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**SUPPORT OUR TROOPS BY BEING A GOOD EMPLOYER**  
**by Thao Tiedt**

Operation Justice is calling to active duty National Guard and Reserve forces, some of whom may be your employees. In addition, some employees may volunteer for active duty. The employee is not required to provide written notice of either enlistment or call up.

Under the Employment and Re-employment Rights of Members of the Uniformed Services Act (38 USC Sec. 4301 et seq) in effect since 1994, the reemployment rights of reservists and members of the National Guard as well as enlistees are protected. The State of Washington has similar laws.

Reservists and members of the Guard called to active duty or enlistees are considered to be on a leave of absence from their civilian employment. Below is an overview of some of the returning veterans' rights and your obligations.

### **Reinstatement**

Returning veterans who have satisfactorily completed service (honorable discharge) are entitled to reinstatement if the former position was not "temporary" and the reinstatement is applied for within the following time periods:

1. If the military service lasted less than 31 days, the employee must request reinstatement by the beginning of the first regularly scheduled work week following the employee's release from military duty;
2. If the military service lasted more than 31 days but less than 181 days, the employee must request reinstatement no later than 14 days after being released from military duty; and
3. If the military service lasted for 181 days or more, the employee must request reinstatement no later than 90 days after being released from military duty.

The time periods for requesting reinstatement can be extended if requesting reinstatement within the time frame would be impossible or unreasonable through no fault of the returning veteran. For example, if the length of service was less than 31 days but the release from service takes place on the East Coast on a Sunday, it would be unreasonable or impossible for the veteran to request reinstatement on the following day, the beginning of the next full work day. The employer may require proof that the veteran was honorably discharged but if such proof is not readily available at the time may not refuse reinstatement conditioned upon submission of such proof when it is available. Reinstatement must be to the veterans' former position or, if that is unavailable, to a position of similar status, pay and seniority. Reinstatement must be provided even if it requires "bumping" a replacement employee. A veteran's seniority rights continue to accrue during the absence; therefore, the veteran's seniority level upon return must be that which the veteran would have attained but for the active duty period.

## **Compliance**

All businesses, regardless of size, must comply. If the business's ownership changes, the new owner succeeds to the former owner's obligations.

## **Pay**

You are not obligated to pay or make up the pay of an employee on active duty. However, if you normally continue paid benefits for your employees and their dependents on other types of leaves, such as maternity, family or disability, the reservist or veteran is entitled to similar benefits. Also, unless your other leave policies require discharge and rehiring, those requirements should not be applied to a veteran.

## **Pay raise**

If the veteran was due for a raise while on active duty based on time on the job (but not on merit), the active duty period counts as time on the job for that purpose.

## **Promotion**

If the veteran would have been promoted but for the absence, the promotion must be granted retroactively upon return.

## **Pension rights**

The veteran's pension rights based on length of service continue to accrue while the veteran is on active duty. You must continue to make pension contributions on the veteran's behalf if the plan requires employer contributions based on length of service. A returning veteran is entitled to make retroactive contributions to plans funded by employee contributions.

## **Re-employment rights**

Upon the veteran's reemployment, the veteran is entitled to any pay increases, vacations, vesting of stock options and other benefits that would have accrued but for the absence. You cannot discharge the returning veteran for one year without good cause.

## **Hospitalization/injury**

If a veteran is hospitalized or injured while on active duty, the reinstatement period is extended for two years, plus the applicable number of days to apply for reinstatement. If the veteran is unable to perform the job due to injury, you must offer the veteran another job that is closest in seniority, status, and pay. Remember, you also have a duty to reasonably accommodate any disability the returning veteran may have suffered.

## **Discrimination**

Employers may not discriminate against a veteran for exercising his or her rights under the Act or discriminate against anyone who assists the veteran in exercising his or her rights under the Act.

## **Exceptions to Reinstatement**

The employer is not required to reemploy the veteran if the employer's circumstances have changed so much that the reemployment is impossible or unreasonable, if reemployment would be an undue hardship on the employer, or if the veteran's employment before reporting to service had been for a brief period in a temporary position that no longer exists. The burden of proving an exception to reemployment rests on the employer and is a very high burden.