

U.S. Military Reservists – Job and Benefit Protection

YOUR LEGAL RIGHTS

1. What is the Uniformed Services Employment and Re-Employment Rights Act?

The Uniformed Services Employment and Re-Employment Rights Act (the “Reservists Act”) is the federal law that provides job and benefit protection for U.S. Military Reservists. Congress enacted this law to encourage people to become reservists by minimizing the disruption to the reservist who must leave his/her job when called into service.

2. How do I keep my job if I am a Reservist and called to active-duty?

Notice

You should give your employer notice of the need for leave and intent to return. Notification may be either oral or written. However, if you are “shipped out” before you are able to give adequate notice to your employer the notice requirement may be delayed or waived.

Return to Work

Depending on the length of the active-duty service, you are required to return promptly to work after the active service is completed. If you are in service and absent from work less than 31 days, you must return to work the first full day following completion of service, not including time to travel home and an eight-hour rest period. If you are absent from work between 31-180 days, you must submit an application for re-employment within 14 days of the completion of military service. If you are absent from work more than 180 days, you must submit an application for re-employment within 90 days of the completion of military service. (Note: Since reservists must be rehired, the “application” is actually a notice of an intent to return to work rather than a typical new job application that carries a risk of rejection.).

3. When I return from military leave can my employer place me in a position lower than I was before I left?

Normally, no. When you return from military leave, your employer is required to place you in the position you would have been in had you never left, as long as you are qualified for the job or can become qualified after reasonable efforts are made by your employer to help you become qualified. Also, you should receive any pay raises, promotions and seniority as if you never left.

4. Do I have any protection against termination once I return to my job after military leave?

Yes. Although most employees are “at-will,” meaning they can be fired for any reason as long as it is not discriminatory (e.g. on the basis of race, sex, religion, national origin, etc.) or for reasons in violation of public policy (e.g. reporting an unsafe work condition), military service may change your “at-will” employment status. If your military service was more than 30 days but less than 181 days, for the 180 days after you begin work again your employer can fire you only if it has a *good reason*. If you served more than 180 days, then for the one year after you begin work again your employer can fire you only for a good reason.

5. My employer says that it will be too costly to rehire me. What can I do?

If your employer can show that it will suffer “undue hardship,” (not just mere *inconvenience*) because of significant difficulty or expense, it is excused from having to rehire you. Whether or not something is an undue hardship depends on many factors (e.g. the employer would go out of business) that tend to be difficult for employers to prove.

6. What if I become disabled in the course of my military service?

The Reservists Act requires your employer to provide you with reasonable accommodations if you incur any service-related disabilities regardless of whether the disability would be protected under the ADA (Americans with Disabilities Act) or its California counterpart, the FEHA (Fair Employment and Housing Act). If you do not qualify for the position that you would have had due to service-related disabilities, your employer must transfer you to another position with equal seniority, status and pay, if such position is available.

7. Is my employer required to pay me while I am on a military leave of absence?

Although some employers may provide *paid* military leave days, they are not required to do so. However, if your employer chooses to pay an employee while on military leave, it is required to uniformly extend that policy to *all* reservists.

8. Can my employer require me to use my vacation time while I am on a military leave of absence?

No. However, your employer cannot stop you from using your vacation time if you choose to do so.

9. Am I still covered by my employer's health insurance while on military duty?

Your employer is required to continue your health insurance for 30 days while you are on military duty. After 30 days, a federal law known as "COBRA" requires your employer to continue your health insurance coverage for up to 18 months but can require that you pay up to 102% of its full premium under the plan.

If you are on active duty for more than 30 days, you and your dependents should be covered by military health care. For more information on these programs contact your military unit.

Finally, another law known as the Health Insurance Portability and Accountability Act (HIPAA) may give you and your family rights to enroll in another group health plan coverage such as your spouse's employer's group health plan. You have this opportunity to enroll regardless of the other plan's otherwise applicable enrollment periods. To qualify, you must request enrollment in the other plan within 30 days of losing eligibility for coverage under your current employer's plan. After that special enrollment is requested, you have to be covered in the other plan no later than the first day of the first month following your request for enrollment. If you will be on active duty more than 30 days in your current plan, coverage in another plan through special enrollment may be cheaper than your COBRA continuation coverage because the other employer often pays a part of the premium.

10. How is my pension plan affected by military leave?

Your pension plan benefits should not be affected because of military leave. Your pension credit should be as it would have been had you never left. If you are required to make employee contributions to your pension plan, you must be given the opportunity to make up any missed contributions over a period up to three times the length of the military service but not more than five years.

11. What remedies do I have if my employer violates my rights under the Reservists Act?

You may file a complaint with the Department of Labor or file a court action directly. If your employer violated the Reservists Act, it may be liable for various damages, including, lost wages, attorney fees, expert witness fees and other costs incurred from litigation. The Reservists Act has no statute of limitations (a certain length of time an employee has to bring a claim), but if you intend to sue your employer for a violation of the Reservists Act, you should do so as soon as possible to preserve the evidence in the case that may be helpful to you.

This fact sheet is intended to provide accurate, general information regarding legal rights relating to employment in California. Yet because laws and legal procedures are subject to frequent change and differing interpretations, the Legal Aid Society - Employment Law Center cannot ensure the information in this fact sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your rights in your particular situation.

For further information about your employment rights, please call:

The Workers' Rights Clinic

415-864-8208 (SF Bay Area) or **866-864-8208** (Toll Free in CA)

The Workers' Rights Clinic is a project of The Legal Aid Society - Employment Law Center, a non-profit organization focusing on the employment-related legal rights of low-income workers and providing free legal information on a wide range of employment-related problems.

