

# Military Leave is Not Just for Veterans – Addressing Military Leave Requests from Current Employees

## Labor & Employment Law Update

on November 4, 2014

Employers often do not question a service member's request for time off due to being deployed or called up to active duty. However, when an employee comes home from active duty do you know your legal obligations? Better yet, do you know what to do if one of your employees is a service member who regularly requests time off for "training"?

Illinois employers are primarily affected by the federal Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Illinois National Guard Employment Rights Law. The problem is under both laws there is no formal process to check whether an employee's leave is really military related. Moreover, there is no set or required amount of notice and the notice may be either written or oral.

In fact, for military service that is less than 30 days, employers are prohibited from requesting any documentation. As one can imagine, this can make it extremely difficult to verify that the requested time off is actually for military purposes. The best way to address this is to proactively request that employees provide you the name of their military unit and commanding officer's contact information. Commanding officers are generally willing to verify leave requests and make sure that employers receive advance notice of training and assignments. More often than not, commanding officers provide service members with training schedules to give to their employers (and are often more than happy to ensure that employers receive those schedules).

For military service that exceeds 30 days, employers may request that employees submit an application for reemployment and provide documentation to establish that (1) the reemployment application is timely (leave of 30 to 180 day service employee must return within 14 days of service completion; leave of 180 days or more must return within 90 days of service completion); (2) the employee has not exceeded the five-year service limitation; and (3) the employee's separation or dismissal from service is not disqualifying (i.e. dishonorable, bad conduct, court martial, etc.). However, it is important to note that if documentation is not immediately available you must re-employ the individual until the

documentation does become available.

It is also important that employers understand that when an employee is on military leave, he or she is generally entitled to the same benefits that an employee on a similar furlough or leave of absence would be entitled. Likewise, under USERRA an employer is required to allow an employee and eligible dependents to elect to continue health insurance coverage during military service for up to 24 months. That being said, for leave less than 31 days an employee can still be required to contribute the same amount towards health insurance as active employees and for service of more than 31 days. After 31 days the employer can provide notice of COBRA rights and require the employee to pay up to 102% of the full premium, which represents the employer and employee share, plus 2% for administrative costs.

Needless to say, military leave is like a minefield for employers and so it is vitally important that you have legal counsel that can guide you through it safely.

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