

USERRA'S PETTY LITTLE REQUIREMENTS

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(As published in the PELRAS Update for the
Pennsylvania League of Cities and Municipalities)

In Petty v. Metropolitan Government of Nashville-Davidson County, 538 F.3d 431 (6th Civ. 2008), the Sixth Circuit Court of Appeals provided a revealing glimpse of the current state of affairs with respect to the balance of interests between federal and local governments. The question before the Court was whether local government employers may inquire into an employee's conduct while absent due to military service before reinstating him to his former position? The Petty Court answered that question with a definitive, "no." The Court held that the Metropolitan Police Department violated Petty's rights under the federal Uniformed Services Employment and Reemployment Rights Act (USERRA) by delaying his return to work, and by failing to return him to his former position as a patrol officer.

The Sixth Circuit Court issued that ruling even though reinstating Petty was clearly at odds with the legitimate interests of the local police department. Petty had resigned his commission as an Army officer in *lieu* of being court-martialed for illegally manufacturing alcohol, which he provided to a female enlisted soldier while in Kuwait. Each of those things was a serious infraction of Army rules. Petty later concealed this information by altering or omitting substantial parts of his DD-214, which the Metropolitan Police Department had requested as part of its standard return-to-work process. As part of the deal to avoid the Army court-martial proceedings, the Army accepted Petty's resignation "for the good of the service." On his DD-214 the Army characterized his discharge as being "Under Honorable Conditions (General)." The section of his DD-214 listing the "Narrative Reason for Discharge," however, stated "In lieu of trial by court martial." But Petty provided a photocopy of his DD-214 to the Metropolitan Police Department that simply omitted that section. Petty admitted that he had enlarged the photocopy causing the block containing it to be removed from the page. While the Metropolitan Police Department found Petty's conduct to be an important consideration as to whether to return him to work as a police officer, the Court focused on the USERRA's strict requirements:

We conclude that it would be inconsistent with the goals of USERRA to prevent Petty from exercising his right to reemployment because he failed to provide forthrightly information that is statutorily unnecessary to his establishing the right in the first place.

(538 F.3d 441). In other words, while the DD-214 is a permissible way to provide one's employer with information about military service, it is not the only way, nor is it required by USERRA. The fact that Petty left the Army to avoid court-martial, and the fact that he materially altered his DD-214 to conceal that fact was, in the Court's view, not relevant to an analysis of whether his employer had obeyed the strict letter of federal law.

The Petty Court also explained that USERRA permits neither an extra delay in returning employees to work due to an employer's internal processes, nor the establishment of additional eligibility requirements:

...Petty's separation from military service is classified as "under honorable conditions," which Congress has made clear suffices to qualify him for USERRA benefits.

(Id.). The Court therefore ordered summary judgment be entered in favor of Petty, and subsequently denied requests for rehearing and rehearing *en banc*.

The Petty Court's analysis is significant for Pennsylvania public employers for several reasons. First, it reveals plainly the drawbacks of USERRA. While most would agree that employers should not discriminate based on military service, USERRA does far more than prohibit that discrimination. The statute also contains substantial affirmative requirements. The Petty case shows that at least some courts will brook no restraint on its dictates, whether or not they make any sense. Second, it shows that requesting a returning employee's DD-214 is not a solution to every problem associated with military veteran-employees. While obtaining that document provides a wealth of information about the employee's military service, it will not absolve public employers from meeting the strict requirements of the law, even where common sense plainly requires something less. Finally, the Petty Court's ruling that the Metropolitan Police Department violated USERRA by delaying Petty's return to work shows that internal procedures, paperwork, ordinary inconvenience, and even an employee's intentional concealment of information cannot be used as excuses for avoiding federal requirements.

Public employer's faced with employees seeking to return to work after military service should therefore act quickly. Given the extensive requirements contained in USERRA that may mean seeking legal guidance as soon as the request is received.