

# USERRA REFRESHER





## **Ombudsman Services**

**Ombudsmen are trained ESGR Volunteers at the local level who:**

- **Provides Mediation services (as a neutral)**
- **Educate and mediate USERRA issues**
- **ONLY Qualified Ombudsmen who have completed training from NCESGR can work cases.**





## **Ombudsman Services**

**In order to be an Ombudsman and eligible to work cases, they must receive certification training from the National Headquarters ESGR Directorate and maintain qualifications in accordance with National Headquarters criteria (e.g. working required number of cases, continuing education, etc).**





# **On-line DOL Course : USERRA 101**

## **Subjects:**

- **Discrimination in Hiring**

**On-line DOL Course : USERRA 102 is also Available**

- **Termination of Employment**
- **Reemployment Rights**
- **Employment Benefits**





## **Service Member's Rights**

- **Military leave of absence**
- **Prompt reinstatement back into your job**
- **Accumulation of seniority, as if you never left**
- **Immediate reinstatement of health insurance**
- **Training or retraining of skills, as necessary**
- **Protection against discharge and discrimination**





## **Service Member Requirements**

- **Service Member must have left a civilian job**
- **Leave for the purpose of service**
- **Cumulative period of service must not exceed five years (there are exemptions)**
- **Provide prior notice to employer (preferably in writing)**
- **Serve under honorable conditions**
- **Return to work in a timely manner**





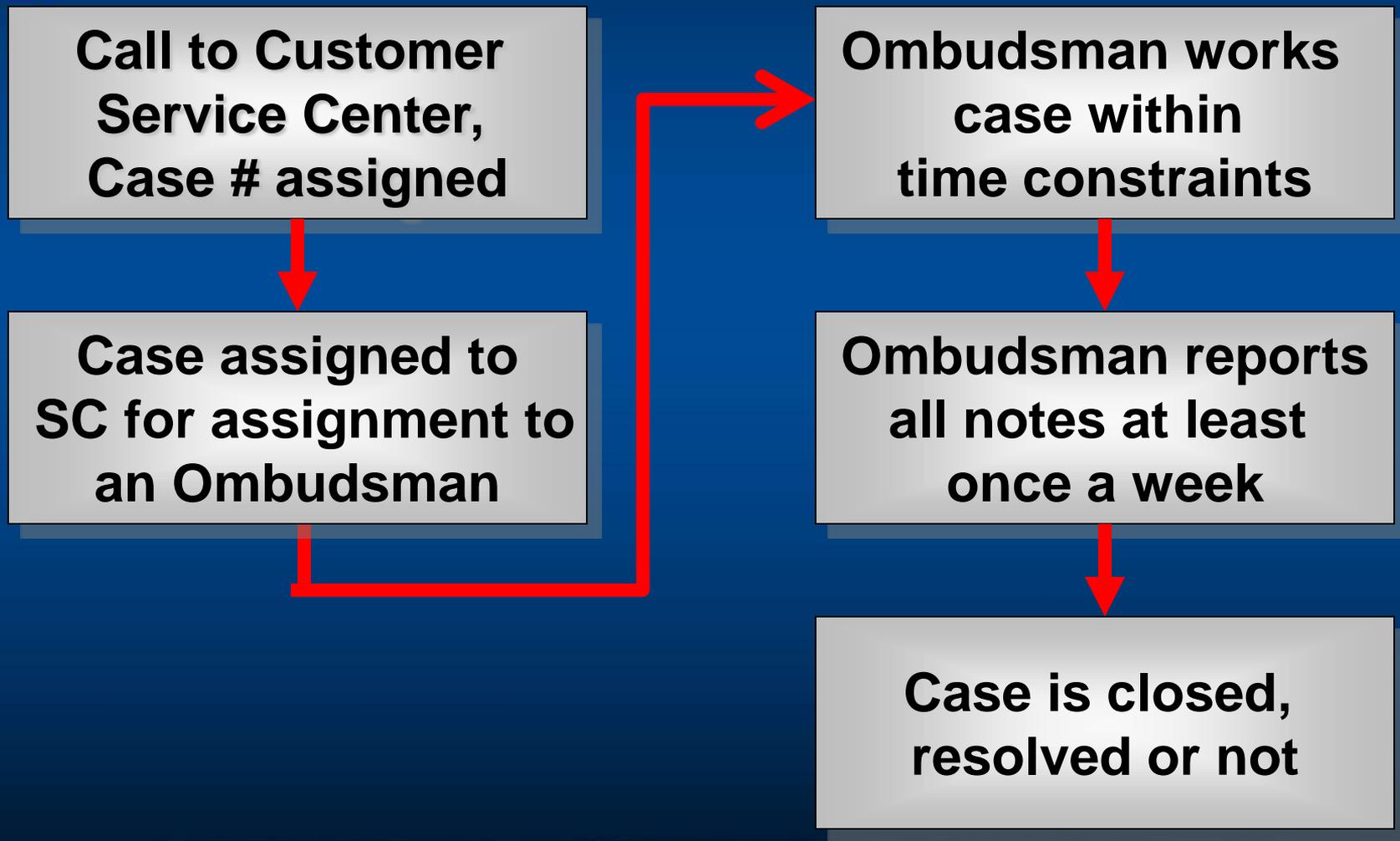
## **Five Year Limit**

- **Maximum period of military service you can serve with continued coverage under USERRA.**
- **Numerous exemptions, orders will specify the individual's status.**
- **New employer, new 5-year limit**





# Case Management Process





# Time Limits

## 7-Day Rule

If case involves  
loss of wages,  
must be  
Closed in 7  
days.

