

# *Military Leave - Overview*

## **HR ALERT**

P.O. Box 217 ■ Uwchland, PA 19480-0217 ■ PHONE 610.476.6326 ■ FAX 610.469.6842 ■ E-MAIL [aet@aethr.com](mailto:aet@aethr.com) ■ WEBSITE [www.aethr.com](http://www.aethr.com)

### **CONTINUATION OF BENEFITS WHILE IN THE MILITARY**

Three laws protect employees' rights to continue health coverage under an employment-based group health plan if they are called to active military duty. The **Consolidated Omnibus Budget Reconciliation Act (COBRA)**, the **Pennsylvania Military Leave of Absence Act (PMLAA)** and the **Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)** generally allow individuals called for active duty to continue coverage for themselves and their dependents under an employment-based group health plan for up to 18 months. In addition, the **Health Insurance Portability and Accountability Act (HIPAA)** may give an employee and family rights to enroll in other group health plan coverage if it is available.

There is no requirement for an employer to make contributions to a 401k plan while an employee is on active duty. However, once the employee returns from military duty and is reemployed, the employer must make the employer contributions that would have been made if the employee was employed during the period of military duty.

### **POSSIBILITY OF WAR INCREASES EMPLOYER MILITARY LEAVE CONCERNS**

Employers would be prudent to begin reviewing military leave policies and preparing now for possible staffing shortages due to the possibility of a war with Iraq. Employers could unintentionally fail to comply with the Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994, or the Pennsylvania Military Leave of Absence Act (PMLAA) of 2001, which requires employers to re-employ returning service members, preserves employees' benefits, and prohibits discrimination based on military service. The Labor Department's Veterans' Employment and Training Service (VETS) has seen an increase in USERRA violations since September 11, 2001.

### **JOB RIGHTS FOR VETERANS' AND RESERVE COMPONENTS MEMBERS**

The Uniformed Services Employment and Reemployment Rights Act (USERRA) protects civilian job rights and benefits for veterans and members of Reserve components. Among some of its requirements:

- Individuals may be absent from work for military and retain reemployment rights for five years. Some exceptions apply.
- Protection for disabled veterans, requiring employers to make reasonable efforts to accommodate the disability, health and pension plan coverage for service members is required.

## **MILITARY LEAVE – REEMPLOYMENT AND SENIORITY**

USERRA provides that returning service-members are reemployed in the job that they would have attained had they not been absent for military service (the long-standing "escalator" principle), with the same seniority, status and pay, as well as other rights and benefits determined by seniority. However, USERRA also requires that reasonable efforts (such as training or retraining) be made to enable returning service members to refresh or upgrade their skills to help them qualify for reemployment. The law clearly provides for alternative reemployment positions if the service member cannot qualify for the "escalator" position. USERRA also reaffirms and clarifies that while an individual is performing military service, he or she is deemed to be on a furlough or leave of absence and is entitled to the non-seniority rights accorded other individuals on non-military leaves of absence.

## **THE VETERANS EMPLOYMENT AND TRAINING SERVICE (VETS)**

The U.S. Department of Labor's Veterans' Employment and Training Service, through cooperative efforts with, and grants to, each State, offers employment and training services to eligible veterans through two principal programs:

- Disabled Veterans' Outreach Program
- Local Veterans' Employment Representative Program

## **MULTIPLE COVERAGES**

Employers are required to provide benefits that are most beneficial to the employee if the employee is eligible for coverage under more than one regulation.

### **Other Relevant Documents Available in the HRALERT section of [WWW.AETHR.COM](http://WWW.AETHR.COM):**

- [IRS Notice 98-12: Deciding Whether to Elect COBRA Health Care Continuation Coverage After the Enactment of HIPPA](#)
- [IRS Notice 90-58: Continuation of Employer Health Coverage for Activated Reservists and Their Families](#)
- [COBRA Overview](#)
- [PMLAA Military Leave Statute](#)
- [USERRA Act](#)
- [HIPAA Overview](#)

### **Other Relevant Documents Available by Annual Subscription in the CLIENTS ONLY section of [WWW.AETHR.COM](http://WWW.AETHR.COM):**

- VETS Fact Sheet
- Job Rights – Military
- Benefits – Who Pays?
- Report of Military Pay Form

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**For information or assistance, contact: Dr. Mel Cooksey at (610) 476-6326 or at [mel@aethr.com](mailto:mel@aethr.com) or visit our website at [www.aethr.com](http://www.aethr.com)**

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