



WHEN DUTY CALLS

Ann G. Grubbs

You've seen the TV ad – today's military is made up of salespeople, teachers, truck drivers – men and women who hold down jobs during the week and train on weekends. As those part-time military personnel are called to full-time duty, employers should understand their responsibilities under the Uniformed Services Employment and Reemployment Rights Act (USERRA).

Under this act, the employer can hire someone to fill in for an employee on active duty, but the employee has an absolute right to prompt re-employment after military service, as long as he or she advises the employer of the readiness to return to work in a timely manner.

The employer does not have to pay wages or salary while the employee is on active duty. However, seniority continues to accrue in the employee's absence. The returning employee is entitled to promotions that would have occurred due to length of service and accrued benefits under pension plans.

In addition, if the job changes while the employee is on active duty, the employer must make a "reasonable effort" to qualify the returning employee for the new job. If the employee becomes disabled as a result of service, the employer must make reasonable accommodations for the disability. In either situation, if the employee can no longer perform the work, he or she must be placed in a position that most nearly approximates the previous job, and with full seniority.

Employee health benefits must be continued for 31 days as if the employee were actively employed. The employee cannot be required to pay more than the normal share of the premium. After that, USERRA provides for a continuation of benefits for service members and their families for up to 18 months, with the employee paying no more than 102% of the full premium for coverage.

Because USERRA covers all employees except where there is no reasonable expectation of continued employment, it applies to virtually all employers, regardless of size. USERRA does not preempt state laws where these laws provide greater rights to the employee, but it does preempt those providing lesser rights or imposing additional restrictions.

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Employees, to avail themselves of these rights, must take specific steps. First, they must give notice – as much time as is reasonable, unless giving notice is precluded by military necessity. The notice can be written or verbal, but employees would be wise to give written notice.

In addition, the employee must return to work in a timely manner. The length of time varies depending on the length of service – one working day if absent for 31 days or less, and up to 90 days after discharge for service over 180 days. If recovering from a service-related injury or illness, the reporting-to-work deadline can be extended for up to two years.

Two other criteria must be met to be eligible for USERRA protection. The period of military service must not have exceeded five years. In addition, a less than honorable discharge makes the employee ineligible for reemployment rights.

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