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Employment rights of returning military personnel

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Connecticut Post: <http://www.ctpost.com/default/article/Employment-rights-of-returning-military-personnel-4282604.php>

News-Times (Danbury): <http://www.greenwichtime.com/default/article/Employment-rights-of-returning-military-personnel-4282604.php>

Greenwich Time: <http://www.greenwichtime.com/default/article/Employment-rights-of-returning-military-personnel-4282604.php>

Stamford Advocate: <http://www.stamfordadvocate.com/default/article/Employment-rights-of-returning-military-personnel-4282604.php>

When we discuss our obligation to care for men and women in the military, we typically focus on serious health issues they face as a result of their service. An overlooked, and less understood issue, is how we protect their employment rights upon their return to civilian life.

With the wars in Iraq and Afghanistan, interruptions in civilian employment of our service men and women have never been more pronounced. As the armed services have relied more heavily on extended, multiple deployments of reservists and **National Guard** personnel, not only has there been a greater stress placed upon military families, but also on the businesses that employ them.

Military families and employers alike are grappling with the implications of these longer deployments, which are likely to continue under the realities of our modern military. Employers want to know whether they really have to hire, or reemploy, military personnel on extended tours of duty. Our men and women in uniform are seeking peace of mind that they will not lose their jobs because they are serving our Country.

In 1994, Congress enacted the Uniform Services Employment and Reemployment Act, referred to as USERRA, which sought to strike a balance between the need to protect the employment rights of our service men and women, and the needs of employers to run their businesses with available, qualified workers.

Under USERRA, an employer must not deny initial employment, reemployment, promotion, or any benefit of employment to an individual on the basis of membership, application for membership, performance of service, application for service, or obligation for service in the

uniformed services. USERRA covers all employers, both public and private, no matter their size, and all categories of military training and service in the uniformed services, in both times of peace and war. It includes service in the National Guard and reserve units, as well as all active components of the Armed Forces. The law does not cover state call-ups of National Guard units for riot and disaster relief.

To qualify for USERRA protections, the employee must show that he or she: (1) gave the employer advance notice of military service, (2) has five years or less of cumulative service in the uniformed services during his or her employment relationship with the employer; (3) timely returns to work or applies for reemployment; and (4) has not been separated from service with a disqualifying discharge or under other than honorable circumstances.

The only way an employer is excused from the obligations is by demonstrating: (1) employment circumstances have so changed as to make reemployment impossible or unreasonable; (2) assisting the employee in becoming qualified for reemployment would impose an undue hardship; or (3) the employment position vacated by the employee was for a brief, non-recurrent period and there was no reasonable expectation that employment would continue indefinitely or for a significant period.

So what happens when a soldier returns from a tour of duty to learn that another person has been hired to his or her position?

In most instances, the employer must offer reemployment, even if reemployment might require termination of that replacement employee.

What must an employer do when the employee returns from service with an injury -- a circumstance all too frequent in recent years? The law requires the employer to engage in efforts to reasonably accommodate disabilities acquired as a result of the employee's military service.

What commitment must be made to our service men and women upon their return? Notwithstanding that most employment relationships are at-will, the employer may not reemploy the service member for a period of less than 180 days if his or her most recent military service was more than 30 days or less than 181 days, or for less than one year if the employee's most recent military service was more than 180 days.

USERRA also protects a wide variety of reemployment rights, including preservation of health and seniority benefits of employment, all of which must be navigated with care.

As more and more military personnel return to civilian life, it is clear that all must be mindful of the law in order to marry the need to minimize disruption in the lives of our men and women in uniform, with the desire to promote a successful, healthy business environment.

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