



ILLINOIS EMPLOYMENT RIGHTS FOLLOWING RELEASE FROM MILITARY SERVICE



Illinois Employment Rights Following Release from Military Service

Many of the men and women who have served our country in the military are now returning home and attempting to reintegrate into civilian life. One crucial element of these efforts is the ability to return to the jobs they left upon enlisting. This guide answers some common questions regarding reemployment rights following release from military service.

I recently returned home after being released from military service. Do I have any legal rights to return to the job I left upon enlisting?

Both federal and state laws provide that *eligible persons in military service* may regain their former jobs after they have returned from military service.

The federal law is known as the *Uniformed Services Employment and Reemployment Rights Act of 1994* (USERRA, Pub. L. 103–353, codified as amended at 38 U.S.C. §§ 4301–4335).

The state law is known as the *Service Member’s Employment Tenure Act* (SMETA, 330 ILCS 60).

This guide addresses the protections afforded by the state law (hereinafter referred to as “the Act” or “SMETA”). For further information about the federal law, visit <http://www.dol.gov/vets/programs/userra/>.

Who is covered by the Act?

Illinois residents recently released from active duty from any branch of the U.S. Armed Forces, including the respective federal Reserves and the National Guard.

Which employers are covered under the Act?

All private employers in Illinois, the State of Illinois and any unit of local government (i.e., counties, townships and municipalities) as well as school districts are covered under the Act.

Moreover, certain public employers in Illinois are also governed by the *Local Government Employees Benefits Continuation Act* (50 ILCS 140), *Public Employee Armed Services Rights Act* (5 ILCS 330), *Municipal Employees Military Active Duty*

Act (50 ILCS 120) and the *Military Leave of Absence Act (5 ILCS 325/1)*, which provide additional employment protections, including (with limitations) continued compensation, pension and promotion rights, along with health insurance and other benefits rights. Some of these laws provide that certain public employers must not only grant employees leave from their public employment for any period actively spent in military service, but also in certain circumstances provide either “differential” or “concurrent” pay.

Furthermore, in cases where a collective bargaining agreement or employer policy is more generous, the more generous provisions apply.

Are there any employees to whom this Act would not apply?

Yes. If the position you held upon entering active service was a position in the executive branch of state government that primarily involved responsibility for the determination of policy or how it is carried out, the protections of this Act do not apply.

What are the qualifications for protection under the Act?

To be protected under the Act, you must:

1. Have been employed by:
 - a. a private employer in Illinois;
 - b. the State of Illinois; or
 - c. any unit of local government (i.e., county, township or municipality) or school district;
2. Have left that employment for the purposes of entering military service;
3. Have entered military service;
4. Have received an honorable discharge or otherwise satisfactorily completed your military service;
5. Be qualified to perform the duties of the position of employment you left at the time of your discharge or completion of military service; and
6. Have made an application for reemployment within 90 days after you were relieved from military service, unless at the time of your discharge you were hospitalized as a result of your military service, in which case the time within which to apply for reemployment is extended up to one year after discharge.

Am I still covered if I left my job and enlisted in the service but was later rejected by the service?

Yes. As long as you were not dishonorably discharged, you are covered under the Act.

Does the Act still protect me if I was not a regular employee but rather a temporary or casual worker?

No. The protections provided by this Act do not apply to workers employed on a temporary or casual basis.

Is there a time limit by which I must seek reemployment?

Yes. Generally, you must make an application for reemployment within 90 days after you are relieved from military service or receive an official notice of rejection.

Is the employer required to hold my position open indefinitely?

The Act is silent on any specific time limit for holding a position open.

At the time of my discharge, I was hospitalized with a service-related injury. Do I still need to apply for reemployment within 90 days from the date of my discharge?

No. If at the time of your discharge you were hospitalized with a service-related injury, you have 90 days after your release from the hospital to apply for reemployment, provided that the hospitalization does not exceed one year.

What position am I entitled to when I apply for reemployment?

Under the Act, if you apply for reemployment within the requisite time, your employer is required to restore you to the position of employment that you left *with the same increases in status, seniority and wages* that were earned during your term of military service by employees in like positions who were on the job at the time you entered the service or to a position of like seniority, status and pay, *unless your employer's circumstances have so changed as to make it impossible or unreasonable to do so.*

What if I am no longer able to perform the job I had prior to enlisting due to a disability sustained during my military service?

