

Labor and Employment Law Alert

Congress Increases the Rights of Military Personnel

Amendments to the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) became effective on December 10, 2004, when President Bush signed the Veterans Benefits Improvement Act of 2004.

USERRA is a very technical law that protects the reemployment rights of returning military personnel. In general,

- The statute applies to all employers.
- The statute requires “prompt” reemployment of returning service members, if they meet certain requirements.
- The returning service member steps back onto the seniority and benefits escalator at the point the person would have occupied had he or she remained continuously employed. That may result in a promotion, a demotion, a different job, a layoff, or job loss.
- Employers must make reasonable efforts to qualify returning employees unless that would create an undue hardship for the employer.
- Re-employment is excused if the employer’s circumstances have changed so that re-employment is impossible or unreasonable. An example is a reduction

in force that would have included the service member.

- Employees in the Uniformed Services must be treated as if they are on a leave of absence. Thus, while away, they are entitled to any rights and benefits not based on seniority that are available to employees on non-military leaves of absence, whether paid or unpaid.
- If a pension plan is in force, the returning employee must be treated as not having incurred a break in service. Military service must be considered service with the employer for vesting and benefit accrual purposes.
- The departing employee can now elect health benefit coverage continuation for

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up to 24 months after the military service begins, or the full period of the military service (whichever is shorter), regardless of whether the employer is covered by COBRA. (Employers with fewer than 20 employees are exempt from COBRA.) The 2004 amendments increased the continuation period from 18 months to 24 months. If the service was for 30 days or less, the employee cannot be required to pay more than his or her normal share of any premium. Otherwise, the employee can be required to pay up to 102% of the full premium. Waiting periods cannot be imposed upon reinstatement if coverage would have applied had the person not been absent for military service. Employer-provided medical insurance is not required to cover "any illness or injury determined by the Secretary of Veterans Affairs to have been incurred in, or aggravated during, performance of service in the Uniformed Services."

- Finally, the 2004 amendments mandate that, "Each employer shall provide to persons entitled to rights and benefits under this chapter a notice of the rights, benefits, and obligations of such persons and such employers under this chapter. The requirement for the provision of notice . . . may be met by the posting of the notice where employers customarily place notice for employees." The Secretary of Labor is required to provide the text of the notice. These notices are to be posted by March 10, 2005, and will be made available on the Department of Labor's web site at: <http://www.dol.gov/vets/programs/USERRA/poster.pdf>.

Please call any member of the Rubin and Rudman LLP Labor and Employment Law Group if you have questions about USERRA.

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