



March 2, 2005

Military Leave Amendments And New Posting Requirement Now In Effect

The Uniformed Services Employment and Reemployment Rights Act ("USERRA") of 1994 is a federal law that protects the job rights of and ensures reemployment of individuals who voluntarily or involuntarily leave employment positions to undertake military service (including veterans, reservists, and National Guard members). USERRA also prohibits employers from discriminating against individuals based on their past, present or future military obligations or intent to apply to any of the uniformed services. USERRA applies to all employers, regardless of size, in both the public and private sectors.

On December 10, 2004, President Bush signed the Veterans Benefits Improvement Act of 2004, Public Law 108-454 ("VBIA"). VBIA amended portions of USERRA to provide additional protections for employees who perform military service. Under VBIA, there are two changes that are of particular interest to employers.

Notice/Posting Requirement: VBIA requires employers to provide employees with notice of their rights, benefits and obligations under USERRA by March 10, 2005. The VBIA notice requirement can be satisfied by displaying the USERRA poster in a location where other employee notices are customarily posted. A sample poster, containing the required language, can be obtained online from the United States Department of Labor at <http://www.dol.gov/vets/programs/userra/poster.pdf>. Although the law is satisfied by posting of this notice, employers may want to consider distributing a copy of such a notice directly to eligible employees before they take their leave.

Extension of Health Insurance Protection: VBIA expands the right of military personnel to continue their employer-sponsored health insurance coverage from 18 months to 2 years (24 months). USERRA gives employees who are absent as a result of military duties the right to continue employer-provided health care coverage for themselves and their covered dependents, regardless of the employers' obligations under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"). As a result of VBIA, for all continuation elections made after December 10, 2004, the continuation period is increased from 18 months to 24 months. (Of course, California employers must still comply with Cal-COBRA which requires a continuation period of 36 months for individuals who began receiving continuation coverage on or after January 1, 2003.)

Further, under VBIA, the amount that an employee can be charged for such continued coverage now depends on the length of the employee's military service. If the employee is absent for less than 30 days as a result of military service, the employee cannot be charged more than the employee's normal share of the cost of coverage. However, if the employee's military service results in an absence of 31 days or more, the maximum amount that an employee can be charged for continuing coverage is 102% of the full premium under the plan. Finally, an employee may not be subjected to a waiting period for health insurance coverage after the employee returns from military service and is reemployed.

For additional information regarding additional protections of employees while on military duty, reemployment rights, protection of benefits, and the prohibition against discrimination of military personnel, employers can visit <http://www.dol.gov/vets/> or seek advice from a qualified labor and employment attorney.

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