

*As part of our ongoing effort to keep you informed of employer requirements and obligations, below is a summary of the 2004 changes under the Uniform Service Employment and Reemployment Rights Act (USERRA) and the recent posting deadline.*

## **New Requirements under USERRA**

The Uniform Service Employment and Reemployment Rights Act (USERRA) provides employees who served or have served in the uniformed services with reemployment and health plan continuation of coverage rights. The Veteran's Benefits Improvement Act of 2004 (VBIA) included two administrative changes to USERRA.

The first change, effective December 10, 2004, requires the employer to offer COBRA continuation of coverage for a period of 24 months to employees on USERRA. This is a change from the prior 18 month continuation.

Secondly, effective March 10, 2004, an employer must provide notice of the rights, benefits and obligations of USERRA. The notice must be provided by March 10, 2005. This notice is available on the DOL's website at [www.dol.gov](http://www.dol.gov). Notice can be provided either through posting a flyer in an area where notices are customarily placed, or by distributing the notice via hand delivery, mail, or email. In addition to the posting requirement, employers may choose to provide employees prior to commencement of any leave for uniformed service duty, a specific notice of their rights under USERRA.

Below is a summary of the USERRA protections and obligations.

For further information please contact your Account Manager or Alicia M. Scalzo at Kibble & Prentice.

## **Summary of USERRA**

The Uniform Services Employment and Reemployment Rights Act (USERRA), protects 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 service and applicants to the uniformed service. There are three facets of protection under USERRA.

## **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:

1. You ensure your employer receives advanced written or verbal notice of your service;
2. You have five years or less of cumulative service in the uniformed services while with your particular employer;
3. You return to work or apply for reemployment in a timely manner after conclusion of service; and
4. 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:

1. are a past or present member of the uniformed service;
2. have applied for membership in the uniformed service; or
3. are obligated to serve in the uniformed service;

then an employer may not deny you any of the following because of this status:

1. initial employment;
2. reemployment;
3. retention in employment;
4. promotion; or
5. 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 coverage for you and your dependents for up to **24 months** while in the military. USERRA coverage is administered pursuant to the same policies and procedures as COBRA coverage. Hence, you must elect to continue coverage in writing within the 60-day election period and pay premiums in a timely manner in order to prevent termination of coverage.

Even if you do not 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 the website at [www.dol.gov/elaws/userra](http://www.dol.gov/elaws/userra).