

Benefits Alert

2005-2

The Uniformed Services Employment and Reemployment Rights act of 1994 (USERRA) was enacted more than ten years ago to provide employment rights for individuals who serve in the military. For the first time since USERRA was enacted, proposed regulations have been published by the Veterans Employment and Training Services (VETS), which is the agency within the Department of Labor (DOL) that interprets and enforces the law. Additionally, Congress has enacted the Veterans Benefits Improvement Act of 2004 (VBIA).

Background

On September 20, 2004, the VETS issued proposed USERRA regulations. The intention is to provide "clear and consistent guidance" on USERRA's requirements for employers since many service members are being asked to serve longer military commitments than initially expected. Also, the written guidance is expected to ensure that service members are comfortable knowing that they will be able to return to their jobs with the same pay, benefits, and status that they would have had they not been on military duty.

On December 10, 2004, President Bush signed into law S. 2486, Veterans Benefits Improvement Act of 2004 (VBIA), which amends USERRA. Although the VBIA focuses primarily on improving housing, education, and other benefits for veterans, it also includes two provisions which affect an employer's obligations under USERRA.

1. **Employer Health Care Coverage.** USERRA requires employers to offer service members and their families the right to continue their health coverage for a period of 18 months. Under VBIA, the 18 month period is extended to 24 months for elections made on or after December 10, 2004. While these health care continuation requirements are similar to those provided under COBRA, the USERRA requirement applies to all employers, regardless of size, and to other health plans that might not otherwise be subject to COBRA. The employee who elects this coverage may still be charged up to 102% of the full premium under the plan unless the employee is absent from work less than 31 days, in which case the employee cannot be charged more than the employee's share of the coverage cost. Since VBIA extends the health coverage period under USERRA, employers must be sure to reflect the longer continuation period in all policies.
2. **Notice of Employee Rights.** VBIA requires employers to provide their employees with a notice of their rights, benefits, and obligations under USERRA. The notice must be posted or distributed by March 10, 2005 or as soon as possible thereafter. Employers may meet this obligation by mailing, e-mailing, hand-delivering the Notice to employees, or posting the notice in the same location where other required notices are customarily posted.

A copy of the USERRA notice is attached. It is also available on the DOL's website at: <http://www.dol.gov/vets/programs/userra/poster.pdf>.

Conclusion

It is important to remember that USERRA is a federal requirement and many states provide rights broader than USERRA to employees in the military or with military commitments. Employers

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should make sure to be aware of their state law obligations that apply to employees who serve in the military.

The main provisions of USERRA include safeguarding employment and benefits, and prohibiting employment discrimination of service members upon their return to civilian life.

As a result of the war against terrorism and the ongoing operations in Afghanistan and Iraq, many reservists returning from duty find that their civilian jobs are not necessarily waiting for them when they return home. Consequently, these actions have led to renewed attention by our government and the public in order to ensure the rights of employees and enforce the obligations of employers under USERRA.

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