Military Leave

celebrating 20 years

NOBLE DAVIS CONSULTING, INC

PEACE of MIND

If you have an employee who returns to work after military leave, USERRA is probably effective for your plan

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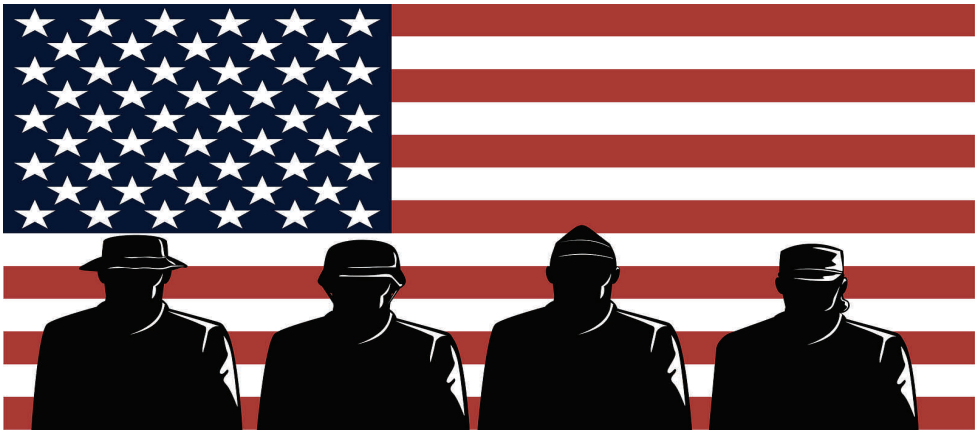
The Uniformed Services and Reemployment Right Act (USERRA) revised the Federal law protecting a veteran's rights. An employee who leaves a civilian job for military service is generally entitled to reemployment by the civilian employer upon his/her return. Veterans are also entitled to certain retirement and other benefits that would have accrued if the employee had not been absent due to the military service. USERRA requires that returning service members who meet the law's eligibility criteria must be treated as if they had been continually employed for pension purposes, regardless of the type of retirement plan the employer has adopted.

Reemployment rights extend to persons who have been absent from a position of employment because of "service in the uniformed service." This includes active duty, training, or National Guard duty in the Army, Navy, Air Force, Marines, Coast Guard, or National Guard. Employees must provide their employer with advance notice of military service unless it is impossible or unreasonable to do so. Generally, the length of service cannot exceed five years. The person must return to work within certain time frames based on the length of military service. The veteran should alert the employer that he/she is returning to work.



Military leave and USERRA

The basic rule is that employers must fund pension benefits that a re-employed participant did not receive due to qualifying military service. If an employer had a required contribution that was made while the participant was out on military leave, the participant must receive that contribution for the period of their absence once they return to work. To calculate the amount of the makeup contributions and, assume the rehired employee earned compensation at the same rate they would have received during the military service period. If this cannot be determined, using the employee's average compensation during the twelve month period immediately preceding the military service can be used.

An employer does not have to begin any makeup contributions until the veteran returns to civilian employment with the same employer. The employer's contribution make up period is equal to three times the period of qualified military service, not to exceed five years. The rehired employee is not entitled to additional benefits relating to forfeitures that occurred during the military period, not any lost earnings on those makeup contributions.

A rehired veteran can make up lost elective 401(k) deferrals for a period of up to three times the length of the military service, up to five years. The returning employee will determine for what year the deferral applies. The plan must match those deferrals at the same rate of match the participant would have received if they had not been out on military service.

Furthermore, a plan can allow for a suspension of loan repayments while the participant is performing military service. Upon rehire, the veteran must resume loan payments and the loan must be paid within the maximum loan period plus the time of military service. Interest on the loan should be limited to 6% during the military service period.

Generally, these makeup contributions can be excluded from the non-discrimination testing that must be completed each year.

With tens of thousands of reservists on active duty today, most of whom will be seeking reemployment rights guaranteed under USERRA, employers will continue to face the challenge of balancing business needs with complying with their legal obligations.