

What Is an Application for Reemployment?

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Q: I am a Specialist (E-4) in the Army National Guard. I work for a small diner that has only 12 employees. Mr. Bunker, the owner of the diner, frequently gives me a hard time about the times that I must miss work because of my Army National Guard training and service. I have read with great interest your “Law Review” articles¹ about the Uniformed Services Employment and Reemployment Rights Act (USERRA).

In Law Review 1281 and other articles, you have set forth the five conditions that I must meet to have the right to reemployment in my civilian job after a period of military training or service. You have said that the final condition is that I must have been timely in reporting back to work or applying for reemployment after release from a period of service. What exactly am I required to do? And how long do I have to do it?

A: After a period of service of less than 31 days (like a drill weekend or a standard two-week annual training tour), you are required to report for work “(i) not later than the beginning of the first full regularly scheduled work period on the first full calendar day following the completion of the period of service and the expiration of eight hours after a period allowing for the safe transportation of the person from the place of that service to the person’s residence; or (ii) as soon as possible after the expiration of the eight-hour period referred to in clause (i), if reporting within the period referred to in such clause is impossible or unreasonable through no fault of the person.” 38 U.S.C. 4312(e)(1)(A).²

For example, let us assume that you perform inactive duty training (drills) all day Saturday and Sunday and that you are released from the drill weekend at 5 pm Sunday afternoon. On Monday, your work day normally starts at 8 am. You must report back to work at 8 am Monday, if you perform the drill weekend in the same metropolitan area where you live and work. If you must travel a great distance from your drill location to your home, you can report back to your

¹ We invite the reader’s attention to www.servicemembers-lawcenter.org. You will find 1,036 articles about laws that are especially pertinent to those who serve our country in uniform, along with a detailed Subject Index and a search function, to facilitate finding articles about very specific topics. Captain Wright initiated this column in 1997, and we add new articles every week. We added 169 new articles in 2013.

² The citation means that you can find this provision in section 4312(e)(1)(A) of title 38 of the United States Code.

civilian job Tuesday morning. In any case, if your return to work is delayed by factors beyond your control (like an automobile accident on the return trip), you must report back to work as soon as reasonably possible.

After a period of service of 31-180 days, you have 14 days to apply for reemployment. 38 U.S.C. 4312(e)(1)(C). After a period of service of 181 days or more, you have 90 days to apply for reemployment. 38 U.S.C. 4312(e)(1)(D). You don't have to wait 90 days or even 14 days to ask for your job back. If you are anxious to return to work, you should apply for reemployment immediately after you are released from service. If you need some time off to readjust to civilian life after an arduous period of service, you should wait a few days before you apply for reemployment.

Q: What does it mean to “apply for reemployment?”

A: There is no specific form of words that you must use, and the application for reemployment need not be in writing. The essential message that you must convey is “I used to work here. I left my job for uniformed service. Now, I am back from the uniformed service, and I want my job back.”

An application for reemployment is more than a simple inquiry about “do you have any jobs available?” If the employer is a large organization, and if you have been gone for months or years, the employer may not realize that you worked there previously and that you left your job for military service.

The Department of Labor USERRA regulation provides as follows about the form of an application for reemployment:

“§ 1002.118 Is an application for reemployment required to be in any particular form?”

An application for reemployment need not follow any particular format. The employee may apply orally or in writing. The application should indicate that the employee is a former employee returning from service in the uniformed services and that he or she seeks reemployment with the pre-service employer. The employee is permitted but not required to identify a particular reemployment position in which he or she is interested.”

20 C.F.R. 1002.118 (bold question in original).³

³ The citation means that you can find this provision in title 20 of the Code of Federal Regulations (C.F.R.) at section 1002.118. Section 4331 gives DOL the authority to promulgate regulations about the application of USERRA to state and local governments and private employers. DOL published draft USERRA Regulations in the *Federal Register*, for notice and comment, in September 2004. After considering the comments received and making a few adjustments, DOL published the final USERRA Regulations in December 2005.

