

# Labor and Employment Alert



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## New USERRA Military Leave Posting Requirements

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### Executive Summary

The Veterans Benefits Improvement Act, enacted by Congress in December 2004, amends the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") by requiring employers to notify employees of their rights, benefits, and obligations under USERRA. Employers must now comply with the new notification requirements and may do so by posting the USERRA notice where employee notices are customarily placed, or by distributing the notice to each employee by hand, mail, or email. Employer's obligations under USERRA were previously addressed in detail on October 3, 2001. *Reference:* IHHA Memo: Employer's Obligations Under Military Leave Laws, October 3, 2001.

### Detailed Analysis

As part of an ongoing effort to increase employer awareness of USERRA, the U.S. Department of Labor issued the text of the newly required notice on March 10, 2005. The notice, which is in poster format, explains the rights of employees under USERRA and is now available for downloading at <http://www.dol.gov/vets/programs/userra/poster.htm>.

Employers are *required to post the USERRA notice* where employee notices are customarily placed, or by distributing the notice to each employee by hand, mail, or email.

Originally enacted on October 13, 1994, USERRA applies to all public and private sector employers and was enacted to encourage non-career service in the uniformed services by minimizing the disadvantages to civilian employment which can result from such service. Key USERRA provisions include the following:

- No Discrimination: In general, an employer is prohibited from discriminating against a person who is a member of, or applies to be a member of, the uniformed services. This prohibition applies to initial employment, reemployment, retention, promotion, benefits, or any other terms or conditions of employment. Similarly, employers are prohibited from retaliating against anyone who exercises a right under USERRA.
- Reemployment Rights: Covered employees who have completed their service are entitled to reemployment, subject to certain requirements. Although the position in which the employee is to be reemployed depends upon the length of the employee's service, USERRA generally requires reemployment in the position the employee would have held, together with the pay, seniority, and benefits they would have enjoyed if continuously employed.
- Continuation of Health Coverage: USERRA provides each employee called to service and his or her dependants the opportunity to continue healthcare coverage in a manner similar to the healthcare continuation rights under COBRA. However, USERRA continuation coverage applies even when the employer is not subject to COBRA, as in the case of small employers and governmental employers. For service lasting longer than 30 days, the employee may elect to continue coverage for up to 24 months under terms similar to those under COBRA.
- Employee Pension Benefit Plans: An employer that reemploys an individual after a period of service must provide employee pension benefits and make employer contributions for the individual in the same manner and to the same extent as for other employees during the period of service. Additionally, the employee's time spent in service counts as service with the employer for vesting and benefit accrual purposes.

As service members conclude their tours of duty and return to civilian employment, it is important for employers to understand what their obligations are regarding military leave, reemployment, and, most recently, USERRA posting requirements.

A copy of the notice, "Your Rights Under USERRA" is attached.

Should you have any questions, please do not hesitate to contact your local counsel, or Steve Lyman, John Ryan, Jon Bumgarner, Kevin Stella, Dana Stutzman, or Kevin Gfell at Hall, Render, Killian, Heath & Lyman, P.S.C. at 317/633-4884.

**About Hall Render:**

[Hall, Render, Killian, Heath & Lyman](#) is a full service law firm with offices in Indiana, Kentucky, and Michigan. Since the firm was founded by William S. Hall in 1967, Hall Render has focused its practice primarily in the area of health law and is now recognized as one of the nation's preeminent health law firms.

Hall Render attorneys today serve the legal needs of all types and sizes of healthcare providers, from multi-billion dollar national health systems to sole practitioner physicians. In addition to its healthcare clients, the firm's attorneys also serve the legal needs of a wide variety of other businesses and individuals. Hall Render invites you to learn more about its services and professionals on its web site at [www.hallrender.com](http://www.hallrender.com).

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