



May 25, 2022

Mr. Ivan Butts
President
National Association of Postal Supervisors
1727 King Street, Suite 400
Alexandria, VA 22314-2753

Dear Ivan:

As a matter of general interest, the Postal Service is revising Chapter 7, section 77, *Employment Restoration after Military Service* of the Handbook EI-312, *Employment and Placement*. The revisions are being made to update Uniformed Services Employment and Reemployment Rights Act (USERRA) policies. Revisions are also being made to update organizational department titles following the recent Postal Service re-organization.

We have enclosed two copies of the revised Chapter 7, section 77, *Employment Restoration after Military Service*, of Handbook EL-312, one with and one without changes identified.

Please contact Bruce Nicholson 7773 if you have questions concerning this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "David E. Mills".

David E. Mills
Director
Labor Relations Policies and Programs

Enclosures

77 Employment Restoration After Military Service

771 Policy

It is the Postal Service's policy to comply with the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended (USERRA). It is the responsibility of postal management to ensure that personnel actions comply with the requirements of USERRA.

771.1 Eligibility

Reemployment rights are extended to employees who were absent to perform military duty in the uniformed services and duty in the National Disaster Medical System as defined below, if the employee fulfills USERRA's requirements for reemployment:

- a. *Uniformed services.* Consist of the following military branches: Army, Navy, Marine Corps, Air Force, Coast Guard, Space Force, their respective reserve components, and the Army and Air National Guard; Commissioned Corps of the Public Health Service; and any other category of persons who are designated by the President as uniformed service in time of war or emergency.
Note: If any inquiries are received involving the definition of covered uniformed services or if an employee presents deployment orders from any other agency, outside of the definition of "uniformed services", Field HR officials must contact the Law Department.
- b. *Types of uniformed service* (voluntary or involuntary, paid or unpaid). Consists of the following: active duty, active duty for training, including initial training, inactive duty training, full-time National Guard duty, or time needed for an examination to determine fitness for any of the above types of duty.
- c. *National Disaster Medical System.* Civilian service as an Intermittent Disaster Response Appointee ordered to duty covered by 42 U.S.C. 300hh-11(e)(3) B).
- d. *Types of postal positions covered.* Includes all career and temporary classifications. Temporary employees, including casual employees and postal support employees, in some situations, who are not eligible for conversion to career under the terms of their appointment are covered by USERRA during their temporary appointment.

771.2 Duration of Uniformed Service

Under USERRA, the cumulative length of absence from non-career and career employment because of military service is limited to five (5) years - except that any such period of service shall not include any service covered by any of the exceptions articulated in USERRA. Contact the Law Department before making any determination relating to five (5) years or more of military service.

Only Field Human Resources (HR), after consultation with the Law Department, may deny reemployment under this provision.

771.3 Character of Service

Under USERRA, persons separated from the uniformed services with a dishonorable or bad conduct discharge, or an administrative discharge under other than honorable (OTH) conditions, are not eligible for restoration to employment or any other benefit the law provides. Likewise, officers dismissed from the service through court-martial or Presidential order lose USERRA protections. Persons dropped from the military rolls for unauthorized absence for more than 3 months or who are imprisoned by a civilian court are not eligible for restoration to employment or any other benefit the law provides.

771.4 Effects of Performance and Conduct on Restoration

Restoration rights may be denied if the conduct of the employee while in the uniformed service was such that the returnee would be disqualified for employment under postal regulations. Field HR, in consultation with the Law Department, determines reemployment eligibility for such persons.

771.5 Advance Notification of Entering the Uniformed Services

Any person whose absence from a position of employment is necessitated by reason of service in the uniformed services shall be entitled to the reemployment rights and benefits and other employment benefits of this chapter if the person (or an appropriate officer of the uniformed service in which such service is performed) has given advance written or verbal notice of such service to such person's employer.

No notice is required if the giving of such notice is precluded by military necessity or, under all of the relevant circumstances, the giving of such notice is otherwise impossible or unreasonable. Advance notice cannot be given for the employee by another co-worker, including a union representative.

Only Field HR, after consultation with the Law Department, may deny reemployment under this provision.

772 Management — Supervisor Action

Upon receipt of notification that the employee is leaving to perform uniformed or intermittent disaster response service for 31 or more days, the immediate manager or supervisor must contact Field HR to assure that necessary personnel actions are completed, and appropriate benefits are continued. This notification is to be made in writing regardless of how the employee gave notice of their departure for the military service. Typical employee identifiers such as full name, pay location, Employee Identification Number (EIN), information about the employee's pending service, and all documentation provided by the employee are to be included.

