

Letter carriers' USERRA rights

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) protects the job rights of individuals who, either voluntarily or involuntarily, leave employment positions to undertake military service or certain types of service in the National Disaster Medical System. USERRA prohibits employers from discriminating against past and present members of the uniformed services.

Letter carriers generally have questions about USERRA rights concerning military reservists and National Guard members who are called to active duty. However, USERRA regulations also address the rights of letter carriers who choose to enlist in the military.

This article offers NALC members who are also military members and/or veterans a basic understanding of the rights and benefits guaranteed under USERRA. The majority of the Postal Service regulations implementing USERRA are found in Section 77 of *Handbook EL-312*, Employment and Placement, which is available on the NALC website at nalc.org/workplace-issues/resources/usps-handbooks-and-manuals. For a more detailed explanation of the rules contained in *Handbook EL-312* and USERRA, members should review the *NALC Veterans Guide* available on the NALC website at nalc.org/veterans.

USERRA extends reemployment rights to employees who are absent from work to serve on active duty in the uniformed services for up to a total of five years (subject to certain exceptions). For purposes of applying these rights, "uniformed services" consist of the following military branches: Army, Navy, Marine Corps, Air Force, Coast Guard, their respective reserve components and the Army and Air National Guard; Commissioned Corps of the Public Health Service; and any

other category of persons designated by the president of the United States as uniformed service in time of war or emergency.

The types of uniformed service protected under USERRA include active duty, active duty for training (including initial training), inactive duty training, full-time National Guard duty, or time needed to attend an examination to determine fitness for any of the above types of duty. These are protected whether the employee performs them voluntarily or involuntarily.

Typically, under USERRA, the cumulative length of absence from employment because of military service is limited to five years; however, there are some exceptions. A complete list of these exceptions is found in Section 771.21 of *Handbook EL-312*. This list is also available in the *NALC Veterans Guide*.

Rights while on military duty

Employees called to active duty in the reserves or National Guard are placed in a leave without pay (LWOP) status until their return. Employees enlisting in the military may be placed in an LWOP status for up to five years, or they may exercise a written option to resign with the intention of not returning to the Postal Service. The Postal Service must advise employees who choose to resign of their right to be restored to employment once the period of active duty ends. These restoration rights are not affected by the resignation.

Many of the National Agreement provisions afforded to city carriers remain in force while the employees are on LWOP for military service. Career letter carriers serving on active duty in the military remain a part of the bargaining unit and will continue to accrue seniority in accordance with Article 41, Section 1.B.1 of the National Agreement.

Full-time letter carriers are eligible



to bid for route assignments. Part-time flexible (PTF) letter carriers in a LWOP status while on active military duty will be promoted to full-time based on their seniority as opportunities arise. City carrier assistants (CCAs) will not have their conversion to career status delayed based on the absence for active military duty.

All letter carriers may file grievances or have grievances filed and processed on their behalf. Service members are entitled to the same rights and benefits available to employees on a non-military leave of absence. Furthermore, they are entitled to any non-seniority rights and benefits that became effective during their service time. These rights include, but are not limited to: the Federal Employees Health Benefits Program, Federal Employees' Group Life Insurance, flexible spending accounts, retirement (the Civil Service Retirement System or the Federal Employees Retirement System) and the Thrift Savings Plan.

Employees who elect to resign from the Postal Service, rather than electing to be in an LWOP status during their military service, are no longer members of the bargaining unit. The employee relinquishes their bid as-

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signment, which is then vacated and posted for bid under the provisions of Article 41, Section 1.A.1. They do not have bidding rights while on active military duty. In addition, letter carriers who were PTFs prior to resigning would not be promoted to full time, and CCAs would not be converted to career status. Prior to resigning from the Postal Service for active military service, letter carriers should speak to their shop steward or branch officer to ensure that they fully understand their rights under USERRA.

USERRA reemployment rights

To ensure entitlement to reemployment and benefits, employees must give their immediate supervisor reasonable notice, either orally or in writing, of the impending absence from work due to active service in the uniformed services. In some circumstances, military necessity prevents the employee from giving notification. In these cases, the employee's military command may provide this notice. No advanced notice is required if it is precluded by military necessity, or it is otherwise impossible or unreasonable to give notice.

Postal employees seeking reemployment must report for duty within certain timeframes based on the length of the military service.

For an absence due to military service of one to 30 days, the employee must report by the beginning of the first regular scheduled day of work following eight hours after return home from the military service. If an employee's return to work within this time frame is unreasonable or impossible, and they are not at fault for the delay, the employee must return to work as soon as possible.

If the military service time was 31 to 180 days, a written request for return to duty must be submitted no later

than 14 days after the employee's completion of the military service. If submission of written request for return to duty is impossible or unreasonable through no fault of the employee, it must be submitted as quickly as possible.

For military service exceeding 180 days, a written request for return to duty must be made within 90 days from the date of discharge.

Individuals who fail to request return to duty in writing within the specified time frames do not forfeit their rights automatically. However, they may be subject to discipline because of unexcused absences. A detailed explanation of the rights of military veterans in the discipline process is available in the *NALC Veterans Guide*.

Members of the uniformed services who are hospitalized or convalescing because of a service-connected disability incurred during active service are required to return to work once recovered. They are to report or apply for reemployment in accordance with the previously stated timeframes. Normally, the recovery period may not exceed two years; however, the two-year period may be extended for short durations to accommodate circumstances beyond the employee's control that prevented the employee from reasonably reporting or applying.

The seniority of city letter carriers who are reemployed following military service is governed by Article 41, Section 2.D.2 of the National Agreement. Under the rules in this section, letter carriers who enter the military shall not have their seniority broken or interrupted because of military service. Unlike members of the other postal bargaining units, reinstated letter carriers' uninterrupted seniority is restored even if they return to a different installation than their original.

USERRA prohibits discrimination

against an applicant or employee based on service in the uniformed services and prohibits acts of reprisal for exercising a right stipulated in its provisions or for seeking its enforcement. The application of USERRA regulations can be complex, and problems may arise. Letter carriers enlisting or called to active duty in the military should study their rights and discuss any questions with their local union representative or national business agent (NBA).

As previously stated, carriers who are in an LWOP status rather than separated for military service are still members of the bargaining unit and may be represented by the union concerning certain issues such as the failure of the Postal Service to honor bids. They should seek advice from their shop steward, branch officers or NBA if they need assistance. Additional assistance regarding USERRA is available from the U.S. Department of Labor's USERRA advisor, available online at webapps.dol.gov/elaws/vets/userra/userra.asp.

For more information on USERRA and other rights and benefits afforded NALC military veterans visit the NALC Veterans Page at nalc.org/veterans.

Join the NALC Veterans Group

The NALC Veterans Group is designed to provide NALC members—both active and retired letter carriers—who are also military veterans the ability to connect with fellow NALC veterans and stay informed on issues of importance to letter carrier veterans. It is free to join.

Members receive a pin as a symbol of gratitude for their military service and membership in NALC.

If you are interested in joining the group, complete the sign-up card at nalc.org/veterans.