



# Quarterly

*Your Keys to Compliance*



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## What about Military Leave?

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) was signed into law on October 13, 1994. USERRA clarifies and strengthens the Veterans' Reemployment Rights (VRR) Statute. The Act itself can be found in the United States Code at Chapter 43, Part III, Title 38.

USERRA is intended to minimize the disadvantages to an individual that occur when that person needs to be absent from his or her civilian employment to serve in this country's uniformed services. USERRA makes major improvements in protecting servicemember rights and benefits by clarifying the law and improving enforcement mechanisms. It also provides employees with Department of Labor assistance in processing claims. Specifically, USERRA expands the cumulative length of time that an individual may be absent from work for uniformed services duty and retain reemployment rights.

USERRA potentially covers every individual in the country who serves in or has served in the uniformed services and applies to all employers in the public and private sectors, including Federal employers. The law seeks to ensure that those who serve their country can retain their civilian employment and benefits, and can seek employment free from discrimination because of their service. USERRA provides enhanced protection for disabled veterans, requiring employers to make reasonable efforts to accommodate the disability.

USERRA is administered by the United States Department of Labor, through the Veterans' Employment and Training Service (VETS). VETS provides assistance to those persons experiencing service connected problems with their civilian employment and provides information about the Act to employers. VETS also assists veterans who have questions.

USERRA provides for COBRA-like benefit continuation for persons who are absent from work to serve in the uniformed services, even when their employers are not covered by COBRA. If a person's health plan coverage would terminate because of an absence due to uniformed service, the person may elect to continue the health plan coverage for up to 18 months after the absence begins, or the period of service, whichever is shorter. The person cannot be required to pay more than 102% of the full premium for the coverage — if the uniformed service was for 30 or fewer days, the person cannot be required to pay more than the normal employee share of any premium.



## Psychiatric Disabilities and the Americans with Disabilities Act

The workforce includes many individuals with psychiatric disabilities who face employment discrimination because their disabilities are stigmatized or misunderstood. Congress intended Title I of the Americans with Disabilities Act (ADA) to combat such employment discrimination as well as the myths, fears, and stereotypes upon which it is based.

## REASONABLE ACCOMMODATION IS THE LAW

The Equal Employment Opportunity Commission receives a large number of charges under the ADA alleging employment discrimination based on psychiatric disability. These charges raise a wide array of legal issues including, for example, whether an individual has a psychiatric disability as defined by the ADA and whether an employer may ask about an individual's psychiatric disability.

Under the ADA "mental impairment" includes "[a]ny mental or psychological disorder, such as . . . emotional or mental illness." Examples of "emotional or mental illness[es]" include major depression, bipolar disorder, anxiety disorders (which include panic disorder, obsessive compulsive disorder, and post-traumatic stress disorder), schizophrenia, and personality disorders.



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### USERRA continued....

On return from service, health insurance coverage must be reinstated without any waiting period or exclusions for preexisting conditions, other than waiting periods or exclusions that would have applied even if there had been no absence for uniformed service. This rule does not apply to the coverage of any illness or injury determined by the Secretary of Veterans' Affairs to have been incurred in, or aggravated during, performance of service in the uniformed service. USERRA protects all members of the uniformed services from discrimination in employment regardless of whether their uniformed service was in the past, present or future. For example, a Vietnam Era veteran remains protected against most discriminatory employment actions even though that person's uniformed service preceded an employment relationship by many years. If that person is subsequently denied a benefit of employment, motivated even in part by that service in the uniformed services, then that person may have rights under USERRA.

For additional information regarding employer's rights and responsibilities under USERRA, go to [www.dol.gov/elaws/vets/userra/mainmenu.asp](http://www.dol.gov/elaws/vets/userra/mainmenu.asp).

*For more information on these or other Compliance Issues, contact your **Spetner Associates** Compliance Check Specialist at **800-737-4535**.*

### A continued....

The Supreme Court has ruled that the determination of whether a person has an ADA "disability" must take into consideration whether the person is substantially limited in performing a major life activity when using a mitigating measure. This means that if a person has little or no difficulty performing any major life activity because s/he uses a mitigating measure, then that person will not meet the ADA's first definition of "disability."

Even if a condition is an impairment, it is not automatically a "disability." Also, traits or behaviors are not, in themselves, mental impairments. Under the ADA, an impairment rises to the level of a disability if it substantially limits a major life activity. "Substantial limitation" is evaluated in terms of the severity of the limitation and the length of time it restricts a major life activity. The determination that a particular individual has a substantially limiting impairment should be based on information about how the impairment affects that individual and not on generalizations about the condition.

Relevant evidence for EEOC investigators includes descriptions of an individual's typical level of functioning at home, at work, and in other settings, as well as evidence showing that the individual's functional limitations are linked to his/her impairment.

An impairment is sufficiently severe to substantially limit a major life activity if it prevents an individual from performing a major life activity or significantly restricts the condition, manner, or duration under which an individual can perform a major life activity, as compared to the average person in the general population. An impairment does not significantly restrict major life activities if it results in only mild limitations.

For detailed information on this topic, please refer to the EEOC Enforcement Guidance on the Americans with Disabilities Act and Psychiatric Disabilities. This may be found at [www.eeoc.gov/docs/psych.html](http://www.eeoc.gov/docs/psych.html).