In the event that managers face a legitimate critical operational burden, they may request Field HR contact the employee's military command to inquire if the military duty can be rescheduled. Field HR must contact the Law Department before contacting the employee's military command. The military command's decision on the request to reschedule an employee's military duty is final and cannot be appealed.

The employee must be released to perform military duty even if the employee fails to provide advance notice as required by USERRA. If an employee does not provide advance notice, the supervisor must notify Field HR. Field HR must consult with the Law Department prior to taking any personnel action in such situations.

772.1 Notification of the Employee's Rights and Obligations

Managers are responsible for notifying employees orally or in writing of their rights, obligations, and benefits before departing for and upon return from active service. This notification includes any appeal and grievance rights.

However, this does not relieve the employee from the responsibility to exercise due diligence to request this information from management or the appropriate Field HR office.

Additionally, the law requires that individuals on military duty are to be given the opportunity for career advancement as if they are actively present on the job. To assure compliance, Field HR needs to include the following in the discussion as appropriate:

- a. *Bargaining Positions.* While on military service, employees continue to accrue seniority and may bid on positions that may become vacant during the employee's absence. The following procedures apply:
 - (1) A written or electronic notice must be submitted by the employee to Human Resources, or if appropriate, to the manager-in-charge, such as the Postmaster, indicating the employee's interest to bid on specific positions.
 - (2) The bids should be processed and awarded in accordance with the appropriate Collective Bargaining Agreement (CBA) as if the employee is actively employed. If awarded, a personnel action needs to be initiated to place the employee in the newly gained position and pay scale to assure that seniority is credited as specified

by the appropriate CBA.

- (3) Unsuccessful bids are retained until the desired position is gained or the employee resumes active employment upon return from military duty. Training will be deferred for employees who gain a position for which there is contractually required training until they return.
 - (4) Upon return, the employee will be required to meet the training requirements pursuant to the respective CBA. No personnel action is to be initiated until the training requirement is completed. In these cases, every effort must be made to train the employee upon return to work. The employee would only be awarded the position upon satisfactory completion of the required training. Human Resources must maintain an audit trail documenting the bid submissions.
- b. *Nonbargaining Positions.* Nonbargaining and bargaining employees on military service who are interested in being considered for EAS positions are required to submit completed Forms 991 for specific position descriptions to Human Resources reflecting the desired positions and locations. Human Resources will activate the application as soon as the desired position and location has a vacancy. The application is considered in accordance with the EAS selection policies for local and national positions and in accordance with the area of consideration noted on the announcement. Applications resulting in a nonselection are considered as vacancies occur in the specified occupation, until the applicant has been successfully selected. Applications from employees who are on active duty with the uniformed services are accepted at any time for subsequent consideration when an appropriate vacancy is announced. In addition, the following provisions apply:
- (1) *Reassignment requests.* EAS employees on active duty may also request reassignments to lateral or lower level positions in accordance with the EAS selection policy.
 - (2) *When personnel action should be effectuated* Selected individuals will be placed in the new position and the appropriate pay level by initiating a personnel action while in the LWOP status.
 - (3) *Return from military duty.* Upon return from the military service, the responsibility for submitting bids or applications for EAS positions reverts to the employee.

772.2 Audit Trail

Human resources must establish and retain an audit trail of the selection activity.

Managers will notify Field HR that an employee has provided notice of pending military duty or national disaster response duty with an anticipated duration of 31 or more days, or is seeking reemployment following completion of military or national disaster response duty of 31 or more days. Field HR will provide the manager a hard copy of PS Form 37, *USERRA and Postal Service Provisions for Employees Performing Active Duty Military Service* to be given to the employee prior to the employees' departure. PS Form 37 provides the employee an explanation of their rights, obligations, and benefits under USERRA and postal regulations. Field HR will notify the Human Resources Shared Services Center (HRSSC) when the employee is approved for reemployment and request that a USPS 37 - *Return to Duty USERRA Kit* be sent to the employee.

772.3 Personnel Action

Employees called for active duty are to be placed in a LWOP-Military status, using NOA-460 and Special Benefit Code U as stated in CMS Update 97.70, dated December 5, 1997.

Employees (career and non-career) who choose to resign their employment when leaving to perform military service must complete a PS Form 42 Resignation to Enter Military Service

Declaration. The PS Form 42 acknowledges the employee's present determination not to return to employment with the Postal Service following military duty, notifies the employee of all non-seniority based benefits that they forfeit by resigning, and that their restoration rights are not waived by their resignation. If the employee does not sign the PS Form 42, he or she must be placed into an LWOP-Military status using NOA-460. If the employee signs a PS Form 42, a resignation military, NOA-313, is to be initiated. An employee who resigns to perform military service will be restored to employment at their request, if eligible under USERRA, and will be entitled to seniority as if they had never left for military service. However, they forfeit the non-seniority based employment benefits they would have earned during the period of military service if they had not resigned and had opted instead to go on LWOP.

