

Anniversary of September 11 Attacks is a Good Time to Review Status of Employees on Military Leave

September 11, 2003

News reports this week indicate that many of the military reservists and national guard members activated by President Bush for duty in Iraq and other theaters in the undeclared war on terror may have tours of duty longer than initially expected. With the sobering realities of our post-September 11 world continuing to ripple throughout society, and the second anniversary of the terrorist attacks upon us, employers that have employees on military leave should recall that an employee's legal rights to some extent hinge on the length of the employee's military leave.

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) requires employers to grant a leave of absence up to five years to any employee reservist or national guard member, as well as to any employee who voluntarily enlists for military service while employed. USERRA also provides job security for the first 12 months of employment after an employee returns to work, as it prohibits the discharge of an employee without cause during that period (even if employment is otherwise "at will").

Although USERRA's requirements touch on a number of aspects of the employment relationship regardless of length of service, the length of an employee's military leave does affect certain return-to-work rights and health insurance coverage rights. Each is addressed below.

Return-To-Work Rights

If the employee's length of service was *30 days or less*, the employee is eligible for reinstatement as long as he or she reports for work by the first regular workday that is at least 8 hours after the employee's physical return to his or her residence following the completion of military service. The employee can report as soon as is reasonably possible if he or she cannot make the above deadline through no fault of his or her own.

If the employee's length of service was *31-180 days*, the employee must submit an application for re-employment no later than 14 days after completing service, or, if the employee cannot do so within that time through no fault of his or her own, by the next day that submitting an application is reasonably possible.

If the employee's length of service was *more than 180 days*, the employee must submit an application for re-employment no more than 90 days after completing service.

Health Insurance Rights

Employers must offer employees on military leave continuous health insurance coverage for up to 18 months. If the employee's service is 31 days or less, the cost to the employee must be the employee's normal share for that coverage. If service is longer than 31 days, the employer may require the employee to pay not more than 102 percent of the full premium under the plan.

Miller Canfield's Labor and Employment group prepared a more comprehensive summary of the USERRA law shortly after the September 11 attacks.

Continued

For additional information on this topic, or for specific advice, please contact our Labor and Employment Law Group; Megan Norris at (313) 496-7594, or norris@millercanfield.com. This message is for general information only and should not be used as a basis for specific action without obtaining further legal advice.