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# Chapter 1

## The Uniformed Services Employment and Reemployment Rights Act of 1994<sup>1</sup>

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### § 1.01. Introduction.

Given our current military situation where many employers are faced with employees voluntarily enlisting in the military or with the activation of employees enlisted in reserve units, and more recently, the return of those employees from active duty, employers are wise to familiarize themselves with the laws governing their obligations to those employees.

Enacted in 1994 as an amendment to the Veterans Reemployment Rights Act, and amended slightly in 1996, 1998, 2000, and 2001, the Uniformed Services Employment and Reemployment Rights Act of 1994, (USERRA)<sup>2</sup> provides for the job protection of veterans returning to their

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<sup>2</sup> 38 U.S.C. § 4301 *et seq.*

jobs without any accompanying loss of seniority, status or pay. Moreover, veterans may not be denied initial employment, reemployment, retention in employment, promotion, or any other benefit of employment on the basis of their former service. USERRA applies to *all employers*, regardless of size or number of employees. Unlike many other federal laws, there is no exception or exemption for small employers.<sup>3</sup>

**§ 1.02. Discrimination Against Military Service Personnel.**

Not surprisingly, USERRA prohibits discrimination against returning service members because of their military service or obligation.<sup>4</sup> Discrimination because of past, current or future military obligations is specifically prohibited, and covers the areas of hiring, promotion, reemployment, termination and benefits. This prohibition extends to past service members, current service members, and any employees who apply to be a member of any of the branches of the uniformed services. Employers are also prohibited from retaliating against anyone who has filed a complaint, participates in an investigation or proceeding under USERRA or who exercises any right under USERRA, whether or not the person has performed military service.

Specifically, the statute provides:

[a] person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service shall not be denied initial employment, reemployment, promotion or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.<sup>5</sup>

An employer will be found to have violated this provision if the employee's military status was a "motivating factor" in the employer's

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<sup>3</sup> See e.g., Ryan Wedlund, "Citizen Soldiers Fighting Terrorism: Reservists' Reemployment Rights," 30 *Wm. Mitchell L. Rev.* 797 (2004).

<sup>4</sup> 38 U.S.C. § 4311.

<sup>5</sup> *Id.* at 4311(a).