

## **FEDERAL LAW ON MILITARY LEAVES OF ABSENCE AMENDED TO REQUIRE NOTICE TO EMPLOYEES**

The Uniformed Services Employment and Reemployment Rights Act (“USERRA”), 38 U.S. Code § 4301 *et seq.*, as amended, is the primary federal statute on this subject. Its protections establish the *minimum* requirements for employers of military personnel. USERRA requires that federal military leave standards be followed whenever they are more favorable to the employee than state law, and that state laws are to be followed whenever they are more favorable to the employee. 38 U.S.C. § 4302. Pennsylvania law is generally more favorable to the employee than the federal statute. Pennsylvania’s main statute on this subject is the Pennsylvania Military Leave of Absence Act (PAMLAA), 51 Pa.C.S.A. §7302 *et seq.*

USERRA’s and PAMLAA’s substantive and enforcement provisions establish two basic categories of rights for military service members: (1) general protection against discrimination in employment motivated by considerations of military status or service; and (2) entitlement to be restored to their jobs after absences due to military service without loss of status, benefits, seniority, or opportunity for advancement.

USERRA was amended by the Veterans Benefits Improvement Act, enacted by Congress in December 2004, which mandates that employers provide the notice to “all persons entitled to rights and benefits under USERRA.” Employers may meet this obligation by posting the notice in a prominent place where employees customarily check for such information. The USERRA poster is now available at [www.dol.gov/vets/programs/userra/poster.pdf](http://www.dol.gov/vets/programs/userra/poster.pdf). All employers should ensure that this notice is posted along with other mandated employment information.

Yet, as a reminder, public sector employees are entitled to certain benefits under state law that are not provided for under federal law. These state law provisions generally relate to situations under which municipal employees are entitled to be paid for military leave.

1. Members of the Pennsylvania National Guard are entitled to a leave of absence without loss of pay or seniority on all days in which they are engaged in *active State duty*. 51 Pa.C.S.A. §4102
2. Members of the Pennsylvania National Guard and reserves are entitled to a leave of absence without loss of pay or seniority for up to 15 days annually on which they are engaged in training *or other military duty under orders authorized by law*. 51 Pa.C.S.A. § 4102 and 65 P.S. § 114; 1975 Op.Atty.Gen. No. 75-4
3. When a member of the Pennsylvania National Guard or reserve component is called into active federal or state service, other than training, the employer shall continue health insurance and benefits in effect for at least the first 30 days of the military duty, *at no cost to the employee*. After the first 30 days, the employer must provide the option to the employee to continue the health insurance and benefits at his/her own expense and at the same rates paid by the employer. 51 Pa.C.S.A. § 7309.

If you have an employee on military leave or about to be called to active duty, make sure you thoroughly understand your obligations under both federal and state law.