§ 1002.43 Does an individual have rights under USERRA even if he or she is an executive, managerial, or professional employee?

Yes. USERRA applies to all employees. There is no exclusion for executive, managerial, or professional employees.

§ 1002.44 Does USERRA cover an independent contractor?

(a) No. USERRA does not provide protections for an independent contractor;
(b) In deciding whether an individual is an independent contractor, the following factors need to be considered:
   (1) The extent of the employer’s right to control the manner in which the individual’s work is to be performed;
   (2) The opportunity for profit or loss that depends upon the individual’s managerial skill;
   (3) Any investment in equipment or materials required for the individual’s tasks, or his or her employment of helpers;
   (4) Whether the service the individual performs requires a special skill;
   (5) The degree of permanence of the individual’s working relationship; and,
   (6) Whether the service the individual performs is an integral part of the employer’s business.
   (c) No single one of these factors is controlling, but all are relevant to determining whether an individual is an employee or an independent contractor.

Coverage of Service in the Uniformed Services

§ 1002.54 Are all military fitness examinations considered “service in the uniformed services?”

Yes. USERRA’s definition of “service in the uniformed services” includes a period for which an employee is absent from a position of employment for the purpose of an examination to determine his or her fitness to perform duty in the uniformed services. Military fitness examinations can address more than physical or medical fitness, and include evaluations for mental, educational, and other types of fitness. Any examination to determine an employee’s fitness for service is covered, whether it is an initial or recurring examination. For example, a periodic medical examination required of a Reserve component member to determine fitness for continued service is covered.

§ 1002.55 Is all funeral honors duty considered “service in the uniformed services?”

(a) USERRA’s definition of “service in the uniformed services” includes a period for which an employee is absent from employment for the purpose of performing authorized funeral honors duty under 10 U.S.C. 12503 (members of Reserve ordered to perform funeral honors duty) or 32 U.S.C. 115 (Member of Air or Army National Guard ordered to perform funeral honors duty).
(b) Funeral honors duty performed by persons who are not members of the uniformed services, such as members of veterans’ service organizations, is not “service in the uniformed services.”

§ 1002.56 What types of service in the National Disaster Medical System are considered “service in the uniformed services?”

Under a provision of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, 42