

## Virginia Workplace Law

### How Will You Welcome Home Our Veterans?

By: Annemarie Cleary. Friday, May 18th, 2012

On May 1, 2012, President Barack Obama made **an unannounced visit to Afghanistan** during which he and Afghan President Hamid Karzai signed the Strategic Partnership Agreement. The Agreement spells out the plan for the withdrawal of U.S. troops from **Afghanistan** over the coming years.



President Barack Obama meets with Afghanistan President Hamid Karzai. (Official White House Photo by Pete Souza) (Photo credit: Wikipedia)

While this is terrific news for our military members and their families, as our military's mission shifts and our troops return home, employers may find themselves navigating the complexities of the **Uniform Services Employment and Reemployment Rights Act** ("**USERRA**" or the "Act"), which requires employers to provide certain benefits and rights to employees who serve in our country's military.

Under the Act, employers cannot deny initial employment, reemployment, retention, promotion or **employment benefits** based on an applicant's or employee's membership in the military, including the National Guard. In addition, as a result of an amendment to the Act contained in the VOW to Hire Heroes Act, employers cannot allow a work environment that is hostile to members of the military.

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Upon returning from deployment, a service member is entitled to be returned to the position he or she would have attained but for their service. And once back at work, employers cannot discharge a returning service member (other than for cause) for 90 days if the period of service was between 30 and 180 days and for one year if the period of service was more than 180 days long.

To qualify for benefits under USERRA, a returning service member must meet certain criteria:

- he or she must have given his or her employer advanced notice of their service;
- the total of all service related absences must not exceed five years;
- the employee must submit an application for reemployment within certain time frames; and
- the service member must have been **honorably discharged**.

The timeframe for applying for reemployment varies depending on the length of service:

- if the period of service was not more than 30 days, the employee must report not later than the next work period plus eight hours;
- if the period of service was between 31 and 180 days, the employee must apply within fourteen days of completing service; and
- if the period of service was longer than 180 days, the employee must apply within 90 days of the completion of service.

There are additional rules if an employee has a service-related injury. For example, if the service member is convalescing, the timeframes for reapplying are extended. Additionally, employers must help returning veterans with service-related disabilities become qualified for jobs they would have attained but for their service. This means the employer may need to provide additional training or reassign duties as a reasonable accommodation. If it is not possible to return a veteran with service-related disabilities to the job they would have attained but for their status, the employer must make reasonable efforts to employ the veteran in a position with equivalent seniority, status and pay. Employers can recruit and give hiring preference to veterans with service-related disabilities and can ask those veterans to self-identify for affirmative action plans.

Employers do not have to reemploy returning service members if the service member was not honorably discharged, it would create an undue hardship for the business, or the job previously held by the service member was temporary and there was no expectation of continued employment.

If you need any help welcoming our heroes home, the **Virginia employment lawyers** at **Sands Anderson PC** would be glad to answer your questions.

Now, you can **Tie A Yellow Ribbon Round The Old Oak Tree**, like the song says. What else can your business do to be prepared for the service members who will be looking for work after the war winds down?

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