

January 2006

At Lindabury, we have a comprehensive Employment Law Practice. Our Employment Litigation attorneys handle hundreds of cases annually, representing company management clients at all levels of dispute resolution.

We also provide Employment Law advice and counsel. We firmly believe that the proper implementation of a comprehensive set of policies and procedures that cover training, documentation, interviews and investigations is essential for containing employment litigation costs and creating a long-term positive work environment.

New Jersey Office
P. O. Box 2369
53 Cardinal Drive
Westfield, NJ 07091
908-233-6800
Fax 908-233-5078
info@lindabury.com

New York Office
Suite 2300
26 Broadway
New York, NY 10004
212-742-3390
Fax 212-269-5016
info@lindabury.com

www.lindabury.com

New Labor Regulations for Employee Military Leaves of Absence

By John F. Goemaat

Regulations Clarify Employer's Obligations Under USERRA

At the present time, many military reservists have been recalled to active duty and have been forced to take military leaves of absence from their current, civilian employment. Although most employers recognize that there is an obligation to reemploy these employees following the tour of duty, they should recognize that the United States Department of Labor has recently adopted new regulations further clarifying an employer's obligations under the Uniformed Services Employment and Reemployment Rights Act (USERRA), the federal law that governs leaves of absence from employment for military service and prohibits employment discrimination because of military obligations.

The new Department of Labor regulations, which went into effect January 18, 2006, govern leaves of absence for military service that employers must accommodate. They also clarify the benefits and reemployment rights that individuals on military duty may exercise during and at the end of their service. Under the new regulations, an employer must provide employment benefits and reemployment rights while its employees are away on military duty for up to a cumulative period of five years. That time period could be extended in certain circumstances.

The Department of Labor's regulations cover all aspects of USERRA's protection of individuals in uniformed service, as well as the conditions imposed on the exercise of these protections. (→)



John F. Goemaat provides advice and counsel to company management in labor and employment law matters. He is a former corporate counsel with Lucent Technologies. He can be contacted at jgoemaat@lindabury.com.



The regulations state that employees and job applicants are protected from discrimination or retaliation based on their military service even though, under USERRA, they would not be entitled to reemployment after military service.

Regarding reemployment, the regulations detail the type of notice the service member must give the employer on commencement of military leave; they detail the rights and benefits to which employees are entitled during military leave; and they explain eligibility for reemployment, application for reemployment, possible justification for denying reemployment, and the position, pay rate and benefits to which the reemployed employee is entitled. USERRA protects reemployed service members from termination of employment for a period of time, and the new regulations explain that protection as well as the exceptions to it.

The new regulations also set forth specific requirements for dealing with the reemployment of individuals disabled during military service. Each requirement includes several exceptional circumstances that require employers to apply individualized treatment.

While, as the regulations point out, USERRA supersedes state and local laws that would limit a returning service member's rights, it does not supersede such laws if they are more beneficial to the service member. New Jersey's military leave law, under individual circumstances, may be more beneficial to a person returning from military service. Employers will be expected to apply the federal or state law that produces the best result for the returning individual.

Employers with employees on leaves of absence for military service should understand their overall responsibilities under the regulations and the application of the law to their specific situations to avoid potential violations of that law. As such, we strongly urge employers to contact their legal counsel.



The material in this Employment Alert is for information purposes only and is not intended as legal advice. If you have any questions concerning this Alert, please contact John F. Goemaat (jgoemaat@lindabury.com) or John H. Schmidt, Jr. (jschmidt@lindabury.com). For biographical information on our attorneys, see our web site at www.lindabury.com.

