



SPRING 2007

EMPLOYER BULLETIN:

USERRA- WHAT ARE AN EMPLOYER'S OBLIGATIONS UNDER THE ACT? & UPDATING YOUR ARBITRATION POLICIES

What is USERRA? USERRA (Uniformed Services Employment and Reemployment Rights Act) was signed into law on October 13, 1994. Under USERRA, employers are prohibited from discriminating against employees with regard to hiring, firing, promotion, training, or any other employment benefits or advantages due to the employee's past, present or future participation in the armed services.

Who is subject to USERRA? USERRA covers every individual who serves in or has served in the uniformed services. Uniformed services includes the US Armed Forces, Public Health Service, National Guard and reservists. All employers in both the public and private sectors are subject to USERRA's requirements.

What are an Employer's obligations in notifying employees about USERRA? Private and government employers must notify their employees about the right to return to their jobs upon the completion of military service. This notice requirement can be met by posting the "Your Rights Under USERRA" where employee notices are customarily placed. The notice advises employees of their re-employment rights, protection from discrimination and retaliation, health benefit guarantees and administrative/legal enforcement procedures.

Eligibility requirements. In order to be eligible for USERRA protection, employees must meet certain requirements as follows:

1. Employees must have left their jobs for the purpose of performing military service;
2. All employees must provide advanced notice, if possible, to the employer. Such notice may be either oral or written and must come from the employee or from an officer of the branch of the military in which the employee will be serving;
3. The employee must not receive a dishonorable discharge;
4. The employment position held by the employee must not be temporary in nature;
5. The employee's length of service in the military must not exceed five (5) years, absent certain specific conditions;
6. The employee must return to work within a specified time frame, depending upon the individual's military service as follows:

Service up to 30 days – By the beginning of the first regularly scheduled workday that falls eight (8) hours after returning home from military service, allowing reasonable time for travel, rest, etc.

Service 31 to 180 days – No later than 143 days after completing military service.

Service 181 or more days – No later than 90 days after completing military service.

Service related injury or illness- The reporting and application deadlines are extended for up to 2 years for individuals who are hospitalized or convalescing because of a service related illness or injury.

What are an employee’s rights to compensation and benefits while on leave? If the leave is for less than 31 days, employers are required to maintain any health benefits as if the employee is actively employed. If the leave is greater than 31 days, employees may elect to continue such health benefits through COBRA. Coverage under COBRA ends after twenty four (24) months or when the employee fails to return to work or is reinstated (whichever is earlier). Employees electing COBRA may be required to pay up to 102% of the premium payment.

How much time can an employee take? An employee is entitled to be reinstated to employment as long as the military service did not exceed five (5) years.

Are Employers required to pay employees while on military leave? Employers are not required to pay non-exempt hourly and non-exempt salaried employees while on leave. However, if an exempt employee works any time in a workweek, the employee must be paid. An employee may, but is not required to, use any accrued paid time off (vacation, personal days, pto) during the military leave.

What are an employee’s reinstatement rights? An employee is required to be reinstated to his/her former position as long as he/she satisfactorily

completed his/her military service. Reinstatement must be made promptly. Absent unusual circumstances, this must be done within two (2) weeks. An employee must be reinstated with no loss in seniority.

What benefits are available to a returning employee? The employer is required to credit the employee for his/her military service and adjust the employee’s rate of pay, pension benefits and other benefits that are linked to length of service. Employees are entitled to their former level or rate of pay plus any increases and cost of living or merit increases that were made during the employee’s absence. Employees must also immediately begin earning benefits at the rate that would apply if they had never left employment. Further, waiting periods applicable to new employees for health insurance or other benefits do not apply to re-employed workers.

ANY FURTHER QUESTIONS SHOULD BE DIRECTED TO HEATHER G. PTASZNIK AT (313) 259-8586 OR JOHN T. BELOW AT (313) 259-8597

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UPDATING YOUR ARBITRATION POLICIES

Many employment arbitration agreements provide that AAA’s rules and standards will apply. AAA recently amended its Employment Arbitration Rules and Mediation Procedures to provide that for disputes arising out of employer promulgated plans, the employer is responsible for paying the arbitrator’s entire compensation (and expenses) unless the employee, post dispute, voluntarily elects to pay a portion. Further, the employee’s portion of the filing fee is capped at \$150.00 (unless the employer plan provides for less). An employer is responsible for paying a non-refundable \$900 filing fee (for 1 arbitrator) and \$1,775 (for 3 arbitrators). For disputes arising out of individually negotiated employment agreements, the administrative fees are based on the amount of the claim or counterclaim. The arbitrator’s compensation is borne equally by the parties and is subject to reallocation by the arbitrator in the award. Thus, due to changes in the allocation of costs and fees, it is important to review your current arbitration agreement.