## 14-Day Rule

If case does NOT  
involve loss of  
wages, must be  
closed in 14  
days.





## **Ombudsman = Neutral**

A “neutral” is one who functions specifically to assist parties to resolve a dispute and has no official, financial, or personal conflict of interest with respect to the issues in controversy.

- Does not advocate for either party.
- Does not make a decision for parties.
- Provides a process to assist parties to resolve issues.





## **Confidentiality**

- Ombudsman **CANNOT** discuss case details with anyone not directly involved in the case.
- Full Time Support Staff can see notes when serving as Case Coordinators.
- In general, ESGR staff are not entitled to case details.
- National Case Managers are neutrals entitled to case details to support Ombudsmen.





## **Why Confidentiality?**

### ***Administrative Dispute Resolution Act (ADRA) of 1996***

**Prohibits disclosure of oral statements or writings prepared for the purpose of the dispute resolution proceeding or communications provided in confidence to the neutral.**





# **Top Five USERRA Violations**

- 1 - Termination**
- 2 - Discrimination**
- 3 - Job Placement**
- 4 - Pay**
- 5 - Work Schedule**





## **Frequently Asked Questions**

**Does USERRA protect Service Member if service was voluntary?**

**YES – There is differentiation between voluntary and involuntary service.**

**Is Service Member required to provide written orders for active duty?**

**NO – However, providing a copy of orders to employers is encouraged. If upon return to work and the orders exceed 30 days, the employer can request documentation of service.**





## **Frequently Asked Questions**

**Does the Service Member have to find a replacement for their absence?**

**NO – Only responsible to give advance notice, if possible.**

**Does Service Member have to use vacation for military service?**

**NO – The employee may use vacation, but it is unlawful to force the employee to utilize.**



# PROTECTIONS FOR SERVICE MEMBERS' EDUCATION RIGHTS





## **Effective Date**

- Law went into effect August 14, 2009, however:
  - Code of Federal Regulation 34 does not go into effect until July 1, 2010
  - Schools are expected to make a good faith effort to comply with language of the statute.
- Changes are reflected in the United States Department of Education's (USDE's) 34 CFR Parts 600, 668, and 675.
- USDE adopted USERRA like protections under (Part 668-Student Assistance General Provisions).





# **Qualifying Service for Returning Service Members**

- **Uniformed Service,**
- **whether voluntary or involuntary,**
- **in the Armed Forces (including service by a member of the National Guard or Reserve, on active duty, active duty for training, or full-time National Guard duty under Federal authority),**
- **and for a period of more than 30 consecutive days under a call or order to active duty of more than 30 consecutive days.**





## **General Rights for Returning Service Members**

- May not deny readmission to a Service Member.
- Supersedes State law/any other matter that reduces any right or benefit of these rules.
- Must promptly readmit Service Member with the same academic status.
  - “Promptly readmit means in next class of classes in program
  - Exceptions





## **General Rights for Returning Service Members**

- Tuition and fees (for first year)
- If readmitted to same program:
  - Same tuition and fee charges would have assessed for academic year in which student left
  - Same as other students for that year, if VA or other benefits will cover beyond what student would have been assessed
  - For another program, assessed no more than other students





# **General Rights for Returning Service Members**

## **Academic preparation:**

**Institution must make reasonable efforts to help them prepare to resume or complete a program**

- **Must be at no extra cost to student**
- **“Reasonable efforts” means no undue hardship to the institution**





# **Service Members Readmission Procedures**

**Student entitled to readmission if:**

- Gives advance oral or written notice of the service.
- Cumulative length of absence and all previous absences for service  $\leq 5$  years.
- Gives oral or written notice of intent to return.
- Institution must designate office(s).
- Notices may not have a required format.





# **Service Members Readmission Procedures**

- **Notice of intent to return must be:**
  - **Not later than 3 years after completion of period of service; OR**
  - **Not later than 2 years after end of period necessary for recovery from service-related illness or injury**





# **Returning Service Members** **Documentation**

**Student must provide documentation to establish that:**

- **Student has not exceeded limitation on the cumulative length of absence.**
- **Student eligibility for readmission has not been terminated.**
- **Example – Certificate of Release or Discharge from Active Duty**





## **Enforcement Assistance**

Potential violations of the law can be report to:

- Office of Postsecondary Education, Wendy Macias (202) 502-7526, email: **wendy.macias@ed.gov**
- It is the intent of USDE to establish call assistance centers.



