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JUNE 2010

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Veterans in the Workplace

MATHEW B. TULLY

Every year in the United States thousands of service members put promising civilian careers on hold in order to serve their nation. When they return from service these men and women have certain rights that must be respected by their employer. According to the Labor Department, in 2009, 22.2 million men and women ages 18 and over in the civilian population were veterans. Statistically, most organizations, big or small, private or public, will at some point hire or at least interview a service member. As a human resource (HR) manager it is imperative to know the federal laws surrounding the employment and reemployment of service members and veterans in order to ensure your company's compliance.

The Uniformed Services Reemployment Rights Act (USERRA) of 1994 is a complex piece of legislation that applies to almost every employer in the country, regardless of the size of the workforce. At its most basic level, it requires employers to reemploy a returning veteran if he or she meets certain conditions of the law. But the law also offers current service members and veterans protections from discrimination during the hiring process and during company layoffs, and it preserves certain benefits while they are on military leave.

When employers break the rules, some have been found to have purposefully violated USERRA laws, while others were not aware that they did anything illegal. Ignorance is never an excuse for violating the law. It is extremely important for companies to educate themselves on USERRA regulations.

USERRA

Under USERRA, an employer cannot refuse initial employment, reemployment, or a promotion to an employee based on that person's association with the military or interest in serving with the military. USERRA protects all members of the Armed Forces, National Guard, and Reserves. It also protects those who are applying to the military.

In order to be eligible for protections offered by USERRA service members must meet certain requirements. They must give their employer prior notice that they are leaving for

military service. Also, service members must not receive any other than honorable discharge or dishonorable discharge from their military service. If they do, they are not protected by USERRA.

Employees also have a time requirement in reporting back to their job after their military service. If an employee was away for less than 31 days, considering time for safe travel home plus an eight hour rest period, that person must return at the beginning of the next regularly scheduled work period. For service of more than 30 days but less than 181 days, the service member must reapply within 14 days of being released. For service of more than 180 days, an application for reemployment must be submitted within 90 days of release from service.

It is important to note that even if employees give an employer written notice before they leave for service that they will not be coming back to work, they still have reemployment rights if they change their mind upon returning from service.

If a service member meets the above qualifications, there are only a few situations when a company is excused from reemploying them. If the company can show that circumstances with the company have changed so much that it makes reemployment of the service member impossible or the company proves that rehiring the veteran will cause an undue hardship.

THE FIVE YEAR LIMIT

Service members are only guaranteed reemployment with their employer for up to five years of cumulative absence due to their military service. If they exceed the five year limit, the USERRA protections cease. Be careful when calculating a service member's cumulative leave time. Do not assume a service member's absence due to military service is automatically calculated towards the five year limit. Many exemptions exist that will exclude certain military assignments from counting towards the five year limit. For example, involuntary deployments are not counted towards the time limit, nor are certain missions with designation from the Secretary of State.

The National Guard Employment Protection Act of 2010 would make certain domestic assignments exempted from the five year rule with approval from the Secretary of Defense. Examples of these assignments include disaster relief response and homeland security training missions. This legislation recently passed the House but is waiting on approval from the Senate.

If you are unsure about what time is exempt and what time is not you can always check with the United States Department of Labor Veterans Employment and Training Service for assistance in calculating an employee's total military service time for the purpose of the five year limit rule. They will have any updates and can explain technicalities that could be relevant to your employee.

PRESERVING BENEFITS

Aside from protecting reemployment rights for qualified service members, USERRA also ensures these men and women will not miss out on a promotion or raise because of their service. When a service member returns he or she is entitled to the pay raise that would have been received had the employee never been away. The "escalator principle" included in USERRA also preserves an employee's seniority status while the employee is away, and mandates that an employee receive benefits that would have been received if the employee had been continually employed.

Employers must allow service members to continue their health

insurance coverage for both themselves and their dependents, for up to 24 months. Service members also have the right to reinstate their health plan without any waiting periods when they are reemployed.

DISCRIMINATION PROTECTIONS UNDER USERRA

USERRA protects service members from discrimination by an employer. Forms of discrimination include retaliation against an employee for filing a USERRA claim or creating a hostile work environment for service members. Employers cannot refuse to initially hire a qualified applicant because of his or her association with the military. An employer that issues a service member a poor performance review while he or she is away on military duty or publicly ridicules a service member for leaving the office "short-handed" is also violating USERRA antidiscrimination policies.

The law protects anyone who even helps a service member exercise his or her USERRA rights or has testified on behalf of a service member. That means any employee, including HR professionals, who experiences retaliation at work because of their involvement with a USERRA matter is protected under the law.

According to the Department of Veterans affairs, over three million veterans receive disability compensation in the United States. A service member who returns with a service connected disability must be accommodated in a reasonable manner. If

the disability cannot be accommodated, the service member is entitled to being reemployed in a position that has similar benefits and pay.

AWARENESS AND ASSISTANCE

In order to ensure service members are aware of their rights in the workplace, USERRA requires employers to provide information through a government prepared notice. Employers can choose to post it in the workplace, or provide it to employees in another manner such as in person, through e-mail, or traditional mail.

Many organizations exist to help service members transition back from active duty into civilian life. Human resource officials are encouraged to work with these groups, veteran service organizations, and attorneys experienced in USERRA law to ensure company compliance and to be sure that service members are correctly informed of their rights in the workplace. Keep in mind there is no time limit for an employee to file a USERRA claim. As an HR representative, being proactive is the best way to ensure your company is a military friendly workplace and to avoid a potential costly lawsuit. ☺

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