

Uniform Services Employment and Reemployment Rights Act (USERRA)

BENEFITS FOR EMPLOYEES ON MILITARY ACTIVE DUTY

DATE: January 10, 2006

Federal Laws

The majority of the law is contained in the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Consolidated Omnibus Budget Reconciliation Act (COBRA) and the Health Insurance Portability and Accountability Act (HIPAA). The Department of Labor (DOL) has developed a website for its Veterans' Employment and Training Service (www.dol.gov/vets/) which contains a Fact Sheet and an interactive computer program which addresses the effect of these laws on both the employee called to active duty and the employer.

Universal Applicability

All employers regardless of size including all state or federal governmental entities and their political subdivisions must honor the rights described in this memorandum applicable to the employees who provide timely notice of their call to active duty. Small employers (under 20 employees) governed by state continuation of health care coverage rules may also be required by statute to make COBRA available to employees and eligible dependents of employees called to active duty.

Discussion

1. **Health Care Coverage.** Employees called to active duty who serve more than 30 days will receive health care coverage for themselves and their dependents through the military.
 - a. **Military leave for less than 30 days:** The employer must provide health care coverage under the employer sponsored health plan at the same contribution rates that the employee paid while active.
 - b. **Military leave in excess of 30 days:** The employer can voluntarily continue the coverage as if it were any other leave of absence, or can offer COBRA to the employee and any covered family member. Note that the dependents and the spouse may elect COBRA in their own right, even though they have coverage through the military. In the event of dual coverage, the employer's plan is primary for purposes of coordination of benefits rules.
 - c. **COBRA Continues:** In the event that a former employee is a COBRA participant at the time of being called up to active duty, the inception of military health benefits does not result in the termination of existing COBRA coverage. Please note that under ordinary circumstances the obtaining of new health coverage terminates a Qualified Beneficiary's rights to COBRA.

- d. **Lapsed Coverage:** If the employee did not elect COBRA or did elect COBRA but ceased paying the premium, he/she may still join the employer's health plan upon return from active duty without a waiting period or the need to satisfy pre-existing conditions limitations. USERRA does allow the employer's plan to exclude benefits for illness or injuries sustained by the employee while on active duty since the military health plan covers these expenses.

[SBCO Comment: SB County allows continuation of health coverage for employees and dependents on military leave of absence, regardless of length of the military leave. No COBRA coverage is involved.]

2. **Other Benefits.** For purposes of life insurance and AD&D, the employer must look to his/her existing personnel policies to determine whether it allows employees on other types of leave to continue premium payments and then provide the same rights to individuals on military leaves. Please note that under some insurance policies no benefits are payable for losses resulting from service in the military. LTD policies also exclude benefits for disabilities resulting from military service.

USERRA also allows employees returning from active duty to accelerate contributions under the employer's 401(k), and requires employers to count military service time for the purposes of eligibility, vesting and pension benefit accrual, whether the plan is a defined benefit plan or a defined contribution plan.

[SBCO Comment: SB County will continue to pay for life and LTD coverage as it does for other regular employees. Optional life insurance and Accident insurance coverage are employee paid plans and can be continued if the employee continues to pay their premiums. The Employee Benefits Division will bill the employee's family for this coverage. This also applies to the health care and dependent care spending accounts, although there are no tax savings on these accounts when employees send in their contributions. A leave of absence qualifies them to stop contributing while on leave and start up when they return to work.]

3. **Reemployment.** For absences which are less than five years, employers must permit reemployment upon timely application by the returning employee. The employee must have provided the employer with timely notice of being called to active duty and, if applicable, must be honorably discharged. The law also has limits on how long an employee has before he/she must report to work:
 - a. **Military leave less than 30 days:** The employee must report for work no later than the beginning of the first full work period on the first calendar day following discharge plus travel time to home.
 - b. **Military leave of 30 to 180 days:** The employee must seek reemployment no later than 14 days following completion of active duty.
 - c. **Military leave greater than 180 days:** The employee must seek reemployment within 90 days following completion of active duty.
 - d. **Injury:** The employee generally has up to two years from discharge to apply for reemployment.

4. **Employer Obligation.** USERRA also requires an employer to rehire the employee in the same position (assuming he/she is still qualified) as he/she had before active duty if the leave is 90 days or less. This parallels the Family and Medical Leave Act (FMLA). For leaves in excess of 90 days but less than 180 days, the employer cannot discharge the employee without cause for 6 months although employers do not have to offer the employee the same position. For leaves greater than 180 days, employers cannot discharge the employee without cause for up to one year.
5. **Model Personnel Policy.** The following section is a model personnel policy provision regarding health care coverage for employees called to active duty.

Military Leaves of Absence

Leaves of absence without pay for military or Reserve duty are granted to full-time regular and part-time regular employees. If you are called to active military duty or to Reserve or National Guard training, or if you volunteer for the same, you should notify your supervisor and submit copies of your military orders to him or her as soon as is practicable. You will be granted a military leave of absence without pay for the period of military service, in accordance with applicable federal and state laws. Health coverage for you and your eligible dependents will continue during your absence for less than 30 days at your regular contribution rate (pursuant to the health care continuation rules of the Consolidated Omnibus Budget Reconciliation Act of 1985) and for absences greater than 30 days. If you are a reservist or a member of the federal National Guard, you are granted time off without pay for required military training. Your eligibility for reinstatement after your military duty or training is completed is determined in accordance with applicable federal and state laws.

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