

When the Troops Come Marching Home, Will You Know the Law?

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The Uniformed Services Employment and Reemployment Rights Act (USERRA) was enacted to protect the employment of people on military leave. It appears, from the local newspaper, that we may be close to a time when troops will be returning en masse. You may have people returning after a year or more of active duty, or with disabilities as a result of their service to our country.

All employers must comply with USERRA regardless of size or industry. In general, the law requires you to reinstate a returning veteran to his or her job with the same standing they would have acquired had they not been on military leave. This includes pay increases, seniority and eligibility for benefits just as if that person had not been away.

This job protection is extended for up to five years, but is seven years if the person is under medical care for an illness or injury resulting from military service. Under our current situation, we are actually looking at unlimited reemployment rights. After 9-11, a national emergency was declared and many experts believe that to terminate employment for any veteran could be in violation of USERRA. One law firm states that an employer who terminates a veteran with more than five years of service does so "at their (own) peril."

Here are the major provisions of USERRA:

- When employees are called up or volunteer for service, they must provide verbal or written notice to the employer. You may request

written documentation and many employers will accept a letter from the commanding officer.

- Seniority and credit for retirement plan eligibility and vesting must continue to accrue while an employee is on military leave. Health care benefits must be available for 24 months. For the first 31 days, the employee should pay their normal contribution rate. After that, you are permitted to charge up to 102 percent of the full premium.
- There are also special rules that apply to retirement plans regarding participant loan repayment, eligibility for profit sharing contributions, plan reentry and contribution limits. Check with your plan provider for specific details about these rules.
- If your vacation/paid time-off policy provides for an increase in benefits based on years of service, you must count the time away for military leave as time served. You cannot require an employee to take vacation or other paid time off during a military leave. Although, if the employee requests it, you can allow it.
- Returning military personnel must notify you (verbally or in writing) that they wish to return within specified time periods. The longer the leave, the more time the employee has to notify, up to 90 days after leaving active duty.

The employee must be reinstated in the same position.

However, if they would have been upgraded to a higher-level position except for the fact of the military leave, they are entitled to the higher-level job. If not qualified for that position, they have a right to

receive training.

- You cannot take any negative

employment action against an employee because of their military service or for filing a discrimination claim relating to that service.

Also, depending upon their time in the military, returning military personnel are guaranteed their jobs for up to one year, unless terminated for cause.

- If you had a layoff that would have affected the employee on leave had they not been away, you are not required to reemploy them upon their return. However, they must receive the same severance and recall rights as others who were laid off. You can also terminate a disabled veteran if, after providing reasonable accommodation, the employee proves an "undue hardship" on your business.

Be aware that, if you deny reemployment to a returning veteran, or if you take any adverse employment action against a reemployed veteran, you have the burden of proving your action was legal. You can expect officials to require an extremely high standard of proof. You also need to be aware that some states have enacted laws that upgrade the federal requirements. As in all federal/state labor law conflicts, apply the standard that is most favorable to the employee.

Proceed with caution if you are unsure of how to deal with any facet of military leave. Rather than take an action if the situation is unclear, seek legal advice. At the very least, access the Department of Labor website at www.dol.gov and read the information about USERRA.

Remember, too, that we have an all-volunteer army. The brave men and women who enlist and put themselves in danger to defend our way of life need and deserve our support. Making every effort to comply with both the spirit and letter of USERRA is part of your patriotic duty.

If you have questions about this topic or any other personnel matter, please feel free to contact the HR Help Line at 800-683-3440 or e-mail lesley@taxfavoredbenefits.com.

