



Know Your Employment Rights Under USERRA

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By Greg T. Rinckey, Esq., Staff Writer

Over the past few years, it's been proven time and time again that even large, national corporations can run into problems when it comes to the Uniformed Services Employment and Reemployment Rights Act (USERRA). With all their human resources knowledge and legal prowess, it seems impossible that national brands could be so careless with their employees' rights. However, as we've seen with both Wal-Mart and American Airlines, these companies are just as likely to violate the employment rights of their servicemember employees.

With even Ivy-league corporate legal departments failing to provide our nation's servicemembers with their lawful employment rights, I find it imperative that members of the armed forces take it upon themselves to have a basic understanding of the rights afforded to them through their service.

For those who are not familiar, USERRA the most important legal protection available to servicemembers when it comes to their employment and reemployment rights. USERRA is the federal statute that prohibits discrimination against anyone for serving in the armed forces or for taking military leave from a civilian job. This includes discrimination in hiring, promotion, reemployment, or any other benefit of employment. USERRA also prohibits retaliation against anyone who seeks to enforce their rights under USERRA or assists another in enforcing those rights.

Simply put, when you return from military duty and ask to be reemployed, your employer has to take you back if all deadlines under USERRA are met and you have taken less than five years total military leave.

USERRA provides protection over the following:

Reemployment Rights

In addition to prohibiting discrimination, USERRA also requires companies to rehire or reemploy military personnel on return from military leave or duty. In order to qualify for rehire under USERRA, the employee must give advance notice to the company before military leave unless it is impossible or unreasonable to do so, or he is prevented by military necessity from doing so.

Seniority and Benefits

A person returning to work after military leave under USERRA is entitled to the same seniority and position as though he or she never left employment. In other words, seniority accrues even while the employee is in military service. This is often referred to as the “escalator principle” of USERRA. These provisions extend beyond just seniority to pay and benefits as well. For example, if a similarly situated employee receives a pay raise or promotion during a servicemember’s absence, the servicemember will likely be entitled to the same pay raise and promotion upon his or her return. Further, medical and pension benefits must continue to be provided to the servicemember while on military leave.

For Cause Termination

Normally, employment is at will. This means that an employee can quit or be fired at any time for any reason other than an illegal one. However, this is not the case under USERRA. Depending on the length of time an employee was absent due to military leave covered under USERRA, the employee is protected from termination without cause for a certain period of time after returning to work. Depending on the specifics of the situation, this protection can even be extended to layoffs.

There is no statute of limitations on filing a lawsuit under USERRA – meaning that no matter how long ago you believe your rights were violated, you still have the option to take legal action against your employer. However, timely filing can provide you with more options when it comes to the award of damages beyond recovering lost benefits or wages, such as reinstatement into your position.

As a member of the armed forces, it’s crucial you understand when your rights are being violated and learn how to speak up. Through familiarizing yourself with your rights, you won’t be relying on your human resource representative to take care of your needs when called to serve. Even those employed by the big companies aren’t safe anymore. And with more and more soldiers rising for duty everyday, your own awareness of USERRA has never been more crucial.

This is just a brief overview of your rights under USERRA. If you have questions about any of the rights afforded to you through your military service, I invite you to send me an email at grinckey@tullylegal.com.

Greg T. Rinckey, Esq. is the managing partner of the law firm Tully Rinckey PLLC. With offices in Albany, NY and Washington, DC, the firm is dedicated to providing superior legal representation to military personnel, veterans, and federal employees throughout the nation in a wide range of legal matters relating to military law and federal employment law. For more information, email Greg at grinckey@tullylegal.com.