



## WHAT'S UP IN HR?

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It's been a busy twelve months in human resources! The legislature has been revising laws and the courts have been very active in issuing opinions that impact the employee-employer relationship. Let's look at some of these activities.

There are very few, if any of us, not touched in some way by the war in Iraq. Lawmakers have increased requirements for responding to military personnel as well as increasing their rights and benefits regarding employment. Here are a few things to keep in mind.

Firstly, you are entitled to notice that the employee has been called to active duty or has volunteered for active duty. While this notice may be verbally or in writing, you are also entitled to official documentation. The employee's health benefits must remain available for 24 months while seniority and pension continue uninterrupted.

Secondly, be sure that you have the newest version of the USERRA poster and have it prominently posted in your business.

Thirdly, this law applies regardless of company size. Even one employee is enough.

Fourthly, in general, the law requires you to reinstate returning active military or released military personnel to the job he or she would have had if the employee had stayed, or one equivalent in pay and seniority, and to provide many of the same benefits during service as if the person had continued employment. In other words, it should be as if the employee never left. So this would include any raises, promotions, training opportunities the employee would have had during the duration of their active duty. While there is some debate about how long this job protection lasts, most employment law attorneys feel that refusing to accept an employee's return even after five years is action taken "at your own peril".

Lastly, the returning employee must provide notice of return to work and has up to 90 days following discharge to do so. Remember that the employee must be returned to either the same job (or an equal position) or, if they would have been entitled to a promotion while away, they come back to the new, higher position.



The requirements of USERRA are complex. If you have employees returning from military duty, ask for help. There may also be state laws that expand the federal provisions.

On to another topic. ICE, the Department of Immigration and Customs Enforcement (formerly INS), has stepped up enforcement against those who either hire those who are not legally eligible to work in the US or work without proper authorization. There is a new I9 Form (November, 2007) that must be completed within the first 3 days of employment. Employers must not tell the new employee which documents to present for authorization. Rather, the employee should be provided with the instruction sheet that lists all the acceptable documents and then select the documents on their own. It is your responsibility as the employer to carefully examine the document and determine if it appears to be authentic. The I9 forms should NOT be filed in the employee's personnel file. All I9's should be in a separate file not in the same location as personnel files.

Remember, if you receive notification from the Social Security Administration that an employee's social security number and name do not match their records (a "no match" letter), you should immediately inform the employee of this fact and ask to verify that their number was correctly recorded in the company's records. If there was no error in recording the number, provide the employee with a reasonable amount of time to go to the local Social Security office and correct the record. A reasonable time would be in the range of 30 to 60 days. If the employee cannot or does not bring documentation that the record has been corrected within the time limit, the employee should be terminated.

The challenge here is that the Social Security Administration will sometimes wait until there are several mismatches before they send the no-match letter to the company. This means that the company could be at risk if an ICE inspection occurs and undocumented workers are discovered. Even though the company may be unaware of the situation, that offers no defense. An option for the employer is to use a background screening service to verify social security numbers for each new hire. This can be accomplished at a very minimal cost while providing good protection.

The above present just a few revisions and requirements for companies. As employment law becomes increasingly complex, ask for help. It is difficult to keep abreast of all the changes in employment related law, much like it is in the area of tax law. So, as the commercials often say, leave this to the professionals and don't try this at home!

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