

Employer Obligations to Employees in Military Service

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As the U.S. continues preparing for military action in Iraq, employees in the military reserves are being called to active duty. When was the last time you revisited your company's military leave policy? The Uniformed Services Employment and Reemployment Rights Act (USERRA), which governs the rights of employees serving in the military and applies to all public and private employers, has been broadened by amendments since 1996. Your company's policy may need review or updating.

Which Employees Qualify for Military Leave?

Generally, eligible employees include those engaged in military training, duty, reserves, war or national emergency who are in the Army, Navy, Marines, Air Force, Coast Guard, Public Health Service, or National Guard.

In June, 2002, President Bush widened the scope of USERRA's coverage. The Public Health Security and Bioterrorism Preparedness and Response Act, which was designed to strengthen the capability of the U.S. to deal with public health emergencies, granted "intermittent disaster-response personnel" the same leave rights and job protections that uniformed military personnel enjoy under USERRA. These individuals include medical personnel such as clinicians, doctors, and nurses who volunteer to participate in the National Disaster Medical System or to perform their volunteer services when the Secretary of Health and Human Services activates the National Disaster Medical System.

Rights and Benefits While Employee Is on Military Leave

Employees on military leave are entitled to participate in benefit plans available to employees on other types of leaves. According to USERRA's legislative history, if the employer provides different benefits for various types of leave, the most favorable benefits would apply to employees in the military. Although an employer does not have to pay for military leave, an employer must allow an employee to use any accrued vacation or other paid leave during a military leave if they request it.

An employer must continue health coverage for up to 18 months for employees on military leave whether the employer is subject to COBRA. After the employee has been on leave for more than 31 days, an employer may charge up to 102% of the cost of the health coverage as determined under COBRA.

Reinstatement Rights

If prior notice is provided, and the employee reports to work within specified time frames, employers are obligated to rehire an employee under most conditions. The time frames were changed by amendment in 1996, to favor longer military leaves. Under the reinstatement provisions, employees are entitled to be re-employed in a position similar in seniority as that which they would have had if they had not gone on leave. An employer is not required to re-hire an employee on military leave if:

- The employee did not give sufficient warning to the employer before they left.
- The period of service exceeds 5 years.
- The employee was not honorably discharged.
- The employee has not complied with the USERRA timelines for reporting back to work.

Returning employees who are reemployed may not be discharged without cause within a certain period if they have served more than 30 days of military duty.

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