The law does not require you to mention the name of the law (USERRA) or to remind the employer of your specific USERRA entitlements, including prompt reinstatement in the civilian job, continuous accumulation of seniority and pension credit in the civilian job, and immediate reinstatement of your civilian health insurance coverage. But if you do provide the employer this information that will likely facilitate the process of your prompt and proper reemployment. Accordingly, I recommend that you make a formal application for reemployment by certified mail. Here is a sample format that you can use:

SAMPLE APPLICATION FOR REEMPLOYMENT

Mr. Archie Bunker
Edith's Place
123 King Dr.
Queens, NY 12345

Re: Application for reemployment—certified mail

Dear Mr. Bunker:

As you know, I have recently been away from my job with your organization for the purpose of service in the United States [name service here]. I have been released from the period of service, and I am now applying for reemployment.

I am entitled to reemployment under a federal law called the Uniformed Services Employment and Reemployment Rights Act (USERRA). You can find USERRA in title 38 of the United States Code, at sections 4301-4335 (38 U.S.C. 4301-4335). Congress enacted USERRA in 1994, as a rewrite of the Veterans' Reemployment Rights Act, which dates back to 1940.

I am entitled to reemployment because I meet the USERRA conditions. I began my employment with your organization in [month year]. In [month year] I left my job for uniformed service and gave you prior oral or written notice. I served honorably and was released from the period of service on [date] without having received a disqualifying bad discharge from the military. I am now applying for reemployment within the timeframe permitted under USERRA.

Because I meet the USERRA conditions, I am entitled to prompt reinstatement in the position of employment that I would have attained if I had been continuously employed or another position (for which I am qualified) that is of like seniority, status, and pay. Upon my reemployment, I am entitled to be treated, for seniority and pension purposes, as if I had been continuously employed in the civilian job during the time since [date], when I was first employed by your organization, and before I left my job for this recently completed period of uniformed service. I am also entitled to immediate reinstatement of my health insurance coverage through your organization, for myself and my family, with no waiting period and no exclusion of "pre-existing conditions." I am now applying for all of my USERRA entitlements.

Please call me at [number] and let us please discuss my report date for returning to work, in the next few days. If you have questions about USERRA, please call the Department of Defense organization called Employer Support of the Guard and Reserve (ESGR), at 800-336-4590.

I also invite your attention to the website of the Service Members Law Center (SMLC) of the Reserve Officers Association, available at www.servicemembers-lawcenter.org. You will find more than 1,000 articles about USERRA and other military-relevant laws, along with a detailed Subject Index and a search function, to facilitate finding articles about very specific topics. You can reach the SMLC toll-free at 800-809-9448, extension 730.

Thank you for your support and your prayers during my recent deployment. I am looking forward to my speedy return to your fine organization.

Q: Mr. Bunker, the owner of the diner, told me: “I spoke to my lawyer, Lettuce Cheatham, of the law firm Dewey Cheatham and Howe. Mr. Cheatham told me that as long as I don’t hire a 15th employee I don’t need to worry about these damned federal laws. I only have 12 employees, so I am not required to rehire you after you return from the Army.” Is Mr. Bunker correct?

A: No. Other federal laws only apply to employers with 15 or more employees, but the reemployment statute has never had any such threshold for applicability. You only need one employee to be a covered employer under USERRA.

As I explained in Law Review 104 and other articles, Congress enacted USERRA in 1994, as a long-overdue rewrite of the Veterans’ Reemployment Rights Act (VRRRA), which dates back to 1940. USERRA’s 1994 legislative history provides: “This chapter [USERRA] would apply, as does current law [the VRRRA], to all employers regardless of the size of the employer or the number of employees. See *Cole v. Swint*, 961 F.2d 58, 60 (5th Cir. 1992).” House Report No. 103-64, 1994 *United States Code Congressional & Administrative News* 2449, 2454.