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Employer Rights and Obligations to Employees on Military Leave

The Uniformed Services Employment and Re-employment Rights Act, commonly referred to as "USERRA," was intended to minimize the disadvantages to employees when they need to be absent from their jobs to serve in this country's uniformed services. In the simplest terms, USERRA protects the employment rights of service members. The Act covers every employee who is or was in the uniformed services, including the Army, Navy, Air Force, Marines, Coast Guard, Air National Guard, and the Uniformed Health Services. USERRA is administered by the U.S. Department of Labor through the Veteran's Employment and Training Service.

USERRA applies to all employers in both the public and private sectors. However, the Act does not cover temporary employees or independent contractors.

USERRA prohibits discrimination against anyone because of his or her time in the uniformed services. The Act states that no person can be denied employment, re-employment, retention in employment, promotion, or benefits because he or she has had to spend time in any uniformed service.

In addition to its anti-discrimination aspects, USERRA requires employers to make reasonable accommodations for disabled veterans. However, its most important provision may be its re-employment requirements. An individual in the uniformed services is entitled to re-employment if the following criteria are met:

The employee held a civilian job with the employer.

The employee gave advance written or verbal notice to the employer that he or she was leaving for uniformed service.

The period of service was less than five years.

The employee was released from service under honorable conditions.

The employee returned to civilian employment on a timely basis or submitted a timely application for re-employment.

An employer does not have to re-employ the employee if the employer's circumstances have changed and re-employment would be impossible or unreasonable. However, the burden of proof is on the employer and if an employee cannot be employed in the same position, he or she must be re-employed in a position with the same seniority, status, and pay.

Louisiana, like many other jurisdictions, has enacted some state-specific military leave legislation. For example, in Louisiana, employees who have been on military leave must apply for reappointment within 72 hours after being released from military duty in order to preserve their reinstatement rights. Additionally, an opinion of the Attorney General made it clear that the state's Military Service Relief Act applies to any private or public employer in the state and that 15 days of paid service must be granted to employees for

each tour of active duty.

USERRA also governs benefits for individuals on military leave as well as other aspects of employment. For more information or specific questions regarding USERRA, contact the attorneys at Baldwin Haspel.

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