

SERVICEMEMBERS **KNOW** YOUR RIGHTS UNDER THE LAW



Servicemembers: Know Your Rights* Under the Law

Servicemembers Civil Relief Act (SCRA) – a law that provides legal and financial protections when a person is called to active military duty.

Servicemembers have the right to such benefits and protections as:

- **Right to the 6 percent interest rate cap:** This law limits the amount of interest on certain financial obligations incurred prior to military service to no more than 6 percent per year.
- **Right to child custody:** If a motion or a petition is filed seeking a permanent order to modify the custody of the child of a servicemember, a court cannot use the deployment or possible deployment of the custodial parent as the sole factor to consider a change in child custody.
- **Right to protections in payment:** The SCRA protects servicemembers and their spouse or children from loss of benefits due to failing to pay rent, loans, mortgages, or insurance policies.

Payment Protections Include

- **Prevention from eviction and distress:** Servicemembers or their dependents may not be evicted from a rental home except by court order.
- **Installment contracts:** As long as the servicemember borrower either placed a deposit for real or personal property (including a vehicle), or made at least one installment payment before entering military service, a creditor may not repossess the property without a court order.
- **Loan foreclosure:** During the period of military service or within one year after, a creditor must get a court order before foreclosing on a mortgage or other security loan originating before the period of the servicemember's military service.
- **Termination of contracts:** Servicemembers may terminate certain leases for property used for residential, professional, business, or agricultural purposes, if the servicemember is deployed for 90 days or more or receives permanent change of station (PCS) orders. Automobile leases are also covered, if the servicemember is deployed for at least 180 days or receives PCS orders. Cell phone contracts may also be covered depending on the distance and duration of the servicemember's relocation.

Additionally, Your Rights Include



- **Right to continue life insurance coverage:** The SCRA protects a servicemembers' right to continue coverage under certain commercial life insurance policies.
- **Right to defer tax obligation:** Without a court order, property belonging to servicemember cannot be sold to collect unpaid taxes or assessments, except income taxes. The collection of income taxes (excluding Social Security (FICA) taxes) may be deferred under certain circumstances.
- **Right to continue health insurance:** On termination of military service, servicemembers may reinstate any health insurance that was effective prior to their service.
- **Guarantee of residency:** Servicemembers can maintain their home state of residency or domicile for tax and voting purposes.
- **Right to file a complaint:** the U.S. attorney general or any person aggrieved by a violation of the SCRA may take action against any person who violates the SCRA.

Uniformed Services Employment and Reemployment Rights Act

The Uniformed Services Employment and Reemployment Rights Act (USERRA) protects servicemembers' and veterans' civilian employment rights.

- **Right to be reemployed (the “escalator” principle):** Unless an exception applies, servicemembers have the right to be reemployed in their prior civilian jobs. Servicemembers also have the right to be restored to the positions and benefits they would have attained. If servicemembers cannot qualify for the “escalator” position, they must be reemployed, if qualified, in any other position that is the nearest approximation to the escalator position and then to the pre-service position.



Qualification requirements

1. ensuring that the employer receives advance written or verbal notice of the service, unless the notice is precluded by military necessity or relevant circumstances;
 2. with exceptions, five years or less of cumulative service in the uniformed services while with that particular employer;
 3. returning to work or apply for reemployment in a timely manner after conclusion of service; and
 4. having not been separated from service with a disqualifying discharge or under other than honorable conditions (this requirement is also essential to all other rights).
- **Right to be free from employment discrimination and retaliation:** an employer may not deny a servicemember's initial employment, reemployment, retention in employment, promotion, or any benefit of employment because of his or her service status. In addition, an employer may not retaliate against anyone assisting in the enforcement of USERRA rights, including testifying or making a statement in connection with a proceeding under USERRA, even if that person has no service connection.

These protections apply to a person who

1. is a past or present member of the uniformed service;
 2. has applied for membership in the uniformed service; or
 3. is obligated to serve in the uniformed service.
- **Right to continue health insurance:** If servicemembers leave their jobs to perform military service, they have the right to elect to continue their existing employer-based health plan coverage for them and their dependents for up to 24 months while in the military. If servicemembers don't elect to continue coverage during military service, they have the right to be reinstated in their employer's health plan when they are reemployed, generally without any waiting periods or exclusions (e.g., pre-existing condition exclusions) except for service-connected illnesses or injuries.

Enforcement – The U.S. Department of Labor, Veterans Employment and Training Service (VETS) is authorized to investigate and resolve complaints of USERRA violations.

For assistance in filing a complaint, or for any other information on USERRA, contact VETS for free at 1-866-4-USA-DOL or visit its website at <http://www.dol.gov/vets>. An interactive online USERRA Advisor can be viewed at <http://www.dol.gov/elaws/userra.htm>.

**This is not an all-inclusive list of rights. Check the resources on the back cover for more information.*

SCRA and USERRA Federal Resources

For more details about the SCRA, please see:

- <http://uscode.house.gov/view.xhtml?path=/prelim@title50/chapter50&edition=prelim>
- R. Chuck Mason, The Servicemembers Civil Relief Act (SCRA): An Explanation, (Jan. 27, 2016), <https://paulryan.house.gov/uploadedfiles/rl34575.pdf>
- For more details about USERRA, please see: (1996), <https://www.justice.gov/crt-military/userra-statute>
- Dep't of Labor, Your Rights under USERRA the Uniformed Services Employment and Reemployment Rights Act, <https://www.dol.gov/vets/programs/userra/aboutuserra.htm>

