



New Paid Leave Obligations under USERRA in the Seventh Circuit

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The U.S. Court of Appeals for the Seventh Circuit, which covers Wisconsin, Illinois, and Indiana, recently held that the Uniformed Services Employee and Reemployment Rights Act (USERRA) requires employers to provide paid leave to military members if comparable paid leave is provided for other non-military reasons, such as jury duty or sick leave. This ruling broke new ground on an important topic, and so employers in the 7th Circuit should revisit their leave policies to ensure they are updated and compliant. Importantly, this ruling does not mandate that all requests for military leave must be paid. Rather, the military leave must be paid if the employer offers paid leave for a comparable form of leave.

USERRA requires employers to accommodate leaves of absence for their employees who take leave for military service and to re-employ them when they return. Its purpose is to prevent civilian employers from discriminating against employees based on their military service. To that end, USERRA requires employers to afford employees on leave the same “rights and benefits” as all other employees. USERRA defines “rights and benefits” broadly to include all: “terms, conditions, or privileges of employment, including any advantage, profit, privilege, gain, status, account, or interest (including wages or salary for work performed) that accrues by reason of an employment contract or agreement or an employer policy, plan, or practice and includes rights and benefits under a pension plan, a health plan, an employee stock ownership plan, insurance coverage and awards, bonuses, severance pay, supplemental unemployment benefits, vacations, and the opportunity to select work hours or location of employment.”

USERRA’s plain text does not specifically mandate paid leave, but according to the Seventh Circuit, this “rights and benefits” definition is broad enough to encompass

paid leave for military absences. So how did it reach that conclusion? In *White v. United Airlines, Inc.*, Eric White, who is an airline pilot and Air Force reservist, filed a class action lawsuit against his employer. He and other military reservists alleged that United Airlines unlawfully withheld pay for periods of time when they were required to take periodic leaves of absence for military training. They claimed that they were entitled to paid leave under USERRA's "rights and benefits" guarantee because the employer provided paid sick leave and jury duty leave. The Seventh Circuit agreed and concluded that USERRA's "rights and benefits" language was broad enough to encompass paid leave for military-related absences. The court held paid leave meant White was entitled to receive his compensation at the normal rate during a leave for military duty.

This ruling may have practical consequences for employers in Wisconsin, Illinois, and Indiana that provide paid leave for comparable absences. Such employers must now provide paid leave for military absences. It will be important for employers to carefully assess requests for military leave to determine whether it is comparable to other forms of paid leave which are already offered. Employers may wish to consult legal counsel to determine whether an absence is "comparable" such that it triggers paid leave for military absences. In light of this ruling, it will be important for employers to revisit their leave policies to ensure that they are compliant with USERRA.

Disclaimer: This information is not intended to be legal advice. Rather, it seeks to make recipients aware of certain legal developments that affect human resource issues. Recipients who want legal advice concerning a particular matter should consult with an attorney who is given a full understanding of the relevant facts pertaining to the particular matter.

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