

Beyond the Yellow Ribbons - Part 3

"I hope to live long enough to see my surviving comrades march side by side with the Union veterans along Pennsylvania Avenue, and then I will die happy."
-- James Longstreet (1821-1904),
one of the foremost Confederate generals

"I do not want the peace that passeth understanding. I want the understanding that bringeth peace."
-- Helen Keller (1880-1968),
deaf/blind author, activist, and lecturer

Active service persons who are called to duty need to know that the jobs and benefits they leave behind will be waiting for them when they return. This column focuses on the laws that protect the civilian jobs and benefits of our U.S. military.

Q. Can service members regain health insurance when they come home from military duty?

Yes. There is a federal law that applies nationwide states called the Servicemembers' Civil Relief Act, or SCRA.

The SCRA requires reinstatement of health insurance. While persons are on active duty, their health care and medical needs are covered by the military. Service persons can suspend their civilian health and medical insurance coverage to avoid having to pay premiums while on active duty.

After active duty, civilian insurance companies must reinstate coverage. They have to write policies for the returning service persons, and they cannot refuse to cover most "pre-existing conditions."

Q. Are civilian jobs of military members protected?

Yes, thanks to a federal law known as the Uniformed Services Employment and Reemployment Rights Act of 1994, or USERRA.

This law says that employers must reinstate a member of the U.S. military or the National Guard if an employee meets certain conditions:

- The employee must give notice to the employer, before taking leave, that the leave is for military duty.
- The employee usually must not spend more than 5 years on leave for military service.
- The employee must report back for job reinstatement within specified time limits.

- And, the employee must have been honorably discharged.

Q. Are there other employment protections for U.S. military?

Yes. The USERRA law requires employers to put workers back in the same job that they would have held as if they had been continuously employed. This means that employees are legally entitled to any promotions, increased pay, seniority, and additional responsibilities that they would have received if they had stayed on the job. If they need training to perform the additional duties, the employer must provide it.

USERRA also says that employers cannot force a service member to use paid vacation time while on active duty.

In addition, USERRA also says that if a service person incurs or aggravates a disability during military service, then the employer must make "reasonable efforts" to accommodate such a veteran. If the disability cannot be accommodated, then the employer must provide employment in the nearest similar position with comparable pay and benefits.

In Tennessee, employees who are not in a union or who don't have a contract normally can be fired at any time, without cause, as long as the firing is not based on illegal discrimination. Under the federal law, however, returning veterans are protected from being fired without cause for up to one year after they are reinstated.

Q. Does Tennessee have any additional protections?

Yes. Tennessee has a special law that makes it a Class E felony to refuse employment or terminate employment solely because that person is a member of the National Guard.

by Jim Hawkins, Managing Attorney, Gallatin office, Legal Aid Society

Note: This column is not intended to take the place of legal advice. All cases are different and need individual attention. Consult with a private attorney of your choice to review the facts and law specific to your case.

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