



**Uniformed Services Employment and
Reemployment Rights Act (USERRA)
April 2006**

Talking Points

- ❑ Employers have an obligation under federal law to extend health insurance for Employees who commence service in the Uniformed Services and their covered dependents.
- ❑ “Employee” means any person employed by an Employer (includes the former Employees of an Employer).
- ❑ “Employer” means any person, institution, organization, or other entity that pays salary or wages for work performed, or that has control over employment opportunities.” (Applies to states, local governments, and private Employers. FEP is excluded.)
- ❑ “Health Plan” means an insurance policy, insurance contract, medical or hospital service agreement, membership or subscription contract, or other arrangement under which health services for individuals are provided or the expenses of such services are paid.”
 - “Service in the Uniformed Services” means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority.
- ❑ A “Uniformed Service” includes the Armed Forces, the Army and Air National Guards, and the commissioned corps of the Public Health Service (and any other category of persons designated by the President in time of war or national emergency).
- ❑ When an Employee is absent from work due to Service in the Uniformed Services, the following requirements apply to health coverage under an Employer Health Plan (“Health Plan”):
 - The Health Plan must provide the Employee an opportunity to elect an extension of health care coverage (for him/herself and covered dependents) for a period of time that is the lesser of:
 - the 24-month period beginning on the day the Employee’s absence begins, or
 - the period beginning on the day the Employee’s absence begins and ending on the day following the Employee’s failure to notify the Employer of the intent to return to work following conclusion of service in the Uniformed Services, or the Employee fails to return from service. (See time frames for reporting for reemployment, below.)
 - If an Employee elects to continue coverage, as described above, the Employer may not charge more than 102% of the full premium under the Health Plan, in the same manner it is calculated for COBRA.

- If an Employee elects to continue coverage and is in the Service of the Uniformed Services for less than 31 days, the Employer may not require a higher Employee contribution of that Employee than of any other Employee, if any, under the Health Plan for him/herself and any covered dependents.
- Employees who choose not to continue coverage under the Health Plan during service in the Uniformed Services, or whose extended coverage is exhausted due to service extending beyond 24 months, must be allowed to enroll in the Health Plan upon return to employment without a waiting period and without pre-existing condition limitations, if they would not have been subject to a waiting period or pre-existing condition limitation had they not entered service.

However, the Health Plan may apply a pre-existing condition waiting period or exclusion to any illness or injury incurred during the performance of Service in the Uniformed Services (if supported by the terms of the Health Plan). The Secretary of Veterans Affairs or his or her representative is the only one who can determine if an illness or injury was incurred in, or aggravated during, performance of service.

- Generally, Employees are expected to provide at least 30 days notice to their Employer prior to their absence from employment due to the beginning of service. However, if an Employee's failure to provide advance notice was excused because it was impossible, unreasonable, or precluded by military necessity, the Employee's health coverage must be reinstated retroactively up to 24 months upon his or her election to continue coverage and payment of all unpaid amounts due, and the Employee cannot be required to pay any administrative reinstatement costs.

Additionally, if the Employee is absent for a period of service in excess of 30 days and provided advance notice of service, but did not elect to continue coverage, the Employer must reinstate coverage without administrative costs to the date of departure if the Employee elects continuing coverage and pays all unpaid amounts due. Employers may develop reasonable requirements (which also comply with COBRA, if applicable) regarding elections of, and payment for, continuing coverage.

- The time frames for notifying the Employer of the intent to return to work are as follows:
 - **In the case of an Employee whose period of service was less than 31 days**, not later than the beginning of the first full regularly scheduled work period on the first calendar day following completion of the period of service and the expiration of eight hours after a period allowing for the safe transportation of the person from the place of that service to the person's residence; or as soon as possible, if it is impossible or unreasonable through no fault of the person to meet the preceding time frame.



- **In the case of an Employee whose period of service was for more than 30 days but less than 181 days**, not later than 14 days after the completion of the period of service, or the next first full calendar day when submission of an application (written or verbal) for reemployment becomes possible.
- **In the case of an Employee whose period of service was for more than 180 days**, not later than 90 days after the completion of the period of service.

The timeframes for notifying the Employer of the intent to return to work are extended to a period of two years from the date of completion of service if the Employee is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service.

- For dependents enrolled under CHAMPUS but continue coverage under the Employer Health Plan, CHAMPUS will pay secondary.
- Dependents do not have an independent right to continue coverage under USERRA, but the Employee has the right to continue coverage for him/herself and covered dependents.
- The exhaustion of the 24-month extension of coverage under USERRA is not a qualifying event under COBRA, since the Employee is deemed to be on a leave of absence while in service. However, there could be qualifying events during the extension of coverage.
- If an Employee remains on active duty after the 24 months, Employers are not required to extend coverage beyond the 24 months. In such situations, it is most likely that the Employee and dependents would have coverage through the federal programs for military personnel and dependents.
- If the Employee is on active duty for no more than five years, the Employer is required (with some exceptions) to reinstate the person's employment and coverage upon his/her reporting back to work.

Questions and Answers

1. What is USERRA?

It stands for the Uniform Services Employment and Reemployment Rights Act (USERRA), enacted by the Department of Labor in 1994, with the final rules effective January 18, 2006.

