) to make clear that USERRA overrides an agreement to submit future USERRA disputes to binding arbitration.
- Amending Title 38, U.S.C. 4323 and 4324 to authorize punitive damages for willful and egregious USERRA violations.
- Protecting recalled Reserve Component members from expiration of required occupation licenses during active duty.

**ROA can work closely with Congressional Offices to draft USERRA improvements that will protect employment of National Guard and Reserve members.**

[over]

## Discussion:

USERRA significantly strengthens and expands the employment and reemployment rights of all uniformed service members.

Reemployment rights extend to persons who have been absent from a position of employment because of “service in the uniformed services, “which means the performance of duty on a voluntary or involuntary basis including:

- Active Duty
- Inactive Duty for Training (weekend or weekday drill)
- Active Duty for Special Work
- Annual Active duty for Training
- Initial Active Duty for training
- Absence from work for an examination to determine a person’s fitness for any of the above types of duty.
- Presidential Recall
- Mobilization
- National Disaster
- Medical System service
- Full-time National Guard Duty
- Public Health Service Reserve Duty
- Funeral Honors Duty performed

## Background:

USERRA was signed into law by President Clinton on October 13, 1994, but the law is actually 74 years old. USERRA was a complete rewrite of the Veterans’ Reemployment Rights (VRR) law, which can be traced to August 1940, when Congress provided reemployment rights to those who left civilian jobs when voluntarily or involuntarily recalled to active duty. The law was amended during the 1960s to provide protection to National Guard and Reserve members performing training duty.

Section 4301 of USERRA (Title 38 U.S.C. 4301) sets forth the purposes that Congress had in mind when it enacted this law: to encourage service in the uniformed services; to minimize disruption of employment and income by providing for the prompt reemployment of those who have served; and to prohibit discrimination against those who serve or have served. Section 4301 also sets forth “the sense of Congress that the Federal Government should be a model employer in carrying out the provisions of this chapter” [38 U.S.C. 4301 (b)].

On December 19, 2005, the U.S. Department of Labor published final regulations regarding USERRA. The regulations clarify the rights and obligations of individuals serving in active duty with respect to their civilian employment.

## Available Resources:

Law Review <http://www.servicemembers-lawcenter.org>

Complete Text of Regulations <http://www.dol.gov/vets/regs/fedreg/final/2005023961.pdf>

Rules and Regulations [http://www.dol.gov/vets/programs/userra/Final\\_USERRA\\_Poster.pdf](http://www.dol.gov/vets/programs/userra/Final_USERRA_Poster.pdf)



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Employer Support of Guard and Reserve (ESGR) <http://www.esgr.mil>



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