

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 91- 20

March 18, 1991

TO : All Regional Directors, Officers-in-Charge,
and Resident Officers

FROM : Joseph E. DeSio, Associate General Counsel

SUBJECT: Veterans' Reemployment Rights

Duty officers may be receiving calls from individuals inquiring about reemployment rights for returning veterans, including members of the National Guard and Reserves. The applicable Federal statutes in this area are enforced by the United States Department of Labor.

The Labor Department has supplied us with the attached list of its area offices which provide information and assistance on veterans' reemployment matters. Please refer individuals with inquiries to the applicable area office. Also attached, for informational purposes, is some material from the Labor Department generally describing the applicable statutes.


J.E.D.

Attachments

cc: NLRBU

MEMORANDUM OM 91- 20



U.S. Department of Labor Program Highlights



Fact Sheet No. OASVET 90-7

AREA LOCATIONS FOR VETERANS' REEMPLOYMENT RIGHTS AND ASSISTANCE INFORMATION

MONTGOMERY, ALABAMA

36130
519 Industrial Relations Building
(205) 261-5430

JUNEAU, ALASKA

99802
1111 West 8th Street
(907) 465-2723

PHOENIX, ARIZONA

85005
1300 West Washington
(602) 261-4961

LITTLE ROCK, ARKANSAS

72201
Employment Security Bldg.
State Capitol Mall, Rm. G-12
(501) 682-3786

SACRAMENTO, CALIFORNIA

94280-0001
800 Capitol Mall, Room W2054
P. O. Box 942880
(916) 551-1422

SAN FRANCISCO, CALIFORNIA

94105-2999
71 Stevenson Street, Suite 705
(415) 744-6677

OXNARD, CALIFORNIA

93030-2124
500 Esplanade Drive, Suite 1550
(805) 485-6687

DENVER, COLORADO

80203
600 Grant Street, Suite 800
(303) 866-1114

WETHERSFIELD, CONNECTICUT

06109
CT Department of Labor Building
200 Folly Brook Boulevard
(203) 566-3326

NEWARK, DELAWARE

19702
Stockton Building, Room 104
100 Chapman Road
(302) 368-6898

WASHINGTON, D.C.

20001
500 C Street, N.W., Room 108
(202) 727-3342

TALLAHASSEE, FLORIDA

32399-0676
Suite 102, Atkins Building
1320 Executive Center Drive
(904) 488-2967

ATLANTA, GEORGIA

30303
Sussex Place, Suite 504
148 International Blvd, N.E.
(404) 656-3127

HONOLULU, HAWAII

96813
830 Punchbowl Street
Room 232A
(808) 541-1780

BOISE, IDAHO

83735
317 Main Street, Room 303
(208) 334-6164 or 6163

CHICAGO, ILLINOIS

60605
401 South State Street, 2 North
(312) 793-3433

INDIANAPOLIS, INDIANA

46204
10 North Senate Avenue, Room 203
(317) 232-6804

DES MOINES, IOWA

50319
1000 East Grand Avenue
(515) 281-5106

TOPEKA, KANSAS

66612
1309 Topeka Boulevard
(913) 296-5032

FRANKFORT, KENTUCKY

40621
c/o Department for Employment
Services
275 East Main Street
(502) 564-7062

BATON ROUGE, LOUISIANA 70804-

9094
Louisiana DOL
Employment Security Bldg.
Room 174, 1001 N. 23rd St.
(504) 342-6094

LEWISTON, MAINE

04243
522 Lisbon Street
(207) 783-5352

BALTIMORE, MARYLAND

21201
1100 North Eutaw Street
Room 205
(301) 333-5194 (FTS)