Only Field HR has the authority to approve a request to resign to perform military service. The employee's manager must notify Field HR when an employee requests to resign to perform military service. Field HR will give the manager a copy of PS Form 42 for the employee to sign. The PS Form 42 must be submitted to HRSSC. HRSSC will not process a resignation for the employee entering military service without a signed PS Form 42.

773 Return to Work

Only Field HR is authorized to approve a request for reemployment from employees who performed 31 or more days of military service. Managers will promptly notify Field HR when an employee who has performed military service for 31 or more days requests reemployment. Employees who have performed 31 or more days of military service are not authorized to return to work until approved by Field HR. An employee who returns to work without the approval of Field HR has not been reemployed and remains subject to Field HR's determination as to the employee's eligibility for reemployment. However, requests to return to work should be expeditiously processed.

Employees must request to return to work after release from military or national disaster response service within the following time periods:

- a. *Service of 1 to 30 days.* The employee must return to work at the start of the first full work period on the first full calendar day and the expiration of an eight hour r a period allowing for the safe transportation by the most direct route from the employee's place of military service to the employee's residence. If an employee's return to work within this time frame is unreasonable or impossible, and he or she is not at fault for the delay, the employee must return to work as soon as possible.
- b. *Service of 31 to 180 days.* An oral or written request for return to duty must be submitted no later than 14 days after the employee's completion of the military service. If it is impossible or unreasonable to submit a request within 14 days through no fault of the employee, a request to return to duty must be submitted as quickly as possible.
- c. *Service of 181 or more days.* An oral or written request for return to duty must be made within 90 days from the date of separation or discharge from military service.

Note: Individuals who fail to request return to duty in writing within the above specified time frames do not forfeit their rights automatically. However, they are subject to discipline because of unexcused absences.

For example: An employee who requested reinstatement 93 days after the end of their military orders would be reinstated but charged with three (3) days AWOL.

- d. *Service-connected hospitalization or convalescence.* Members of the uniformed services, who are hospitalized or in a convalescent status directed by appropriate medical authority following release from military service because of a service-connected disability incurred during military service, are required to apply to return to work within 2 years of separating or being discharged from military service, or immediately upon recovery, whichever is sooner.

Note: Management must contact Field HR before returning an employee to duty if the employee is returning from a period of hospitalization or convalescence as provided for in sub-paragraph d.

774 Documentation to Return to Work

USERRA requires that an employee is returned to work in a prompt fashion. Employees returning from military service of 30 days or less are not required to submit documentation concerning their military service as a condition of return to duty.

Note: Only for employees requesting paid military leave (regardless of service duration): upon return from military duty to the Postal Service, the employee must furnish a copy of military orders or other documentation properly endorsed by appropriate military authority to show the duty was actually performed.

Employees who have been absent to perform military service of 31 days or more must provide documentation to establish eligibility for reemployment. The types of documents necessary to establish eligibility will vary case to case. Military orders or other documentation that satisfy the requirements of USERRA must include the following, before returning the employee to duty:

- a. Timely written request for restoration accompanied by the following:
 1. Employee's cumulative military service with the employer does not exceed five cumulative non-excepted years;
 2. Beginning and ending dates of the employee's most current period of military service; and
 3. Character of the employee's military service (see 771.3, Character of Service).
 4. If the employee was hospitalized or in a convalescent status after separation or discharge from military service, in addition to documentation listed in 1 and 2, documentation showing that the employee was placed in this status by competent medical authority, and the beginning and end dates of hospitalization or convalescent status.

Note: Consult with Field HR or the Law Department before making any determination relating to documentation to return to work.

- b. If the employee is unable to provide satisfactory documentation because the required documentation does not exist or is not reasonably available, the following applies:
 1. The returnee must be conditionally reemployed and provided any benefits of seniority to which the employee would have been entitled but for the employee's absence to perform military service. However, employees who have been absent to perform military service for more than 90 days are not entitled to retirement benefits for the period of his or her military service until the required documentation is provided.
 2. The employee must provide the required documentation when it becomes available.
 3. If the document shows that the employee was not eligible for reemployment under USERRA, the employee will be denied permanent reemployment and immediately separated.

Note: The manager must provide the documentation presented by the employee to Field HR for review but must not return the employee to work unless directed to do so by Field HR. If the employee is unable to provide documentation, the manager must contact Field HR before returning the employee to work. However, requests to return to work should be expeditiously processed and reemployment should not be delayed for administrative reasons.

