



BALCH & BINGHAM LLP

Alabama • Georgia • Mississippi • Washington, D.C.

LABOR AND EMPLOYMENT BULLETIN

March 11, 2005

DEPARTMENT OF LABOR ISSUES NEW NOTICE OF USERRA RIGHTS

The United States Department of Labor announced yesterday that a new notice, in poster format, explaining the rights of employees under the Uniformed Services Employment and Reemployment Rights Act (USERRA) is now available for download from the DOL's web site.

The Veterans Benefits Improvement Act, enacted by Congress in December 2004, does not specifically require a posting, but does require that employers provide their employees "notice of the rights, benefits, and obligations" under USERRA. The Act further states that the notice requirement can be fulfilled by posting a notice of USERRA rights "where employers customarily place notices for employees."

The Department of Labor's recommended poster is attached to this Bulletin. Because the Veterans Benefits Improvement Act's notice requirement is effective immediately, we recommend that all employers subject to USERRA utilize the attached poster.

The poster is available for download from the Department of Labor's web site at <http://www.dol.gov/vets/programs/userra/poster.pdf>.



SAVE THE DATE
Balch & Bingham's 2005 Labor and
Employment Seminars will be held in:
Birmingham, AL: September 29-30
Biloxi, MS: October 13-14

L A B O R A N D E M P L O Y M E N T C O N T A C T S

BIRMINGHAM, AL

Leslie M. Allen
205.226.3484
lallen@balch.com

David R. Boyd
205.226.3485
dboyd@balch.com

Douglas B. Kauffman
205.226.8758
dkauffman@balch.com

N. DeWayne Pope
205.226.3421
dpope@balch.com

Lisa J. Sharp
205.226.8714
lsharp@balch.com

M. Jefferson Starling, III
205.226.3406
jstarling@balch.com

HUNTSVILLE, AL

David B. Block
256.512.0105
dblock@balch.com

JACKSON, MS

R. Pepper Crutcher, Jr.
601.965.8158
pcrutcher@balch.com

Armin J. Moeller, Jr.
601.965.8156
amoeller@balch.com

David M. Thomas, II
601.965.8157
dthomas@balch.com

E. Russell Turner
601.965.8159
rturner@balch.com

ATLANTA, GA

Cary Ichter
404.760.3502
cichter@balch.com

T. Joshua R. Archer
404.760.3556
jarcher@balch.com

MONTGOMERY, AL

David R. Boyd
334.269.3132
dboyd@balch.com

W. Pete Cobb, II
334.269.3128
pcobb@balch.com

Charles B. Paterson
334.269.3143
cpaterso@balch.com

Dorman Walker
334.269.3138
dwalker@balch.com

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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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