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TIPS FOR MANAGING RIGHTS AND BENEFITS WHEN EMPLOYEES ARE CALLED TO MILITARY SERVICE

In light of recent events, it is our hope that this article may provide you with a brief overview and answer some common questions in connection with managing leave for your employees who may be called to service.

Who's Covered?

The federal "Uniformed Services Employment and Reemployment Rights Act" (USERRA) covers employees who serve in the Uniformed Services. Uniformed Services is defined as service in the "Armed Forces, the Army and Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Services, and any other category of persons designated by the President in time of war or national emergency."

What Notice Must an Employee Give for Covered Leave?

Covered employees must give "reasonable" notice in advance of their absence or when they are called for Uniformed Service. Employees may give notice orally or in writing.

How Much Leave Must an Employer Provide?

Covered employees are generally eligible for up to five (5) years of covered leave.

What Rights Does an Employee Have Upon Satisfactory Completion of Service?

Assuming the employee is able to perform the essential functions of the job, with or without a reasonable accommodation, and there has been no change in the employer's circumstances that makes such reemployment impossible or unreasonable, then upon timely notice of his or her intent to return to work, the employee's reinstatement rights are as follows:

A. Upon satisfactory completion of military service of less than 91 days an employee has the right to be reinstated to the job s/he would have had if the employee had not taken covered leave. If the employee is not qualified to perform that job with or without a reasonable accommodation, s/he may be placed in the position in which the employee was employed on the date s/he took leave.

B. Upon satisfactory completion of military service of more than 90 days an employee has the right to be reinstated to the job s/he would have had if the employee had not taken covered leave under **or** a position of like seniority, status and pay. If the employee is not qualified to perform the job you s/he would have had if the employee had not taken covered leave or a position of like seniority, status and pay, with or without a reasonable accommodation, the employer should place the employee in the position in which s/he was employed on the date the employee took covered leave.

C. If the employee is not qualified to perform any of the jobs in (A) or (B) above with or without a reasonable accommodation, the employer should place the employee in any other position which is equivalent in seniority, status, and pay.

What is Timely Notice of an Employee's Intent to Return to Work?

A. An employee whose period of Uniformed Service is less than 31 days must report to his or her employer or submit an application for reemployment not later than the beginning of the first full regularly scheduled work period on the first full calendar day following the completion of the Uniformed Service.

B. An employee whose period of Uniformed Service is for more than 30 but less than 181 days, must generally submit an application for reemployment not later than 14 days after the completion of the period of service.

C. An employee whose period of Uniformed Service is for more than 180 days must submit an application for reemployment not later than 90 days after the completion of the period of service.

What Other Rights Do Employees Have Who Serve in the Uniformed Services?

Federal law also provides employee with specific rights related to continuation of benefits, seniority, pension plans and more. For a copy of the Department of Labor's Fact Sheet No. OASVET 97-3, "Job Rights for Veterans' and Reserve Component Members", which can be obtained online, go to <http://www.dol.gov/dol/vets/public/programs/fact/vet97-3.htm>.

For further information, please also feel free to contact any of Saul Ewing's labor and employment attorneys:

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