



Military Service and Your Rights

As a member of the Armed Forces, how am I entitled to protection from employment discrimination?

Your status as a person who has a "liability for service" in the "Armed Forces of the United States" entitles you to employment-related protection under the New Jersey Law Against Discrimination (the "LAD"). Liability for service means that you are subject to being ordered into active service by reason of membership in the armed forces. Federal law, primarily the Uniformed Services Employment and Re-employment Rights Act (commonly referred to as "USERRA"), provides detailed protection to employees called to service, outlining how your employer must address your need to be on leave for military service and your rights to reemployment when you return.

What kind of protection does the LAD provide?

The LAD prohibits an employer from discriminating against you in hiring or through imposing different terms or conditions of employment because of your membership in the Armed Services. The LAD does not prohibit an employer from refusing to employ someone who has already received orders to report for active duty, although federal law may provide you with such protection.

What rights do I have if I am called away from work to active duty?

Under the LAD, an employer may not fire you because you need a leave of absence due to a military commitment if the employer routinely grants leaves of absences for other reasons. Additionally, USERRA provides detailed protection to you as an employee called to service. First, you cannot be terminated because you are called to duty. When you return from service, you will be entitled to reinstatement, either to the position you had or the position you would be in had the employment not been interrupted. You are also

entitled to the promotions and pay increases that would have taken effect during your time away based on seniority or length of employment. If the promotion means you will have duties for which you are not prepared because of your leave, the employer must attempt to provide the necessary training.

How long can I be away for duty and still return to my position?

Under the LAD, you cannot be treated differently than other employees who take a leave of absence for other reasons. Further, USERRA provides that you are entitled to return to your position as long as the total amount of time away on duty (including previous absences) has not been more than five years.

If I become disabled serving in the Armed Forces, what are my rights upon returning to employment or seeking new employment with a disability?

In addition to protection you may have under federal law, the LAD provides substantial protection of those who seek to gain or continue employment with a disability. The LAD covers both physical and non-physical disabilities. Unless your disability makes it impossible or unreasonably difficult to perform the functions of the job, you are entitled to reinstatement to your employment. You are also entitled to any reasonable accommodation, such as use of a device or alteration of your working environment, necessary to function in the employment with your disability. If you need an accommodation, you should make it known to your employer upon return from leave. The employer should work with you to provide the accommodation and will only be legally excused from doing so if the accommodation places an unreasonable burden on the employer's resources. Failing a reasonable attempt to accommodate your disability and return you to your previous position, USERRA obligates your employer to offer you a position similar in seniority and compensation or the nearest approximation to your former status and level of compensation.

What types of non-physical disabilities are covered under the LAD?

Mental or emotional conditions that prevent normal exercise of bodily or mental function, or which are demonstrable by accepted clinical diagnostic techniques are covered. Such conditions may include post-traumatic stress disorder and depression.

What other protections does the LAD provide to disabled veterans?

The LAD also prohibits housing providers and places of public accommodation (such as hotels and restaurants) from discriminating based on disability. A person with a disability is entitled to a reasonable accommodation from a housing provider to allow access to housing, such as allowing a person requiring a wheelchair to install a ramp. The LAD also makes it unlawful to refuse to do business with any person because of liability for service in the armed forces. This includes buying, selling, leasing, licensing, contracting, trading, or providing goods, services or information. It is also unlawful to include any provision in contracts, letters of credit, or any other documents for transfers of funds or credit, which requires discrimination based on armed forces liability.

What can I do if I believe that I am being discriminated against because of my status as a member of the Armed Services?

You can report a complaint to the New Jersey Division on Civil Rights (for military service or disability discrimination), the U.S. Department of Labor Veterans Employment and Training Service (for military service discrimination), or the U.S. Equal Employment Opportunity Commission (for disability employment discrimination). Your complaint will be handled by investigators and attorneys working in those agencies. The agency may file a complaint against your employer in court or seek a resolution for you without going to court. You also have the right to, on your own or with the help of an attorney, file a complaint in state or federal court against your employer without first seeking assistance from federal or state agencies.

What do I need to show to prove that my employer discriminated against me?

Under both state and federal law, you will need to prove that your membership in the armed services or disability was a substantial or motivating factor in

your employer's negative decision. You do not need to show that it was the *only* factor influencing the decision. The employer will then have the opportunity to prove that the negative decision would have been made regardless of your military status or disability, and for a valid, legally permissible reason.

If I am successful in proving that my employer discriminated against me, to what am I entitled?

Depending on the circumstances, you may receive lost wages and benefits in addition to compensation for emotional distress and any pain or humiliation you suffered as a result of the discriminatory action. Your employer may also be required to change its practices and/or pay penalties for its unlawful conduct.

For more information, contact the Division on Civil Rights office nearest your work or home or visit us on the Web at www.njcivilrights.gov.

To learn more about your rights under the Uniformed Services Employment and Reemployment Rights Act go to: www.dol.gov/vets/programs/userra/USERRA_Federal.pdf



NJ Office of the Attorney General

CIVIL RIGHTS

The Department of Law & Public Safety, through its Division on Civil Rights, is responsible for enforcing the law. To file a complaint, contact or visit the office nearest you:

Atlantic City Regional Office:

1325 Boardwalk, Tennessee Ave. & Boardwalk
Atlantic City, NJ 08401
Phone: **(609) 441-3100** • Fax: (609) 441-3578

Camden Regional Office:

One Port Center, 4th Floor, Suite 402
2 Riverside Drive, Camden, NJ 08103
Phone: **(856) 614-2550** • Fax: (856) 614-2568

Newark Regional Office:

31 Clinton Street, Newark, NJ 07102
Phone: **(973) 648-2700** • Fax: (973) 648-4405

Trenton Regional Office:

140 East Front Street / P.O. Box 090
Trenton, NJ 08625-0090
Phone: **(609) 292-4605** • Fax: (609) 984-3812

Visit our web site at **www.NJCivilRights.gov**