

# Research paper on ussera

Business, Employee



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## **Abstract**

The concept of protecting rights of reemployment of their civil jobs of those employees who served nations through their military and uniformed services was emerged after services of veterans who served America in battle war. Protecting rights was resulted in an act of uniformed services employment and reemployment that is now known as USERRA. An act was changed in a complete legislation to protect rights of those employees who give military services leaving their civil jobs. An employee have a right to re-join civil employment along with attaining same position after releasing from services and employer would be punished if violated USERRA and its obligations. USERRA provides full protection to employees in order to provide those rights of reemployment that is based on time duration spend to uniformed services.

## Introduction

USERRA was formed to strengthen the rights of reemployment of Veterans. It was aimed to protect the rights of the Veterans for civil job benefits and rights along with the reserved components' members and civil individuals.

President of United States of America activated the individuals for responding federally emergencies at the national level. Number of main improvements was made by USERRA for the protection of rights and obligations for members of service. It was happened with the addition of the employees of the federal government to already eligible employees that receives eligibility from labour department of U. S (Quinn, 2005).

Throughout the history of the U. S, it has found that the government of U. S has enacted the law of U. S for men and women protection those who served their times to conflicts of armed. The law was passed by Congress that was aimed to protect the members of service from proceedings as they could not able to attend due to the commitment of military. During World War I, an act of soldiers and sailors civil relief was passed by Congress that was meant to protect similarly in Europe fighting of service members. Before the time of entering of U. S in World War II, an act of selecting training and service was also passed by Congress in 1940 (Ogles, 2012).

The motivation behind this legislation was to provide an opportunity to individuals to re-join or return to jobs at the end of warfare. Supreme Court of United States, after the world war, held a session for strengthening protection of the law in Sullivan Drydock and Fishgold in 1946. At the same time, the Supreme Court worked on the Act to allow an employee to reemployment for drafting war fight (Quinn, 2005).

The Supreme Court provided a number of opportunities to the service members beyond providing them right of reemployment. The court in the law of FishGold had mentioned that service member on returning to the civil job would get all benefits and occupational promotions as he would be considered as keeping position while in participating in military services. The act or USERRA also provided a law to give aid and funds and health insurance for their services in great time of threat and dangers to the country. Court provided full rights to all those employees who left their civil jobs as they have called for defence services in the United States. Hence, they would not be considered to be discharge as their absence are related to military services. The court mentioned that the law is aimed to give rights and benefits to veterans on returning from services that was held by those who were not part of services. The legislation for employees is based on the idea of "Liberally Construed" which means that legislation must be positively followed by both department of labour and courts which have resulted in USERRA (Savitsky et al., 2009).

The Federal Court of Washington State had also made a decision at the end of World War II for the same case associated with FishGold. In the case of 1946 of Seattle Rainier Club vs. Niemiec, club (now Mariners) refused to rehire one of the former players as he was absent to participate in services for World War II for three months. The court applied the decision of FishGold and ordered to Baseball Club to rehire a former player as he was a service member. During acknowledgement of baseball issue, the judge has become serious in his words towards all team players. The judge stated at the end of the session that no baseball manager or player was being considered as

American if he considered playing this year of war, along with leaving a question that did the services of veteran fail? Permission to play baseball was being considered as an exhibition of whoever killed among us (Ogles, 2012).

There was a threat among Congress for the axis powers, therefore; cold war's geopolitical realities were being used by Congress to justify its support and positive legislation for the veteran. An Act of selective services and training of 1940 was being modified in during the period of cold war along with the modification of act of 1948 of selective services and Act of 1967 of Universal Military Training services. Act of 1940 of selective service and training was based on same protections with little modification to support the military during the era of the cold war (Savitsky et. al. 2009).

The military selective services act of 1968 was amended that was being considered as first protection for reservists and an act was being taken on the basis of the act of Veterans' Reemployment rights (VRRRA).

Reemployment discrimination for reservists that was caused by their services to the military was protected by VRRRA. The provisions of VRRRA was again codified Act of 1974 for veterans' readjustment assistance, but it also protects the rights of reservist for discrimination of employment. It also emphasises that all individuals who served military services must have a place in reserved voluntary positions (Quinn, 2005).

An increasing discrimination experiencing by reservist was recognised by Congress during its support to protect their rights, and it was happening because weekly and summer training were being required to attend by reservist. The legal fight was emerged with increasing support and

protection to the reservist in VRRRA as employer demanded proof from employee or reservist to show their wrong actions due to the reserve status of employee (Ogles, 2012).