BOSTON, MASSACHUSETTS

02203
Room 506, JFK Federal Building
(617) 565-2081

DETROIT, MICHIGAN

48202
7310 Woodward Avenue
Suite 407
(313) 876-5613, 5614, or 5615

ST. PAUL, MINNESOTA

55101
390 North Robert, 1st Floor
(612) 296-3665

JACKSON, MISSISSIPPI

39215
1520 West Capitol Street
(601) 961-7588

JEFFERSON CITY, MISSOURI

65104
421 East Dunklin Street
(314) 751-9231

HELENA, MONTANA

59624
515 North Sanders
(406) 449-5431

LINCOLN, NEBRASKA

68509
550 South 16th Street
(402) 437-5289

CARSON CITY, NEVADA

89710
500 East Third Street
(702) 885-4632

CONCORD, NEW HAMPSHIRE

03301
55 Pleasant Street, Room 325
(603) 225-1424 or 235-1425

TRENTON, NEW JERSEY

08609
28 Yard Avenue, Room 200
(609) 292-2930

ALBUQUERQUE, NEW MEXICO

87108
1st National Bank Building, East
5301 Central, N.E., Room 1214
(505) 841-4592

ALBANY, NEW YORK

12240-0099
Harriman State Campus
Building 12, Room 518
(518) 457-7465

RALEIGH, NORTH CAROLINA

27605
700 Wade Avenue
(919) 733-7402

BISMARCK, NORTH DAKOTA

58501
1000 Divide Avenue
(701) 224-2865

CLEVELAND, OHIO

44115
2728 Euclid Avenue, 2nd Floor
(216) 622-3084

COLUMBUS, OHIO

43216
OBES Building
145 South Front Street
(614) 466-2768

OKLAHOMA CITY, OKLAHOMA

73105
Will Rogers Memorial Office
Building, Room 301
(405) 557-7189

SALEM, OREGON

97311
312 Employment Division Building
875 Union Street, N.E.
(503) 378-3338

HARRISBURG, PENNSYLVANIA

17121
Labor and Industry Building
Room 625
Seventh and Forster Streets
(717) 787-5834

HATO REY, PUERTO RICO

00918
Puerto Rico Department of Labor and
Human Resources Building
505 Munoz Rivera Avenue
15th Floor
(809) 754-5391

PROVIDENCE, RHODE ISLAND

02903
507 Federal Building and Courthouse
(401) 528-5134

COLUMBIA, SOUTH CAROLINA

29201
914 Richland Street, Suite 101
(803) 253-7649

ABERDEEN, SOUTH DAKOTA

57402-4730
420 South Roosevelt
P. O. Box 4730
(605) 226-7289

NASHVILLE, TENNESSEE

37201
301 James Robertson Parkway
Room 317
(615) 741-2135

AUSTIN, TEXAS

78701
TEC Building, Room 516-B
Trinity and 12th Street
(512) 463-2207

SALT LAKE CITY, UTAH

84111
178 Social Hall Avenue
(801) 524-5703, 5704

MONTPELIER, VERMONT

05602
Post Office Building
87 State Street, Room 303
(802) 828-4441 or 828-4437

RICHMOND, VIRGINIA

23219
701 East Franklin Street, Suite 1409
(804) 786-7269

LACEY, WASHINGTON

98503
605 Woodview Drive, S.E.
(206) 438-4600

CHARLESTON, WEST VIRGINIA

25305-0112
112 California Avenue, Room 212
Capitol Complex
(304) 348-4001 and 347-5290

MADISON, WISCONSIN

53701
GEF I, 201 E. Washington Ave.
Room 250
(608) 266-3110

CASPER, WYOMING

82602
100 West Midwest Avenue
(307) 235-3281 or 235-3282

U.S. Department of Labor Program Highlights



Fact Sheet No. OASVET 90-9

JOB RIGHTS FOR RESERVISTS AND MEMBERS OF THE NATIONAL GUARD

Congress has recognized that strong, ready National Guard and Reserve forces are essential for national defense under the "Total Force Policy" and that the support of civilian employers is necessary if the services are to be able to recruit and retain National Guard and Reserve personnel and to get them to participate in training to maintain and increase their readiness. Therefore, Congress has provided certain protections for Reservists and members of the National Guard with respect to their civilian employers.