775 Reemployment Positions

Returnees from the uniformed services are to be reemployed promptly. The time frame in which returnees must be reemployed is more fully set forth below in sections 775.1 through 775.3.

775.1 Length of Service

The following length of service time periods are used to establish reemployment priorities for returnees from military service:

- a. *1 to 90 days of service.* Without exercising any other options, the returnee will be restored in accordance with the following priority:
 1. The returnee will be restored to the seniority, step, and position he or she would have held if he or she had remained continuously employed. This is known as the *escalator position*. This means that bargaining employees progress in accordance with the provisions of the appropriate contract as if they had been active with the Postal Service during the period of military service.
 2. If the employee is unable to qualify for a position in (1), then the employee is assigned to the position prior to entry in the service with full seniority.
 3. If not qualified after reasonable effort, then to a position of lesser status and pay, with full seniority, that the returnee is qualified to perform.
- b. *91+ days or more service.* Without exercising any other option, the returnee will be restored according to the following priority:
 1. To the escalator position with full seniority, or position of like seniority, status, and pay.
 2. If not qualified after reasonable effort, then to the position that the employee held prior to entry into military service, or a position of like seniority, status, and pay if the employee's pre-service position was eliminated during the employee's period of service. If the employee's position was downgraded or otherwise changed and the employee would have been entitled to the changed position, then the employee is returned to duty in the new position.

Note: If an employee's job is eliminated during the employee's period of service, the manager must contact Field HR for guidance on assigning the employee to a position upon his or her return to duty. Field HR must consult with the Law Department for guidance on restoring the employee to duty.
 3. If not qualified after reasonable effort, then to any position of lesser status, and pay that most closely approximates the positions in (1) or (2), above that the returnee is qualified to perform, with full seniority.
- c. *Probationary period.* Employees who were serving their probationary period at the time of entry into active duty and who met the probationary time period while serving on active duty are considered as having met the probationary time.

775.2 Returnees With a Service-Connected Disability

USERRA provides certain rights to service members who return from military duty with temporary or permanent disabilities. If an employee who has a disability incurred in, or aggravated during such service, and who (after reasonable efforts to accommodate) is not qualified due to such disability to be employed in the position of employment in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by such service the employee should be placed:

- a. In any position which is equivalent in seniority, status, and pay, the duties of which the person is qualified to perform, or would become qualified to perform with reasonable efforts by the employer; or
- b. In a position which is the nearest approximation to a position in terms of seniority, status, and pay consistent with the circumstances of each employee.

The following is the priority for reemploying individuals who return from the uniformed service with a service-connected disability:

- a. Restore the employee to the escalator position with reasonable accommodation and training, if necessary.
- b. If not qualified for the position after a reasonable effort, then to the employee's preservice position or to a position of like seniority, status, and pay that the applicant is qualified to

perform or could become qualified to perform with reasonable efforts by the employer to include reasonable accommodation and training, if necessary.

- c. If the employee is not qualified for a position in *a* or *b*, then place the employee with full seniority, consistent with the circumstances of the individual's case, in a position that approximates as nearly as possible the equivalent position in subparagraph *b* above in terms of seniority, status, and pay with an accommodation and training, if necessary. If the employee cannot be returned to duty for a position in *a*, *b*, or *c*, the employee must be referred to the Office of Personnel Management (OPM) which is responsible for placing the employee in a civil service position within the federal government.

Note: Field HR is responsible for ensuring that employees returning from military service with a service-related disability are properly restored to duty. The manager must immediately notify Field HR when an employee with a service-connected disability requests reemployment and requests an accommodation or states that he or she cannot perform all of the essential tasks of their position.

775.3 Reasonable Effort to Qualify — Reasonable Accommodation

Postal management is obligated to make reasonable efforts to qualify returning individuals who are not immediately qualified to assume employment in a position to which they are entitled. The qualifying efforts may include appropriate testing, training, or refresher course to update skills where the employee did not have the opportunity to keep up with skills or technological advances. In addition, service members returning with a service-connected disability are entitled to reasonable accommodation or training for a position set out in section 775.2, Returnees With a Service-Connected Disability. Service members with nonservice-connected disabilities may also be entitled to reasonable accommodation. Accommodations are to be made in line with Handbook EL-307, *Reasonable Accommodation, An Interactive Process*.

776 Other Rights

Service members are entitled to participate in the rights and benefits that are available to employees on a comparable nonmilitary leave of absence. Furthermore, they are entitled to participate in any non-seniority right and benefit that became effective during their service time. Postal Service policy complies with USERRA and includes, but is not limited to, the features outlined in this section.

776.1 Employee Benefits

USERRA provisions apply to retirement, Thrift Savings Plan, Flexible Spending Accounts, and to health and life insurance programs. For additional information, contact headquarters Compensation.

