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MEETING THE NEEDS OF OUR SCHOOL DISTRICT CLIENTS SO THEY
CAN FOCUS ON THEIR MISSION OF EDUCATING CHILDREN

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focus
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Illinois Service Member Employment and Reemployment Rights Act

The [*Illinois Service Member Employment and Reemployment Rights Act*](#) (Public Act 100-1101) (ISERRA), effective January 1, 2019, consolidates and bolsters the rights of service members in Illinois. ISERRA incorporates provisions found in the corresponding federal law, the [*Uniformed Services Employment and Reemployment Rights Act*](#) (USERRA), and provides additional protections for public employees, including school district employees.

Failure to comply with ISERRA can result in an investigation by the Illinois Attorney General and a \$5,000 fine for each violation. Service members may also bring civil suits against their employers for violations of ISERRA. There is no statute of limitations (or time limit) to file suit and an employee may be awarded actual damages plus reasonable attorneys' fees if an employer acts in bad faith.

Basic Protections and General Provisions

As a preliminary matter, for ISERRA and USERRA to apply, a service member cannot be dishonorably discharged, separated in other than honorable conditions, or dismissed or dropped from the rolls pursuant to 10 U.S.C. § 1161.

Service members must also provide their employers with advance notice of their anticipated military leave. Employers cannot impose any conditions on this leave regarding timing, frequency, or duration of the military leave. However, employers may bring their concerns to the appropriate military authority for review and consideration.

A service member absent on military leave must be credited with the average performance rating received for the three



years immediately preceding the military leave. Additionally, the rating cannot be less than the rating received for the year prior to the employee's military leave.

Discrimination against service members who exercise their rights under ISERRA is strictly prohibited. Employers must post a notice of rights in the workplace, a copy of which may be found [here](#).

Reemployment, Reapplication & Rehire

USERRA incorporates certain federal protections into ISERRA. A service member is entitled to reemployment if: (1) the service member gave advance written or verbal notice of military leave; (2) the service member submits an application for reemployment; and (3) the service member's absence was less than five years in length. The statute contains a number of exceptions that lengthen this allowable period of time that a service member may be absent.

An employer is not required to reemploy a service member if the employer's circumstances have changed such that reemployment would be impossible or unreasonable. For example, if the employee has suffered an injury and reemploying him/her would cause an undue hardship; or if the employment of the service member before leave was for a brief period and there was no reasonable expectation that the employment would continue. Employers should keep in mind that they have the burden of proof when taking action not to rehire a service member returning from military leave. It is best practice to attempt all possible avenues of rehire. The law represents a floor, not a ceiling for conduct, especially as it relates to individuals who selflessly serve our country.

USERRA contains different reapplication procedures based on the length of the military leave:

- Leave less than 31 days – An employee must report back to work on the first full regularly scheduled work day following his/her leave with a minimum of 8 hours rest after the employee's return home.
- Leave more than 30 days but less than 181 days – An employee must submit an application for reemployment within 14 days after the completion of the period of service.
- Leave more than 180 days – The employee is allowed a period of no more than 90 days after the completion of service to submit an application for reemployment.

These timelines may be delayed if the service member is having trouble getting back home through no fault of his/her own. In addition, an employee who is injured must be allowed to fully recover before reporting back to work. In case of an injury while deployed, the law allows a two-year recovery period which can be extended by the employee depending on the circumstances. It should be noted that failing to report or apply for reemployment within the time frames contained in the statute is not an automatic bar to reemployment. Again, the law should be considered the floor for desirable conduct, not the ceiling.

USERRA also qualifies the positions a service member may be eligible to fill based on the length of his/her military leave:

- Leave less than 90 days – The employee must be allowed to fill the position he/she would have been employed in had it not been for the military leave.
- Leave more than 90 days – The service member should first be allowed to fill the position that he/she would have been employed in had it not been for the military leave. If such position is not available, the service member should be offered a position of similar seniority, status, and pay which the service member is qualified to perform.
- It should be noted that service members who have sustained injury during deployment have special protections and must be provided with individualized examinations for rehire. We recommend consulting an attorney before taking any action under these unique circumstances.

Public Employees

ISERRA provides additional benefits for full-time public employees (330 ILCS 61/5-10). ISERRA entitles public employees up to 30 days per calendar year for military leave for purposes of annual training. In addition, during periods of military leave for active service, public employees are entitled to receive differential compensation in an effort to 'hold them harmless' for their service. This compensation is the daily rate a public employee receives minus the daily rate of compensation for military service. Service members who are on active service without pay are not entitled to differential compensation. ISERRA provides detailed methods for calculating daily compensation as well as differential compensation (330 ILCS 61/1-15).

Employer Support Freedom Award Prairie Grove Elementary School District 46

Did you know that Prairie Grove Elementary School District 46, Crystal Lake, Illinois was awarded the Department of Defense Employer Support Freedom Award in 2016? This is the highest honor the U.S. Department of Defense awards to employers for supporting National Guard and Reserve employees. School District 46 is one of only two school districts in the country to ever receive this honor. District 46 was nominated for the award by physical education teacher Lt. Col. Patricia Klop, who has spent over 5 of her 15 years employed in the District on active duty in the Marine Corp.

During the award ceremony on August 26, 2016, Lt. Col. Klop stated "I have repeatedly been assigned military orders due to the nature of global events and the continued high-tempo operations demanded upon my units. My employer enabled me to answer the call of duty without consequence and with their utmost support, which I cannot express into words how grateful I am. I truly share my Marine Corps career success with Prairie Grove SD 46, as I could not have achieved the rank or accomplished the missions without their unwavering and unequivocal support."



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