

7th Circuit Allows USERRA Class Action to Proceed

Labor & Employment Law Update

By Molly Arranz on March 11, 2021



Commercial air pilot and Air Force reservist Eric White filed a class action against United Airlines under the United Services Employee and Reemployment Right Act (USERRA) claiming United violated USERRA by not providing paid military leave to the same extent as other paid leave. The district court dismissed White's lawsuit, but

last month the 7th Circuit ruled that paid leave falls within the definition of "rights and benefits" employees are entitled to pursuant to USERRA. The case has been sent back to district court.

Generally, USERRA provides that any person who is absent from work as a result of military service is deemed to be on a leave of absence and is "entitled to such other rights and benefits" provided to other employees under contract, policies and practices. In the lawsuit, White argued that the phrase "rights and benefits" is to be applied broadly and should include "paid leave." Of significance, White also alleged that United not only deprived him of paid leave but also prevented him and others in his putative class, from fully participating in United's profit sharing plan. United maintained that USERRA does not mandate paid leave.

In its decision, the 7th Circuit found that rights and benefits "captures all 'terms, conditions, or privileges' with no express limitation" and an employer's policy of paying employees during a leave of absence is a term, condition or privilege of employment. Insofar as Congress chose not to include an exception to this rule, it should be applied broadly. The court also rejected United's arguments that "Congress did not realize that it was opening the door to this kind of paid leave...and that [the Court's] reading would effect a costly sea-change for public and private employers." The court focused on the specific language of the statute and noted that "USERRA mandates only equality of treatment; and does not specify how generous or how parsimonious an employer's paid leave policies must be."

A number of district courts are dealing with similar cases and this 7th Circuit decision, a matter of first impression at the federal appellate level, will be leading the way. Employers should be reviewing policies as well as collective bargaining agreements and practices to ensure they have a handle on paid leave rights and benefits. You can and should evaluate any common policy or practice that is not on all fours with the legal requisites, as a common question of fact or law as to the employees could form the cornerstone of what could become a new wave of class action litigation. Employers should also be mindful of parallel state statutes that, in some instances, supplement and complement USERRA "rights and benefits."

7th Circuit Allows USERRA Class Action to Proceed