



## ADA - The "Association" Provision

The Americans with Disabilities Act (ADA) is a federal law that prohibits discrimination on the basis of disability. Title I of the ADA makes it unlawful for any employer with 15 or more employees (including a state or local government employer) to discriminate against a qualified applicant or employee because of a disability in any aspect of employment. In addition to protecting qualified applicants and employees with disabilities from employment discrimination, one ADA provision – the "association" provision — protects applicants and employees from discrimination based on their **relationship or**

**association** with an individual with a disability, whether or not the applicant or employee has a disability.

The purpose of the association provision is to prevent employers from taking adverse actions based on unfounded stereotypes and assumptions about individuals who associate with people who have disabilities. Thus, it makes unlawful actions such as refusing to hire an individual who has a child with a disability based on an assumption that the applicant will be away from work excessively or be



otherwise unreliable, firing an employee who works with people who are HIV-positive or have AIDS based on the assumption that the employee will contract the disease, or denying an employee health care coverage available to others because of the disability of an employee's dependent.

The association provision of the ADA prohibits employment discrimination against a person, whether or not he or she has a disability, because of his or her known relationship or association with a person with a known disability. This means that an employer is prohibited from making adverse

**e m p l o y m e n t** decisions based on unfounded concerns about the known disability of a family member or anyone else with whom the applicant or employee has a relationship or association.

The ADA does not require a family relationship for an individual to be protected by the association provision. The key is whether the employer is motivated by the individual's relationship or association with a person who has a disability.

## USERRA Final Rules Issued

The Veterans Employment and Training Service (VETS) issued a final rule on December 19, 2005 to make the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) and its protections more readily understandable by employers and service members. USERRA provides employment and reemployment rights for members of the uniformed services, including veterans, reservists and National Guard members. Under USERRA, service members who leave their civilian jobs for military service are able to return to their jobs with the same pay, benefits and status they would have attained had they not been away on duty. USERRA also protects against discrimination in employment because of military service.

These newly issued regulations specifically address service member and employer obligations regarding such issues as: employee make-up contributions to pension plans; employer contributions to pension plans; continuing employment-based health plan coverage; statute of limitations; and the interaction of USERRA with the Family and Medical Leave Act (FMLA).

In addition, VETS issued a final rule concerning the notice required under Veterans Benefits Improvement Act of 2004 (VBIA). The VBIA requires that "[e]ach employer shall provide to persons entitled to rights and benefits under [USERRA] a notice of the rights, benefits, and obligations of such persons and such employers..." This



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notice requirement can be met by distributing the notice or posting the poster version of the notice. Two downloadable posters, with identical text, are available at [www.dol.gov/vets](http://www.dol.gov/vets) for use and distribution by employers. One of these posters is for Federal agency employers and the other poster for use by private and State employers.

The USERRA elaws Advisor [[www.dol.gov/elaws/userra.htm](http://www.dol.gov/elaws/userra.htm)] has been updated to reflect these new rules. Additional compliance information is available at [www.dol.gov/vets](http://www.dol.gov/vets).

*For more information on these or other Compliance Issues, contact your Morton Insurance Compliance Check Specialist at 720-488-4915.*

*ADA Continued...*

**Prohibited Conduct**

*An employer may not terminate or refuse to hire someone due to that person's known association with an individual with a disability.*

*An employer may not deny an employee who has an association with a person with a disability a promotion or other opportunities for advancement due to that association.*

*An employer may not make any other adverse employment decision about an applicant or employee due to that person's association with a person with a disability.*

*An employer may not deny an employee health care coverage available to others because of the disability of someone with whom the employee has a relationship or association.*

*An employer may not deny an employee any other benefits or*

*privileges of employment that are available to others because of the disability of someone with whom the employee has a relationship or association.*

*An employer may not subject someone to harassment based on that person's association with a person with a disability. An employer must also ensure that other employees do not harass the individual based on this association.*



The ADA prohibits retaliation by an employer against someone who opposes discriminatory employment practices,

files a charge of employment discrimination, or testifies or participates in any way in an investigation, proceeding, or litigation.

Further information may be found at [http://www.eeoc.gov/facts/association\\_ada.html](http://www.eeoc.gov/facts/association_ada.html).

FOR USE BY PRIVATE SECTOR AND STATE GOVERNMENT EMPLOYERS

**YOUR RIGHTS UNDER USERRA  
THE UNIFORMED SERVICES EMPLOYMENT  
AND REEMPLOYMENT RIGHTS ACT**

USERRA protects the job rights of individuals who voluntarily or involuntarily leave employment positions to undertake military service or certain types of service in the National Disaster Medical System. USERRA also prohibits employers from discriminating against past and present members of the uniformed services, and applicants to the uniformed services.

**REEMPLOYMENT RIGHTS**

You have the right to be reemployed in your civilian job if you leave that job to perform service in the uniformed services and:

- you ensure that your employer receives advance written or verbal notice of your service;
- you have five years or less of cumulative service in the uniformed services with that particular employer;
- you return to work or apply for reemployment in a timely manner after conclusion of service; and
- you have not been separated from service with a disqualifying discharge or under other than honorable conditions.

If you are eligible to be reemployed, you must be restored to the job and benefits you would have received if you had not been absent due to military service or, in some cases, a comparable job.

**RIGHT TO BE FREE FROM DISCRIMINATION AND RETALIATION**

If you:

- are a past or present member of the uniformed services;
- have applied for membership in the uniformed services; or
- are obligated to serve in the uniformed services;

then an employer may not deny you:

- initial employment;
- reemployment;
- promotion in employment;
- promotion; or
- any benefits of employment.

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.

**HEALTH INSURANCE PROTECTION**

If you leave your job to perform military service, you have the right to elect to continue your existing employer-based health plan coverage for you and your dependents for up to 24 months while in the military.

Even if you don't elect to continue coverage during your military service, you have the right to be reinstated to your employer's health plan when you 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 at 1-866-4-USA-3800, 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>.

If you file a complaint with VETS and VETS is unable to resolve it, you may request that your case be referred to the Department of Justice for representation.

You may also bypass the VETS process and bring a civil action against an employer for violations of USERRA.

The rights listed here may vary depending on the circumstances. This notice was prepared by VETS, and may be viewed on the internet at this address: <http://www.dol.gov/elaws/userra.htm>. Federal law requires employers to notify employees of their rights under USERRA, and employers may meet this requirement by displaying this notice where they customarily place notices for employees.

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1-800-336-4590  
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