

**Number 10, June 1999 (updated March 2003):
Health Insurance**

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Q: I have a husband and three children, and I am a lieutenant commander in the Naval Reserve. Like most people in this country, I have health insurance, for my family and myself, through my civilian job. As a Naval Reservist, I perform one weekend of inactive-duty training each month and two weeks of Annual Training (AT) each year. I also do a lot of extra duty, including Active Duty for Special Work (ADSW). I worry about gaps in my civilian health insurance coverage, while I am on AT or ADSW, especially since one of my children has a serious chronic kidney condition and requires dialysis. I have enjoyed reading your series of articles about the Uniformed Services Employment and Re-employment Rights Act (USERRA). Does USERRA have a provision to protect someone like me from gaps in health insurance coverage?

A: Yes, if you leave a civilian job for service in the uniformed services, you can elect to continue your civilian health insurance coverage, through your civilian job, while you are away from the job for service. See 38 U.S. Code 4317(a). This is not automatic. You must inform your employer that you are making this election. The employer is not required to inform you of your right to make this election.

Q: If I make this election, how much will continuing my civilian health insurance cost me?

A: That depends upon the duration of the period of service that you are to perform. If the period of service is less than 31 days, the employer is permitted to charge you only the employee share (if any) of the cost of the coverage. See 38 U.S.C. 4317(a)(1)(B). For example, on your 12-day AT, you will only be required to pay what you would have paid if you had not been on AT.

If your period of service is for 31 days or more (like a 179-day ADSW), and if you make this election, the employer is permitted to charge you up to 102 percent of the entire premium, including the part that the employer normally pays. See 38 U.S.C. 4317(a)(1)(B).

Q: Why was 31 days set as the cut-off, after which I must pay much more?

A: Because under 10 U.S.C. 1076(a)(2), you are entitled to use the military health-care system, including CHAMPUS, if you are on active duty or active duty for training for 31 days or more. You are covered by the military system from day one, if your orders call for 31 days or more of service.

I suggest that you routinely make this election for periods of service of less

than 31 days, such as 12-day AT periods. In such a situation, making the election costs you nothing, other than what you would have paid in any case, and making the election protects you from a gap in coverage, when you are covered neither by your civilian insurance nor the military health-care system.

If your period of service is for 31 days or more, you probably won't want to make the election, unless there is a good reason why you don't want to use CHAMPUS for your family members. For example, perhaps the doctor who has been treating your child's kidney condition refuses to participate in CHAMPUS. In that case, it might be worth it to you to pay 102 percent of the entire premium in order to ensure continuity of care for the child.

Q: I am about to begin a 179-day ADSW period. For exactly the reason you suggest, I plan to continue my civilian health insurance during that 179-day period. My 179-day ADSW may get extended to a three-year voluntary recall to active duty. Am I entitled to continue my civilian health insurance for the entire three-year period?

A: No. Your right to continue your civilian health insurance coverage, by paying 102 percent of the premium, expires after the completion of the period of your service and the expiration of the application period for re-employment (90 days if your period of service is 181 days or more), or 18 months after your absence from your civilian job began, whichever comes first. See 38 U.S.C. 4317(a)(1)(A). The employer could choose to allow you to continue your coverage during the entire three-year period, but the employer has the right to cut off your coverage after 18 months.

Q: Other than health insurance coverage, am I entitled to other non-seniority benefits while I am away from my job for service in the uniformed services?

A: Under some circumstances, yes. If your employer offers continued life insurance coverage, holiday pay, Christmas bonuses, and other non-seniority benefits to employees on furlough or on non-military leaves of absence, your employer must offer you similar benefits while you are away from work for service in the uniformed services. See 38 U.S.C. 4316(b)(1)(A).

If your employer has more than one kind of non-military leave of absence, the comparison should be made to the employer's most generous form of leave. See *Waltermeyer v. Aluminum Company of America*, 804 F.2d 821 (3d Cir. 1986).

Q: If I do not elect to continue my civilian health insurance coverage while I am away from my job for service in the uniformed services, am I still entitled to reinstatement of my health insurance coverage upon my re-employment in my civilian job?

A: Yes. If you meet USERRA's eligibility criteria, as explained in Issues 21-23, you are entitled to immediate reinstatement of your civilian health insurance coverage, upon your re-employment, whether or not you exercised your right to continue the coverage during your absence. There must be no waiting period and no exclusion of "pre-existing conditions," except for conditions which the Department of Veterans Affairs has determined to be "service-connected." See 38 U.S.C. 4317(b). Since your child's kidney condition cannot possibly be "service-connected," you are entitled, upon your re-employment, to coverage for the child and that condition.

Note: If your employer is giving you a hard time about time off from work for Reserve training or service, or if you believe that your employer has denied you benefits to which you are entitled under USERRA, I suggest that you contact NCESGR at 1-800-336-4590. You may also wish to visit NCESGR's Web site at www.esgr.com.