Quarterly

Your Keys to Compliance

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Five Common Misconceptions about USERRA

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) is a complex law which applies to all public and private employers in the United States, regardless of size. Many employers have misconceptions about exactly what is required by the law.

Myth #1 USERRA only applies if an individual is called to active duty by the reserves or another branch of the military.

Service in the uniformed services means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority. (1002.5)

Myth #2 USERRA only applies for absences up to 5 years.

In actuality, there are a number of types of service that an employee can perform that do not count against USERRA's five-year service limit.

(a) USERRA creates the following exceptions to the five-year limit on service in the uniformed services:

(1) Service that is required beyond five years to complete an initial period of obligated service. Some military specialties require an individual to serve more than five years because of the amount of time or expense involved in training. If the employee works in one of those specialties, he or she has reemployment rights when the initial period of obligated service is completed;

(2) If the employee was unable to obtain orders releasing him or her from service in the uniformed services before the expiration of the five-year period, and the inability was not the employee's fault;

(3)(i) Service performed to fulfill periodic National Guard and Reserve training requirements and (ii) Service performed to fulfill additional training requirements determined and certified by a proper military authority as necessary for the employee's professional development, or to complete skill training or retraining;

(4) Service performed in a uniformed service if he or she was ordered to or retained on active duty;

(5) Service performed in a uniformed service if the employee was ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary concerned; (1002.103)

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Myth #3 USERRA entitles an employee to the position which they had before their absence due to

EEOC Reports Increase in Charges Filed

The Equal Employment Opportunity Commission (EEOC) enforces the following federal laws prohibiting job discrimination: Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits employment discrimination based on race, color, religion, sex, or national origin; the Equal Pay Act of 1963 (EPA), which protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination; the Age Discrimination in Employment Act of 1967 (ADEA), which protects individuals who are 40 years of age or older; Title I and Title V of the Americans with Disabilities Act of 1990 (ADA), which prohibit employment discrimination against qualified individuals with disabilities in the private sector, and in state and local governments; Sections 501 and 505 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified individuals with disabilities who work in the federal government; and the Civil Rights Act of 1991, which, among other things, provides monetary damages in cases of intentional employment discrimination.

Last year, the EEOC received a total of 75,768 discrimination charges against private sector employers, the first increase in charge filings since 2002, the federal agency reported recently as part of its Fiscal Year 2006 data.

The year-end statistics, available online at http://www.eeoc.gov/stats/enforcement.html, show that charges based on race (27,238), sex (23,247), and retaliation (22,555) were the most frequent allegations, as in past years. Other frequently cited charge bases were age (16,548), disability (15,575), national origin (8,327), and religion (2,541).

Additionally, 12,025 sexual harassment charges and a record 4,901 pregnancy

LYONS COMPANIES
(800) 456-5508
One Righter Parkway, Suite 110
Delaware Corporate Center One
Wilmington, DE 19803

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EEOC Continued...

discrimination charges were filed with the EEOC and with state and local Fair Employment Practices Agencies combined. A record 15 percent of sexual harassment charges were filed by men.

The FY 2006 data also show that the EEOC:

Resolved 74,308 private sector charges, with a historically high merit factor rate of more than 22 percent (representing favorable outcomes for charging parties). A record 8,201 cases were resolved through voluntary mediation.

Recovered a total of approximately $274 million in monetary relief for charging parties: $44 million through litigation and $230 million through administrative enforcement, including mediation. Additionally, the agency obtained substantial nonmonetary relief, such as employer training, policy implementation, reasonable accommodations, and other measures to promote discrimination-free workplaces.

Filed 371 merits lawsuits (direct suits, interventions and other enforcement actions), including 137 cases involving multiple aggrieved parties or victims of discriminatory policies.

These numbers do not include private lawsuits filed by individuals. Significant injunctive and remedial relief was also achieved through litigation settlements, jury verdicts and court rulings.

For more information on these or other Compliance Issues, contact your Lyons Companies Compliance Check Specialist at 800-456-5508.

USERRA Continued...

uniformed service.

As a general rule, the employee is entitled to reemployment in the job position that he or she would have attained with reasonable certainty if not for the absence due to uniformed service. This position is known as the escalator position. The principle behind the escalator position is that, if not for the period of uniformed service, the employee could have been promoted (or, alternatively, demoted, transferred, or laid off) due to intervening events. The escalator principle requires that the employee be reemployed in a position that reflects with reasonable certainty the pay, benefits, seniority, and other job perquisites, that he or she would have attained if not for the period of service. Depending upon the specific circumstances, the employer may have the option, or be required, to reemploythe employee in a position other than the escalator position.(1002.191)

Myth #4 The employer does not need to place the employee in the escalator position if they are not qualified for it.

The employee must be reemployed in the escalator position or a position of like seniority, status and pay. He or she must be qualified to perform the duties of this position. The employer must make reasonable efforts to help the employee become qualified to perform the duties of this position. (1002.197)

Myth #5 Once rehired, the employee loses protection under USERRA.

USERRA provides the employee with protection against discharge for one year after the date of reemployment if the employee's most recent period of uniformed service was more than 180 days. (1002.247)

For further information, refer to the Department of Labor Veteran's Employment and Training Service 20 CFR Part 1002 Uniformed Services Employment and Reemployment Rights Act of 1994; Final Rules dated December 19, 2005

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