The Veterans' Reemployment Rights (VRR) law provides that a Reservist or member of the National Guard "shall upon request be granted a leave of absence by such person's employer for the period required to perform active duty for training or inactive duty training [drills] in the Armed Forces of the United States." The employee "shall not be denied retention in employment or any promotion or other incident or advantage of employment because of any obligation as a member of a Reserve component of the Armed Forces."

The Reservist or National Guard member is required to "request a leave of absence" when his or her military drills or active duty for training will conflict with his or her civilian working hours. Presently there is a conflict in the courts as to whether an employer is only entitled to notice and must grant the request or whether the request must meet a test for "reasonableness."

The Reservist or National Guard member is not required to possess written training orders at the time he or she requests a military leave of absence. Because of clerical problems within the military services, Reservists and National Guard members sometimes do not receive written orders until shortly before the training is to start or even after it has started. As soon as the Reservist or National Guard member is informed of the dates of the military training, he or she

should notify the supervisor and request a leave of absence, even if he or she has not yet received written orders. The Reservist or National Guard member can minimize the employer's inconvenience by giving the supervisor as much advance notice as possible of any anticipated military training periods.

The right to a military leave of absence applies to "inactive duty training" [drills] as well as active duty for training. Drills are normally, but not always, conducted on weekends. A Reservist or National Guard member normally does not receive written orders with respect to regularly scheduled drills. He may receive a written order assigning him to a unit, and the unit establishes its own drill schedule, which may or may not be reduced to writing.

If a Reservist or National Guard member receives a written drill schedule for a significant period of time, such as a fiscal year, he can write to his employer, attach a copy of the drill schedule, and request a leave of absence for each scheduled drill. An employer cannot require a Reservist or National Guard member to make a separate request each month, so long as the drill schedule remains unchanged.

A request for a leave of absence can be either oral or written; however, Reservists and National Guard members are encouraged to make written requests, to help avoid misunderstandings. There is no limit on the frequency or duration of military leaves of absence under the provisions of law. So long as the Reservist or National Guard member receives orders for military training, his or her civilian job rights are protected.

The employer is not required to pay the Reservist or National Guard member for the hours or days when he does not work because of military training obligations. It is unlawful, however, to require a Reservist or National

Guard member to use his or her earned vacation time for his or her military training.

Upon completion of the military training, the Reservist or National Guard member must report back to the civilian job at his or her first regularly scheduled shift after the completion of training and the time required for return from the place of military training to the place of civilian employment, unless his or her return is delayed by factors beyond his or her control, such as an automobile accident during the return trip. If the Reservist or National Guard member is late in returning to the civilian job, without adequate cause, he or she is subject to the employer's usual sanctions for tardiness or unexcused absence.

Upon reporting back to his or her civilian employer, the Reservist or National Guard member must be reinstated immediately with such seniority, status, pay, vacation, paid holidays, opportunities for promotion, and any other benefit based on presence at work that he or she would have had but for the military absence. Military absence is not considered an interruption of an employee's "continuous service" status for pension purposes.

It is unlawful for an employer to discharge a Reservist or National Guard member because of his or her military obligations, or to discriminate against such a person with regard to promotions or any "incident or advantage of employment." Even if the Reservist or National Guard member has been guilty of some misconduct or inefficiency unrelated to military obligations, the employer cannot treat him or her more harshly because he or she serves part-time in the Reserve or National Guard.

When a person first joins the Reserve or National Guard, he or she is usually required to undergo "initial active duty training" (IADT), unless the person has previously served on active duty. During IADT, the Reservist or National Guard member undergoes basic military instruction and perhaps receives some training in a military specialty.

With two important exceptions, IADT is treated exactly like regular active duty for reemployment rights purposes. After completing IADT, a person must apply for reemployment within 31 days, rather than 90 days as in the case of regular active duty. Furthermore, time spent on IADT does not count toward the four-year limitation on regular active duty. For the eligibility requirements pertaining to regular active duty, see the Department of Labor fact sheet OASVET 90-10, entitled "Reemployment Rights for Returning Veterans."

