

§ 1002.99

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seek reemployment after completing the uniformed service, the employee does not forfeit the right to reemployment after completing service. The employee is not required to decide in advance of leaving the civilian employment position whether he or she will seek reemployment after completing uniformed service.

PERIOD OF SERVICE

§ 1002.99 Is there a limit on the total amount of service in the uniformed services that an employee may perform and still retain reemployment rights with the employer?

Yes. In general, the employee may perform service in the uniformed services for a cumulative period of up to five (5) years and retain reemployment rights with the employer. The exceptions to this rule are described below.

§ 1002.100 Does the five-year service limit include all absences from an employment position that are related to service in the uniformed services?

No. The five-year period includes only the time the employee spends actually performing service in the uniformed services. A period of absence from employment before or after performing service in the uniformed services does not count against the five-year limit. For example, after the employee completes a period of service in the uniformed services, he or she is provided a certain amount of time, depending upon the length of service, to report back to work or submit an application for reemployment. The period between completing the uniformed service and reporting back to work or seeking reemployment does not count against the five-year limit.

§ 1002.101 Does the five-year service limit include periods of service that the employee performed when he or she worked for a previous employer?

No. An employee is entitled to a leave of absence for uniformed service for up to five years with each employer for whom he or she works. When the employee takes a position with a new employer, the five-year period begins again regardless of how much service

he or she performed while working in any previous employment relationship. If an employee is employed by more than one employer, a separate five-year period runs as to each employer independently, even if those employers share or co-determine the employee's terms and conditions of employment.

§ 1002.102 Does the five-year service limit include periods of service that the employee performed before USERRA was enacted?

It depends. USERRA provides reemployment rights to which an employee may become entitled beginning on or after December 12, 1994, but any uniformed service performed before December 12, 1994, that was counted against the service limitations of the previous law (the Veterans Reemployment Rights Act), also counts against USERRA's five-year limit.

§ 1002.103 Are there any types of service in the uniformed services that an employee can perform that do not count against USERRA's five-year service limit?

(a) USERRA creates the following exceptions to the five-year limit on service in the uniformed services:

(1) Service that is required beyond five years to complete an initial period of obligated service. Some military specialties require an individual to serve more than five years because of the amount of time or expense involved in training. If the employee works in one of those specialties, he or she has reemployment rights when the initial period of obligated service is completed;

(2) If the employee was unable to obtain orders releasing him or her from service in the uniformed services before the expiration of the five-year period, and the inability was not the employee's fault;

(3)(i) Service performed to fulfill periodic National Guard and Reserve training requirements as prescribed by 10 U.S.C. 10147 and 32 U.S.C. 502(a) and 503; and,

(ii) Service performed to fulfill additional training requirements determined and certified by a proper military authority as necessary for the employee's professional development, or