Under the Act, as long as you are able to perform the duties of any other position, your employer is required to place you in a position with duties you are qualified to perform that will provide you with like seniority, status and pay or the nearest approximation thereof given your circumstances, *unless, in the case of a private employer, your employer's circumstances have so changed as to make it impossible or unreasonable to do so.*

What circumstances would my employer have to demonstrate to be relieved from the obligations imposed under this Act?

The circumstances would be determined on a case-by-case basis, but the burden is on the employer to demonstrate the changed circumstances and the impossibility or unreasonableness of reemploying you.

What if, upon entering military service, my position is filled by another employee who later enters military service? How is my employer required to allocate positions?

Employees shall be given preference in employment in the order in which they entered military service, and the employer is not required to retain more than one of the employees.

Do I have any protection against my employer discharging me once I am reemployed?

Yes. You may not be discharged from your position *without cause* within one year after being reemployed.

For purposes of any employee benefits, how should my employer treat my time in service and resulting absence from work?

The Act provides that during the time you are in the military, your employer should consider you to be on furlough or a leave of absence from your job. Moreover, you should be restored to your employment without loss of seniority, and you are entitled to participate in insurance and other benefits offered by the employer pursuant to any rules the employer has with respect to employees on furlough or a leave of absence in effect at the time you entered military service.

What rights, if any, do I have to health coverage through my employer upon being reemployed?

If your employer provides health insurance, no exclusion or waiting period may be imposed in connection with coverage of a health or physical condition of any person entitled to participate in that insurance if: (1) the condition arose before or during your period of military service; (2) an exclusion or waiting period would not have been imposed for the condition during a period of coverage resulting from your participation in the insurance; and (3) your condition has not been determined to be service connected.

How do I enforce my rights under the Act?

If your employer has refused to reemploy you, you may enforce your rights by filing a lawsuit against your employer with the circuit court in the county where your employer's place of business is located or, if you are a State employee, the county where you perform most of your duties. You may also have other enforcement options available to you. Call the Military and Veterans Rights Hotline (1-800-382-3000; TTY: 1-800-964-3013) to discuss your enforcement options.

If I am successful in a lawsuit against my employer, to what legal remedies will I be entitled?

If you are successful, you will be entitled to be compensated for any loss of wages or benefits you experienced as a result of your employer's refusal to reemploy you. You will also be entitled to reasonable attorney's fees. Moreover, you will not be charged any fees or court costs for filing your suit. *Please keep in mind that this assumes you are successful.* It is always best to get advice from an attorney before deciding what steps to take or committing yourself to legal action.

I understand that lawsuits take a long time. When can I expect a court to hear my case?

The law mandates that the court give preference to the hearing and disposition of these cases over other pending cases. You should discuss this with an attorney to get a more precise estimate of the time it may take.

Is a violation of this Act also a crime?

Yes, potentially. An employer's knowing violation of this Act is a Class A misdemeanor with a mandatory minimum fine of not less than \$5,000 and a

maximum fine of \$10,000. Complaints should be referred to local law enforcement and/or your local state's attorney's office.

Does the Act assign any additional duties to the Office of the Illinois Attorney General?

Yes. The Act requires that the Attorney General shall establish and maintain a statewide list of employers who have been convicted of violating this Act. The Attorney General shall make the information in the list available to the public on its official website and by any other means the Attorney General deems appropriate. The Attorney General's office posts information related to that list at http://www.illinoisattorneygeneral.gov/rights/violatorsof_smeta.html.

Important Note: Remember to keep your employer informed. Maintaining open lines of communication with your employer throughout your active service to the extent possible is key. A well-informed employer is more likely to work with you and become a partner in your activation. For short activations with the National Guard or the federal Reserves, consider providing your employer with the contact information of your Commander. An employer who communicates directly with a Commander gets their concerns addressed quickly and effectively and that is beneficial for you.

For more information, contact the Military and Veterans Rights Hotline at 1-800-382-3000. For further reading on this subject, see also the Attorney General's publication, *Legal Rights of Illinois Service Members*, available upon request and online at http://www.illinoisattorneygeneral.gov/rights/Legal_Right_of_Illinois_Service_Members.pdf.



For more information, please contact us.

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www.IllinoisAttorneyGeneral.gov