776.2 Use of Accrued Leave During Military Service

Employees on active military service are entitled to use earned annual leave during their regularly scheduled workday while performing military service. Requests for annual leave cannot be denied.

Note: USERRA supersedes any provisions of National Agreements that reduces, limits, or eliminates in any manner any right or benefit provided by USERRA, including limitations of the use of annual leave.

Employees may use sick leave provided that they submit documentation from military medical authorities showing that the employee is hospitalized, restricted to quarters, or placed in a convalescent status because of the employee's medical condition. The employee must submit medical documentation before the leave is paid. Requests for sick leave cannot be approved for the purpose of qualifying an employee who is on leave without pay for holiday pay (ELM 434.4). Furthermore, paid military leave is authorized in accordance with ELM 517, Paid Military Leave.

776.3 Employment Protection and Military Service Credit

Employees on active military service are protected in the following situations:

While on military service, an employee may not be demoted or separated except for cause.

- a. Employee does not participate in a reduction in force (RIF) or a layoff for lack of work.
- b. If an employee's position is abolished during the absence for military service, he or she must be reassigned to another position of like status and pay.

Reemployed service returnees with career status are protected from discharge, except for cause, as follows:

- a. For 1 year after the date of reemployment, if the period of military service was for more than 180 days.
- b. For 180 days, if the period was for more than 30, but less than 181 days.
- c. No protection is provided under this section for employees who served less than 31 days.
- d. Temporary employees who are reemployed for the remainder of their term are not protected.

777 Enforcement of USERRA

777.2 Dealing with Employer Support of the Guard and Reserve (ESGR)

ESGR is a section in the Office of the Assistant Secretary of Defense for Reserve Affairs. Service members may file USERRA complaints with ESGR. ESGR ombudsmen attempt to resolve USERRA issues by mediation. Contacts by ESGR ombudsmen must be forwarded to Field HR, or National Human Resources, and the Law Department should be notified.

778 Employment of Activated Employees — Guard or Reserve

778.1 Postal Service Employees on Active Military Duty

Postal Service employees serving on active military duty under any status cannot be scheduled to work for the Postal Service in any capacity while on such active duty.

778.2 Employees on Terminal Military Leave

Employees on terminal military leave from the Guard or Reserve who voluntarily desire to return to work before their official discharge may do so with management's approval by providing the following documentation to Human Resources:

- a. A copy of an uncertified DD 214 or, if not available,
- b. A signed, written statement from the command that the reservist will be released from active duty at a specific date after use of the reservist's terminal leave.

77.—Employment Restoration After Military Service

771 Policy

It is the Postal Service's policy to comply with the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended (USERRA). It is the responsibility of postal management to ensure that personnel actions comply with the requirements of USERRA.

771.1 Eligibility

Reemployment rights are extended to employees who were absent ~~to perform military from work because of active~~ duty in the uniformed services ~~and duty in, including~~ the National Disaster Medical System as defined below, if the employee fulfills USERRA's requirements for reemployment following:

- a. Uniformed ~~services~~Services. Consist of the following military branches: Army, Navy, Marine Corps, Air Force, Coast Guard, Space Force, their respective reserve components, and the Army and Air National Guard; Commissioned Corps of the Public Health Service; and any other category of persons who are designated by the President as uniformed service in time of war or emergency.
Note: If any inquiries are received involving the definition of covered uniformed services or if an employee presents deployment orders from any other agency, outside of the definition of "uniformed services", Field HR officials must contact the Law Department.
- b. Types of uniformed service (voluntary or involuntary, paid or unpaid). Consists of the following: active duty, active duty for training, including initial training, inactive duty training, full-time National Guard duty, or time needed for an examination to determine fitness for any of the above types of duty.
- c. National Disaster Medical System. Civilian service as an Intermittent Disaster Response Appointee ordered to duty covered by 42 U.S.C. 300hh-11(e)(3) B).
- ~~e.d.~~ Types of postal positions covered. Includes all career and temporary classifications. Temporary employees, including casual employees and postal support Casual-employees, in some situations, who are not eligible for conversion to career under the terms of their appointment are covered by USERRA during their Temporary and eligible casual employees are reemployed for the remainder of their term if temporary appointment employees are still used. The time spent in active service is not counted against the term of temporary appointment.