In addition to performing IADT, active duty for training (ADT) or Active Duty Special Work (ADSW), and inactive duty training (IDT), Reservists and National Guard members also sometimes perform regular active duty, when they are called to active duty voluntarily or involuntarily. Reemployment rights for persons performing regular active duty are described in the Department of Labor fact sheet OASVET 90-10, entitled "Reemployment Rights for Returning Veterans." "Temporary active duty" (TEMAC) or Temporary Tour Active Duty (TTAD) is considered to be regular active duty for reemployment rights purposes.

The VRR law is enforced by the Department of Labor, Veterans' Employment and Training Service. If you have any further questions, or if you desire assistance in securing your reemployment rights, if any, you should contact the office nearest to you.

U.S. Department of Labor Program Highlights



Fact Sheet No. OASVET 90-10

REEMPLOYMENT RIGHTS FOR RETURNING VETERANS

Under the Veterans' Reemployment Rights (VRR) law, a person who leaves a civilian job in order to enter active duty in the Armed Forces, voluntarily or involuntarily, is entitled to return to his civilian job after his discharge or release from active duty if he or she meets the five basic eligibility criteria of the VRR law:

1. He or she must hold an "other than temporary" civilian job. (The job need not be "permanent.")
2. He or she must leave the civilian job for the purpose of going on active duty.
3. He or she must not remain on active duty longer than four years, unless the period beyond four years (up to an additional year) is "at the request and for the convenience of the Federal Government."
4. He or she must be discharged or released from active duty "under honorable conditions."
5. He or she must apply for reemployment with the pre-service employer or successor in interest within 90 days after separation from active duty.

A person meeting these criteria is entitled to reinstatement within a reasonable time to a position of like seniority, status and pay. Additionally, a returning veteran may be entitled to a better job than the one he or she left. In its first case construing the VRR law, the Supreme Court stated, "[The returning veteran] does not step back on the seniority escalator at the point he stepped off. He steps back on at the precise point he would have occupied had he kept his position continuously during [his military service]." This explanation, which is known as the "escalator principle", was later expressly ratified by Congress. Benefits generally found to be based on seniority, *i.e.*, length of service, are pensions, pay increases, missed promotions and missed transfers. Additionally, a veteran who

returns from the service to a different employer in the same industry covered by the same multi-employer pension plan remains covered by that plan and is entitled to military service pension credit.

Although the "escalator" normally goes up or remains in place, there are times when it goes down. If the employer can establish that the veteran would have been downgraded if he had remained continuously employed, he will be entitled to reemployment in the lower job. If the employer can establish that the veteran would have been laid off in accordance with seniority, he may be entitled to "reinstatement" into a layoff position, with recall rights. If the employer can establish that the veterans' pre-service employment relationship would have been severed altogether, the veteran may be entitled to no job at all, but he might be entitled to severance pay. The whole point of the VRR law is to place the returning veteran in the job he or she would have attained if he or she had remained continuously employed instead of going on active duty. Upon reemployment, a veteran may not be discharged without cause for a period of one year.

The VRR law applies to persons who are inducted (drafted) into the Armed Forces, to persons who volunteer directly for active duty, and to Reservists and members of the National Guard who are called to active duty voluntarily or involuntarily. In addition to performing active duty, reservists and members of the National Guard also perform initial active duty training, active duty for training, and inactive duty training.

Reemployment rights for persons performing these kinds of duty is discussed in the Department of Labor Fact Sheet OASVET No. 90-9, entitled "Job Rights for Reservists and Members of the National Guard."

When a person leaves a civilian job in order to perform active duty, he or she is not required

to request a leave of absence or even to notify the employer that military service is the reason the person is leaving the civilian job, although such a person should be encouraged to provide the employer as much information as possible. However, a Reservist or member of the National Guard must request a leave of absence when he or she leaves the civilian job to perform active duty for training or inactive duty training.

The VRR law is enforced by the Department of Labor, Veterans' Employment and Training Service. Attached is a list of the addresses and telephone numbers of offices to contact. If you have any further questions, or if you desire assistance securing your reemployment rights, if any, you should contact the office closest to you.
