Military Leave and Your Job

Do our laws protect employees who leave their jobs to serve in the military?

Yes. There is a federal law, (Uniformed Services Employment Rights and Reemployment Rights Act), which gives broad employment and re-employment rights to people who leave work to serve in the military.

Do all employees enjoy this protection?

Yes, as long as the job that the employee left was reasonably expected to continue indefinitely or for a significant period of time. If the employment was only temporary or for a short period of time, there may be no re-employment rights.

Are all employers covered by the law?

Yes. The law applies not only to private employers, but also to federal, state, and local governments.

What types of military service qualify for the protection of the federal statute?

The law is very broad and applies to all branches of the uniformed military services. It applies to both active duty and inactive duty. It applies to Reservists and National Guard members. It applies whether the service is voluntary or involuntary. It applies to both active duty training and inactive duty training.

What does the employer have to do when an employee returns to work after military service?

Employers must provide returning servicepersons with the same employment status, pay, and other benefits that they would have earned if their employment had not been interrupted by military service. An employee cannot be penalized because of his military service.

When does the employer have to reinstate the employee to his or her job?

The law requires prompt re-employment. This may depend upon the particular circumstances.
The longer that an employee has been gone from work because of military service, the greater leeway an employer may be given before reinstatement is required. However, an employer may not delay reinstatement unless it can show a good reason for the delay.

**How long may an employee be gone from work on military leave?**

In most cases, the maximum period that an employee may be gone on military leave and still be entitled to get his job back is five (5) years.

**Does an employee have to give his employer prior notice before leaving for military service?**

Yes. All people entering military service or military training must give advance notice to their employer in order to be eligible for re-employment after the military service or training is completed.

**When must an employee report back to work after his military service is completed?**

That depends upon how long the employee is gone on military service. An employee who serves from 1 to 30 days must return to work on the first working day after his release from service. An employee who serves from 31 to 180 days must apply for re-employment within 14 days after the military service is completed. An employee who serves more than 180 days must apply for re-employment within 90 days after completing the military service.

There are exceptions to these time requirements in cases where it would be impossible or very difficult for the employee to satisfy them.

**Does an employee automatically get his same job back when he returns from military service?**

Not necessarily. This depends upon how long the employee was gone. As a general rule, an employee who was gone from 1 to 90 days must be promptly re-employed in his previous job. If for some reason the employee is no longer qualified for that job, the employer must try to qualify the employee for that job.

If the employee was gone for 90 days or more, the employee is not necessarily guaranteed his previous job, but he must be employed in a position of similar seniority, status, and pay. If the employee cannot become qualified for any such job, he must be employed in some other position that he is qualified to perform.

If an employee has become disabled during military service so it is impossible or difficult for him to perform his previous job, the employer must make reasonable efforts to accommodate that disability. If accommodation is not possible, the employee must then be employed in some other position which he is qualified to perform.
Are there any situations when an employer does not have to re-employ a returning serviceperson?

Employees who receive a dishonorable, bad conduct, or less than honorable discharge, or who were otherwise separated from service under unfavorable circumstances, are not entitled to re-employment.

Also, if circumstances have changed so as to make it impossible or unreasonable for an employer to re-employ an individual returning from military service, or if re-employment would impose an undue hardship on the employer, re-employment will not be required. To take advantage of this exception, the employer has the burden of proving impossibility, unreasonableness, or undue hardship.

How is an employee’s seniority affected by the time he is on military leave?

It is not affected at all. Any rights related to seniority must be provided to a returning serviceperson as if the employee had never been gone on leave. For example, benefits such as pay raises, job promotions, and paid vacations which are tied to seniority must be given to employees as if they had remained employed throughout the period of their military leave.

What about health insurance?

An employee who is on military leave must be given the right to continue health insurance coverage for up to 18 months. If the employee is gone for only 30 days or less, he cannot be required to pay more than the normal employee’s share of the premium. If an employee is on military leave for longer than 30 days, the employee may be required to pay up to 102% of the full cost of continuing the insurance coverage.

Can an employee lose his pension rights because of military service?

No. Many pension plans have what is known as “break-in-service” rules. This means that an employee loses his pension rights if he is not employed for some specified period of time. However, those provisions cannot be applied to military service. A person returning to work after a military leave must be treated as if he did not leave his job.

What if an employer discriminates against an employee because of his military service?

That is illegal. Among other things, an employer cannot fail to hire an employee, fail to reinstate an employee, discharge an employee, pay him less money, or otherwise discriminate in the terms, conditions, and privileges of employment because of the employee’s past, current or future military obligations.

Does an employee returning from military leave have any protection against discharge for reasons other than discrimination?

Yes. In addition to what is discussed above, an employee who returns to work after serving in the military for more than 180 days cannot be discharged without cause for a period of 1 year after
the date of re-employment. If the employee’s military service was between 31 and 180 days, he cannot be discharged without cause for a period of 180 days after re-employment.

What can an employee do if he believes his rights have been violated?

The employee can file a complaint with the U.S. Department of Labor, which has the authority to enforce the federal statute. In addition, the employee may file a lawsuit in federal court against the employer who has violated his rights. If successful, the employee can receive damages for any lost wages or benefits and can be reinstated to his job if he has been discharged. If the employee can show that the employer willfully violated the law, the employer can be forced to pay the employee a sum of money equal to twice the employee’s lost wages and benefits.

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