771.2 Duration of Uniformed Service

Under USERRA, the cumulative length of absence from non-career and career employment because of military service is limited to five (5) years ~~except that any such.~~ The following are exceptions to this limit:

- a. ~~Service required in excess of 5 years to complete the initial period of service shall not include any obligation.~~
- b. ~~Service from which a person, without control over the circumstances, is unable to obtain release.~~
- c. ~~Required training for reservists and National Guard members. This training includes inactive duty drills, active duty training periods, and any additional training mandated as essential to the professional development of service covered by any of the exceptions articulated in USERRA. Contact the Law Department before making any determination relating to five (5) years or more of members by a specific secretary of a uniformed service.~~
- d. ~~Service required under an involuntary order to active duty or to be retained on active duty because of domestic emergencies or national security matters.~~

~~actions are completed, and continuation of~~ appropriate benefits are continued. This notification is to be made in writing regardless of how the ~~employee gave notice of their way the employee's~~ departure for the military service, ~~became known.~~ Typical employee identifiers such as full name, pay location, Employee Identification Number (EIN), information about the employee's and Social Security number are to be included.

~~Note: It is important to note that employees serving in the military and the Postal Service have a mutual responsibility under USERRA. Given the nature of the employee's obligation and the operational needs of the Postal Service, it is essential that both parties make a good faith effort to avoid conflict. Employees must give reasonable advanced notice of pending service, and all documentation provided by the employee are to be included military duty requirements to provide management time to arrange for coverage.~~

In the event that managers face a legitimate critical operational burden, they may request Field HR contact the employee's military command to ~~inquire express their concerns, and to determine~~ if the military duty can be rescheduled. Field HR must contact the Law Department before contacting the employee's military command. The military command's decision on the request to reschedule an employee's military duty is final and cannot be appealed for the reservist.

The employee must be released to perform military duty even if the employee fails to provide advance notice as required by USERRA. If an employee does not provide advance notice, the supervisor must notify Field HR. Field HR must consult with the Law Department prior to taking any personnel action in such situations.

~~772.1 However, the military authority determines the schedule for duty. USERRA clearly reflects that the nature of duty, its time or frequency is not relevant to compliance with USERRA, as long as the employee has given proper notice and the time limits stated above have not been exceeded.~~

Notification of the Employee's Rights and Obligations

~~Managers are responsible for notifying employees orally or in writing of their rights, obligations, and benefits before departing for and upon return from active service. This notification includes any appeal and grievance rights.~~

However, this does not relieve the employee from the responsibility to exercise due diligence to request this information from management or the appropriate Field HR human resource office.

Additionally, the law requires that individuals on military duty are to be given the opportunity for career advancement as if they are actively present on the job. To assure compliance, Field HR needs local human resources offices need to include the following in the discussion as appropriate:

- a. *Bargaining Positions.* While on military service, employees continue to accrue seniority and may bid on positions that may become vacant during the employee's absence. The following procedures apply:
 - (1) A written or electronic notice must be submitted by the employee to Human Resources human resources, or if appropriate, to the manager-in-charge, such as the Postmaster, indicating the employee's interest to bid on specific positions.
 - (2) The bids should be processed and awarded in accordance with the appropriate Collective Bargaining Agreement collective bargaining agreement (CBA) as if the employee is actively employed. If awarded, a personnel action needs to be initiated to place the employee in the newly gained position and pay scale to assure that seniority is credited as specified by the appropriate CBA.
 - (3) Unsuccessful bids are retained until the desired position is gained or the employee resumes active employment upon return from military duty. Training will be deferred for employees who gain a position for which there is contractually required training until they return.
 - (4) Upon return, the employee will be required to meet the training requirements pursuant to the

individuals will be restored to employment at their request, if eligible under USERRA, and will be and are entitled to seniority as if they had never left for military service.

However, they forfeit the ~~non-seniority~~~~nonseniority~~ based employment benefits they would have earned during the period of military service if they had not resigned and had opted instead to go on LWOP.

~~Employees should be advised that they forfeit nonseniority rights if they elect to resign their employment, but later seek reemployment following military service.~~

Only Field HR has the authority to approve a request to resign to perform military service. The employee's manager must notify Field HR when an employee requests to resign to perform military service. Field HR will give the manager a copy of PS Form 42 for the employee to sign. The PS Form 42 must be submitted to HRSSC. HRSSC will not process a resignation for the employee entering military service without a signed PS Form 42.

documentation that satisfy the requirements of USERRA must include the following, before returning the employee to duty in excess of 30 days:

- a. Timely written request for restoration accompanied by the following:
 1. Employee's cumulative DD-214 or other official documentation showing that the returnee was in military service with the employer does not exceed five cumulative non-excepted years;
 2. Beginning and ending dates of the employee's most current period of military service; and
 3. Character of the employee's military service during his or her absence (see 771.3, 771.3, Character of Service), above;
 4. If the employee was hospitalized or in a convalescent status after separation or discharge from military service, in addition to documentation listed in 1 and 2, documentation showing that the employee was placed in this status by competent medical authority, and the beginning and end dates of hospitalization or convalescent status.