A case of Monroe vs. Standard oil co. was being addressed by Supreme Court under the burden of the proof standard of VRRRA in 1891. The Supreme Court conducted the case as mentioning that the employee must to prove discriminatory actions of his employer as he violated VRRRA for showing his motivation with reserve status. Monroe case hold by the court was resulted in USERRA, which was about to support overburden of employee to provide proof of discrimination. It is now much easy in terms of burden of proof under USERRA (BUGBEE, 2008).

## **Research questions**

What is USERRA?

What are the rights of employees according to the law?

What are the implications of USERRA on employers?

Why USERRA is being considered as important?

What is USERRA?

An act was passed in 1994 of uniformed services employment and reemployment Right known as USERRA. The act was signed in 1994 as law in order to provide strength and power to the act of rights of veterans' reemployment. The basic aim of the USERRA was to provide the rights to those employees who need to re-join his civil employment after participating in uniformed and armed services. USERRA served the rights of service members by improving the rights and benefits with improving the mechanism of enforcement. The assistance of the department of labour was

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also provided to the employees to claim for reemployment. The time length was increased by USERRA for the absent of an individual employee for participating in services of uniformed and then retain rights of reemployment (Ogles, 2012).

All individuals are generally covered by USERRA in the country who served the uniformed services or serves it usually including all employees from the public to private sectors and even federal employees. The law was aimed to serve the reemployment services to those individuals to absent from work to serve services in order to make them retain jobs and employments and all benefits. USERRA protects the rights of veterans and makes all efforts to require employers to give a chance for the disability (BUGBEE, 2008).

### **Implication of USERRA**

An advanced notice whether verbal or written is being required to give to the employer in order to inform them about military services, but prior notice must be produced for the necessity of military. The advanced notice of employee is far considered as reasonable under such circumstances. Service members are also considered as able to use annual leaves or vacations for performing the duty of military (Tidwell et. al. 2009).

The implication of USERRA is for all employers in the United States. The employers include private, local, national, federal, foreigner all other companies in the United States. USERRA is applied to employees of the United States of all those companies operating in other countries (Pate, 2012).

## **Employees rights and responsibilities**

The right of an employee to reemployment their civil jobs and report to come back to work is actually based on the time of serving the duties of the military. Employee who spend time on military services for less than 31 days must return to work from the very next day of releasing from services for the full day same as regular schedule on the basis of assumptions of having safe trip to home along with rest of eight hours. The employee spend time more than 30 days but not more than 181 days needs to submit a retain application within 14 days of after releasing from uniformed services. An employee who spends more time than 181 days for serving is assumed to submit an application within 90 days from releasing from services (BUGBEE, 2008).

The same position must be attained by an employee after returning from services to re-join civil job, this amendment is known as “Escalator Principle” in the advancement of 1946 of FishGold vs. Sullivan DryDock and Repair Corp. The aim of the law is to provide service member the same superiority, pay, post and status on the job along with all other rights had before participating in military services (Tidwell et. al. 2009).

It is also improved in legislation that returning service member must be provided with training in order to make them able to work efficiently as before military services and to become refresh with all their skills that would help them reemployment. An alternative is also being provided to the service member if he could not allow attaining same position of what he has before services (Hance, 2013). USERRA provides as legislation to consider service member on unpaid vacation leaves to the absence and given with rights and



profit of non-seniority different from other individuals having non-military absent leaves (Pate, 2012).

USERRA also provides a plan for health insurance and pension to the service member. An employee who provides the service more than 30 days have a chance to elect for health insurance for more than 24 months. However, it might be possible that he might to be paid more than 100 percent of full premium services. Health plan for service member of giving service less than 30 days is based on the idea that health care would be provided if a member remains an employee (Hance, 2013).

## **Conclusion**

It is concluded from the study that the individuals have a right to perform duties of military services leaving their civil employment and have right to re-join and reemployment on the same position after releasing from services as before participating in services. USERRA is a complete set of laws for employees to provide them rights, benefits, profit and obligations for employers to reemploy those employees who left their jobs for uniformed services. The research paper results and analysis concluded that USERRA is actually aimed to give the right to a veteran in order to give them an opportunity to retain their jobs after war and fighting in a world war. Employees have full right to have leaves for participating in arm and military services and employer is bound to reemploy them after releasing from military services.

It is finally concluded from the study that USERRA is resulted in a representation of veterans in Supreme Court to provide the rights of reemployment and employment and to give strength to their rights. The

discussion above and literature has shown that the veteran would be able to get their full employment right and civil jobs after laying their duties to the military and uniformed services and served their nation.

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