

Uniformed Services Employment and Reemployment Rights Act: Judicial Updates and Other Developments

Hans P. Graff

Sara Leon & Associates, PLLC

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SCHOOL LAW CONFERENCE



1

What is USERRA?

- Specifies reemployment rights of servicemembers
- Employer means any person, institution, organization, or other entity that pays salary or wages for work performed, or that has control over employment opportunities - Broader than Title VII or ADA
- Service in the uniformed services means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority. Service in the uniformed services includes active duty, active and inactive duty for training
- Advance notice required, but liberally construed

2

Five-Year Limitation on Service

- Five-year period includes only actual uniformed service time. Periods of time preceding or following actual service are not included.
- Exclusions from five-year period:
 - ☐ Service requiring more than five years to complete the initial obligation
 - ☐ Involuntary extension of AD beyond five years
 - ☐ Service during war or national emergency
 - ☐ Service as ordered by the President to “suppress an insurrection, repel an invasion or to execute the laws of the U.S.”
 - ☐ Service performed to mitigate economic harm where employer is in violation of reemployment obligations

3

Application for Reemployment- Service Length

- 1-30 days, report to work first scheduled workday that falls at least 8 hours (plus safe travel time) after the end of the last calendar day of military service
- 31-181 days, employee must submit an application for reemployment with the employer within 14 days after release
- Greater than 180 days, employee must submit an application for reemployment with the employer within 90 days after release in order to comply with USERRA

4

Coverage of USERRA Protections

- Prompt Reemployment
- Protection from Discharge
- Health and Insurance and Pension Plan Benefits
- Reemployment Position and Escalator (Seniority) Provisions
- Probationary Employees may be required to undergo remainder of probation

5

Venue and Jurisdiction

- The United States District Courts have jurisdiction over actions against a State or private employer brought by the United States, and actions against a private employer by a person
- For actions brought by a person against a State, the action may be brought in a State court of competent jurisdiction [38 U.S.C. 4323(b); 20 C.F.R. Sec. 1002.305]

6

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