Note: Consult with Field HR or the Law Department before making any determination relating to documentation to return to work.

(1) ~~—If the employee Documentation relating to convalescence or hospital confinement that resulted in a delay of returning to employment.~~

- b. If the returnee is unable to provide satisfactory documentation because the required documentation does not exist or is not reasonably available, the following applies:
 1. The returnee must be conditionally reemployed and provided any benefits of seniority to which the employee would have been entitled but for the employee's absence to perform military service. However, employees who have been absent to perform military service for more than 90 days are not entitled to retirement benefits for the period of his or her military service until the required documentation is provided.
 2. The employee must provide the required documentation when it becomes available.
 3. If the document shows that the employee was not eligible for reemployment under USERRA, the employee will be denied permanent reemployment and immediately separated.

Note: The manager must provide the documentation presented by the employee to Field HR for review but must not return the employee to work unless directed to do so by Field HR. If the employee is unable to provide documentation, the manager must contact Field HR before returning the employee to work. However, requests to return to work should be expeditiously processed and reemployment should not be delayed for administrative reasons.

(2) ~~—The returnee is promptly reemployed.~~

(3) ~~—If the returnee is not subsequently able to provide documentation that meets the eligibility requirements for restoration, the individual can be separated.~~

775—Reemployment Positions

Returnees from the uniformed services are to be reemployed promptly. The time frame in which returnees must be reemployed is more fully set forth below based on their length of military service as defined in sections 775.1 through 775.3.

775.1 Length of Service

The following length of service time periods are used to establish reemployment priorities for returnees from military service:

- a. 1One to 90ninety days of service. Without exercising any other options, the returnee will be restored in accordance with the following priority:
 1. The returnee will be restored to the seniority, step, and position he or she would have held if he or she had remained continuously employed. This is known as the *escalator position*. This means that bargaining employees progress in accordance with the provisions of the appropriate contract as if they had been active with the Postal Service during the period of military service.
 2. If the employee is unable to qualify for a position in (1), then the employee is assigned to the position prior to entry in the service with full seniority.
 3. If not qualified after reasonable effort, then to a position of lesser status and pay, with full seniority, that the returnee is qualified to perform.
- b. 91+Ninety-one days ~~and~~ more service. Without exercising any other option, the returnee will be restored according to the following priority:
 1. To the escalator position with full seniority, or position of like seniority, status, and pay.
~~(1) — If not qualified after reasonable effort, then to a position of like seniority, status, and pay.~~
 2. If not qualified after reasonable effort, then to the position that the employee held prior to entry into military in the uniformed service, with full seniority, status, and pay, or a position of like seniority, status, and pay if the employee's pre-service position was eliminated during the employee's period of service. If the employee's position was downgraded or otherwise changed and the employee would have been entitled to the changed position, then the employee is returned to duty in the new position. like seniority, status, and pay.
Note: If an employee's job is eliminated during the employee's period of service, the manager must contact Field HR for guidance on assigning the employee to a position upon his or her return to duty. Field HR must consult with the Law Department for guidance on restoring the employee to duty.
 3. If not qualified after reasonable effort, then to any position of lesser status, and pay that most closely approximates the positions in (1), ~~(2)~~, or ~~(2),3)~~ above that the returnee is qualified to perform, with full seniority.
- c. Probationary period. Employees who were serving their probationary period at the time of entry into active duty and who met the probationary time period while serving on active duty are considered as having met the probationary time.

775.2 Returnees With a Service—Connected Disability

USERRA provides certain rights to service members who return from military duty with temporary or permanent disabilities. If an employee who has a disability incurred in, or aggravated during such service, and who (after reasonable efforts to accommodate) is not qualified due to such disability to be employed in the position of employment in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by such service the employee should be placed:

- a. In any position which is equivalent in seniority, status, and pay, the duties of which the person is qualified to perform, or would become qualified to perform with reasonable efforts by the employer;
or

- b. position or to a position of like equivalent in seniority, status, and pay that the applicant is qualified to perform or could become qualified to perform with reasonable efforts by the employer to include reasonable accommodation and training, if necessary. -
- c. If the ~~employee~~ returnee is not qualified for a position in a or b, then ~~place~~ employ the ~~employee~~ returnee with full seniority, consistent with the circumstances of the individual's case, in a position that approximates as nearly as possible the equivalent position in subparagraph b above in terms of seniority, status, and pay with an accommodation and training, if necessary. If the employee cannot be returned to duty for a position in a, b, or c, the employee must be referred to the Office of Personnel Management (OPM) which is responsible for placing the employee in a civil service position within the federal government status and pay.

