

Remember USERRA Compliance

Labor & Employment Law Alert – May 18, 2009

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The Department of Justice (“DOJ”) recently filed a slew of lawsuits against employers to enforce the rights of returning military services members under the Uniformed Services Employment and Reemployment Rights Act (“USERRA”). These lawsuits provide a reminder that employers need to keep USERRA in mind when faced with returning veterans who seek their old positions.

Subject to certain limitations, USERRA requires that employers reinstate military service members they employed prior to their military service, including those who have been injured while on active duty, following the conclusion of their military service. Returning employees must be placed in a so-called “escalator position”—the position the employee would have held had there been no break in employment. The returning employee must be given the same seniority, status and pay, in addition to other rights and benefits determined by seniority as he or she would have had if not for the military duty.

One recent lawsuit filed on May 5, 2009 serves as an example. The DOJ filed a lawsuit against the California Department of Corrections and Rehabilitation (“CDCR”), alleging that the CDCR violated USERRA by not promptly reinstating a U.S. Air Force reservist to his old position as a medical technical assistant. The complaint alleges that the reservist, who injured his back while on military duty, was not offered any position—let alone his old position—when he returned because of his injuries. The CDCR finally offered alternative positions nine months after his honorable discharge and only after the reservist advised the CDCR that he had been forced to take a position with another employer. Even then, according to the complaint, the alternative positions offered were substantially less in pay and required longer commute times and, thus, did not comply with USERRA.

In light of the government’s increased focus on compliance with USERRA, employers need to make sure their Human Resources Department is familiar with the military status of those seeking to return to work and reapplying for positions, as well as the requirements under USERRA.