2. What changed in the USERRA final rules that became effective January 18, 2006?

There are two significant changes affecting Health Plan coverage in the final rules:

- The maximum period of continuation of Health Plan coverage upon commencement of Service in the Uniformed Services changed from 18 to 24 months; and
- There are circumstances which allow for retroactive reinstatements of Employees performing Service in the Uniformed Services for up to 24 months.



3. Who does USERRA cover?

Generally, USERRA covers an Employee who enters the Uniformed Services of the United States of America and serves for no more than five years (cumulative service). The Uniformed Services include the Armed Forces (active and reserve), the Army and Air National Guards, and the commissioned corps of the Public Health Service. USERRA also covers any other category of persons designated by the President in time of war or national emergency.

4. How does USERRA apply to Employer sponsored health coverage?

USERRA requires Employers to allow Employees who commence service in the Uniformed Services to elect to continue insurance coverage under the Group Health Plan for themselves and their covered dependents for up to 24 months.

5. What Employers must comply?

Practically all Employers must comply (see definition provided above); it is not limited by number of Employees, nor does USERRA exempt any particular type of Employer. There are separate regulations applicable to FEP. ***If you have questions regarding its applicability or more technical questions than those addressed in this document, please consult legal counsel.***

6. Should the Employer notify BCBSNC if an Employee has elected to continue coverage under USERRA?

Yes. A Change Application should be submitted to BCBSNC indicating that the Employee (and dependents, if applicable) will be continuing coverage while on military leave.

7. Is this the same as COBRA continuation coverage?

No. There are important differences. For instance, USERRA applies to Employers of less than 20 Employees. Also, under USERRA, dependents do not have an independent right to continue coverage, as they do under COBRA.

8. For what length of time must the Employer allow the Employee to continue coverage?

The Employee (and covered dependents) is entitled to continue coverage for the lesser of:

- a period of 24 months, or
- a period ending on the day following the Employee's failure to notify the Employer of intent to return to work following conclusion of service in the Uniformed Services. (See question & answer 18, below.)

9. When does the extension of coverage start?

On the first day the Employee is absent from work due to service in the Uniformed Services.

10. What is the Employee's cost for continued coverage?

An Employee who elects to continue coverage may not be required to pay more than 102% of the full premium under the plan, in the same manner it is calculated for COBRA. However, if service in the Uniformed Services is less than 31 days, the person who continued coverage may not be charged more than the regular Employee contribution under the plan for him/herself and any covered dependents.

11. What are the Employer's obligations (with regard to health insurance) if the Employee does not elect to continue coverage while in the Uniformed Services?

The Employer may cancel the Employee's coverage if the Employee did not elect to continue coverage and/or failed to provide advance notice of service. If the period of service ends within five years and the Employee returns to work, he or she is entitled to have coverage reinstated with no new probationary period or pre-existing condition waiting period.

12. Under what circumstances may an Employee request retroactive reinstatement of coverage?

Generally, if the Employee did not elect to continue coverage but provided advance notice of service and is absent more than 30 days, the Employer must reinstate coverage upon request by the Employee and payment of all unpaid premiums. Employers must also reinstate coverage if the Employee could not provide advance notice of service due to military necessity. See page 2 for more details on retroactive reinstatements.

13. What happens after the Employee has continued coverage for 24 months and remains in the Uniformed Services?

Coverage ends. Upon return to work, coverage must be reinstated with no new probationary period or pre-existing condition waiting period unless injuries or illnesses are service-related.

14. What is BCBSNC's procedure for reinstatement of coverage?

BCBSNC requires that the Employee complete an enrollment application and provide documentation of service in the uniform services, such as discharge papers.

15. Does termination of coverage under the USERRA extension of coverage requirement constitute a qualifying event under COBRA?

No. The exhaustion of the 24-month extension of coverage under USERRA is not a qualifying event under COBRA, since the Employee is deemed to be on a leave of absence while in service. However, there could be qualifying events during the extension of coverage.

16. Does the health coverage have to cover injuries or illnesses that are service-related?

No. The plan may exclude from coverage or impose a waiting period as to any illness or injury that results from service in the Uniformed Services. The Secretary of Veterans Affairs or his or her representative is the only one who can determine if an illness or injury was incurred in, or aggravated during, performance of service.



17. If the Employee's dependents are also covered under CHAMPUS, which plan is primary?

The Health Plan is primary. CHAMPUS is secondary.

18. What is the cut-off for extension of coverage if the Employee leaves the Uniformed Services in less than 24 months?

The end date is the date the Employee is required to report back to work under the following rules:

- **In the case of a person whose period of service was less than 31 days**, not later than the beginning of the first full regularly scheduled work period on the first calendar day following completion of the period of service and the expiration of 8 hours after a period allowing for the safe transportation of the person from the place of that service to the person's residence; or as soon as possible, if it is impossible or unreasonable through no fault of the person to meet the preceding time frame.
- **In the case of a person whose period of service was for more than 30 days but less than 181 days**, not later than 14 days after the completion of the period of service, or the next first full calendar day when submission of an application for reemployment becomes possible.
- **In the case of a person whose period of service was for more than 180 days**, not later than 90 days after the completion of the period of service.

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