Note: Field HR is responsible for ensuring that employees returning from military service with a service-related disability are properly restored to duty. The manager must immediately notify Field HR when an employee with a service-connected disability requests reemployment and requests an accommodation or states that he or she cannot perform all of the essential tasks of their position.

775.3 Reasonable Effort to Qualify — Reasonable Accommodation

Postal management is obligated to make reasonable efforts to qualify returning individuals who are not immediately qualified to assume employment in a position to which they are entitled. The qualifying efforts may include appropriate testing, training, or refresher course to update skills where the employee did not have the opportunity to keep up with skills or technological advances.

In addition, service members returning with a service-connected disability are entitled to reasonable accommodation or training for a position set out in section 775.2, Returnees With a Service-Connected Disability. ~~Service members with nonservice-~~ 775.2, Returnees With a Service-Connected Disability.

~~Service members with nonservice-~~ connected disabilities may also be entitled to reasonable accommodation. Accommodations are to be made in line with Handbook EL-307, *Reasonable Accommodation, An Interactive Process.*

776 — Other Rights

Service members are entitled to participate in the rights and benefits that are available to employees on a comparable nonmilitary leave of absence. Furthermore, they are entitled to participate in any non-seniority ~~non-seniority~~ right and benefit that became effective during their service time. Postal Service policy complies with USERRA and includes, but is not limited to, the features outlined in this section.

776.1 Employee Benefits

USERRA provisions apply to retirement, Thrift Savings Plan, Flexible Spending Accounts, and to health and life insurance programs. For additional information, contact ~~refer to instructions issued under separate cover by~~ headquarters Compensation.

776.2 Use of Accrued Leave During Military Service

Employees on active military service are entitled ~~permitted~~ to use ~~request~~ earned leave, ~~such as~~ annual or sick leave, during their regularly scheduled workday while performing the period of military service. ~~Requests for annual leave cannot be denied.~~

Note: USERRA supersedes any provisions of National Agreements that reduces, limits, or eliminates in any manner any right or benefit provided by USERRA, including limitations of the use of annual leave.

Employees may use sick leave provided that they submit documentation from military medical authorities showing that the employee is hospitalized, restricted to quarters, or placed in a convalescent status because of the employee's medical condition. The employee must submit medical documentation before the leave is paid. Requests for sick leave ~~However, these requests~~ cannot be approved for the purpose of qualifying an employee who is on leave without pay for holiday pay (ELM 434.4). Furthermore, paid military leave is authorized in accordance with ELM 517, Paid Military Leave.

Employment Protection and Military Service Credit

Employees on active military service are protected in the following situations:

While on military service, an employee may not be demoted or separated except for cause.

- a. Employee does not participate in a reduction in force (RIF) or a layoff for lack of work.
- b. If an employee's position is abolished during the absence for military service, he or she must be reassigned to another position of like status and pay.

Reemployed service returnees with career status ~~are protected from discrimination and retaliation.~~ Furthermore, they are protected from discharge, except for cause, as follows:

- a. For 1 year after the date of reemployment, if the period of military service was for more than 180 days.
- b. For 180 days, if the period was for more than 30, but less than 181 days.
- c. No protection is provided under this section for employees who served less than 31 days.
- d. Temporary employees who are reemployed for the remainder of their term are not protected.

777.—Enforcement of USERRA

777.2 Dealing with Employer Support of the Guard and Reserve (ESGR)

ESGR is a section in the Office of the Assistant Secretary of Defense for Reserve Affairs. Service members may file USERRA complaints with ESGR. ESGR ombudsmen attempt to resolve USERRA issues by mediation. Contacts by ESGR ombudsmen must be forwarded to Field HR, or National Human Resources, and the Law Department should be notified.

~~USERRA prohibits discrimination against an applicant or an employee on the basis of service in the uniformed services and prohibits acts of reprisal for exercising a right stipulated in its provisions or for seeking its enforcement. The remedy for violations of USERRA may include the award of back pay, lost benefits, and legal costs.~~

777.1—Filing Complaints

~~Employees and applicants may file a complaint with the Veterans' Employment and Training Service (VETS) of the Department of Labor, which has the responsibility for investigating and resolving complaints. If VETS cannot successfully resolve the complaint, VETS may ask the office of special counsel to represent the employee or applicant in an appeal before the Merit Systems Protection Board (MSPB). Further, the employee or applicant may bypass VETS and appeal to the MSPB.~~

777.2—Dealing with VETS

~~The VETS has the right of reasonable access to records that it deems relevant to the case and to examine and duplicate them. The VETS has been granted subpoena power for witnesses and documentation. Responses to requests by VETS for information and/or records should be coordinated with Labor Relations and the managing counsel. Additionally, Selection, Evaluation, and Recognition will provide additional policy guidance.~~