

Coming Home: Service Members Bring Value, Benefits to Workplace

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Among the millions of Americans who are out of work are a significant number of returning servicemen and women. Many employers are distracted by the host of employment issues that can arise in employing these individuals and, to some extent, their families. Among the applicable laws are the **Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)** and the **Family and Medical Leave Act (FMLA)**.

While an understanding of the rights afforded to servicemembers by these statutes is essential, employing these individuals provides much more than a sense of patriotism for employers. **Specific tax incentives exist (and more have been proposed) to get these individuals back to work.** Many possess unique skills and abilities that would be an asset to any workforce. This article provides simple guidance about the laws that employers need to be aware of that impact the hiring of veterans and provide incentives for doing so.

USERRA mandates that employees be given a leave of absence to serve in the uniformed services and prohibits discrimination against employees because of their service. USERRA applies to all public and private employers regardless of size. This leave of absence can be as long as five (5) years and there are specific pronouncements on how the leave can be treated and what benefits the employee is entitled to while on qualifying leave. After the employee's period of service has ended, the employer has an obligation to re-employ the individual in the same or similar position depending on the length of the leave period.

The FMLA also has a leave provision specifically designed to protect injured servicemembers and their families. While employees must have worked at least 1,250 hours during the preceding twelve-month period, under USERRA, an employee returning from fulfilling his or her National Guard or Reserve Military obligation shall be credited with the hours of service that he or she would have performed (based on pre-service work schedule) but for the period of military service to meet this requirement.

Military Caregiver leave or Covered Servicemember leave permits a "spouse, son, daughter, parent, or next of kin" to take up to 26 workweeks of unpaid leave during a rolling twelve-month period to care for a injured member of the Armed Forces, National Guard, or Reserves. A covered servicemember also includes a veteran "who is undergoing medical treatment, recuperation, or

therapy for a serious injury or illness" if the veteran was a member of the armed services at any time in the five years preceding the medical treatment. The 12-month period to be used for purposes of tracking this leave entitlement begins when the employee starts using his or her leave. Therefore, it is possible that the 12-month period utilized for tracking other forms of FMLA leave may not be the same as what is being utilized for tracking this entitlement.

Importantly, an employee is not entitled to more than 26 total weeks of FMLA leave including Military Caregiver leave, during the 12-month period that commences with the need for leave. Therefore, an employee is not entitled to 26 weeks of leave to care for a family member under this provision, plus an additional 12 weeks of leave for other FMLA-qualifying reasons. Employees may utilize the 26-week entitlement for each servicemember and for each illness or injury incurred. An employee may take 26 weeks of leave in consecutive 12-month periods for family members covered by this provision.

While these laws may seem to discourage the hiring of our returning servicemembers, employers who wisely elect to recruit such individuals can make a significant dent in their federal taxes. Currently, the **Work Opportunity Tax Credit (WOTC)** Program provides up to a \$2,400 credit if the hired veteran is 1) a member of a family that has received Food Stamps for at least 3 consecutive months in the 15 months prior to the date of hire; or 2) a person with a disability who is participating in a vocational rehabilitation program through US Veteran's Administration. The aforementioned credit increases to \$4800 for disabled veterans who were 1) hired within one year of having been discharged, or released from active duty, or 2) unemployed for any six of the last 12 months. In addition, a majority of states offer partial, or total exclusions, from state-level taxes for combat and/or other military compensation paid to troops/reserves. President Barack Obama also recently proposed a \$2,400 tax credit for hiring an unemployed veteran and \$4,800 for hiring a veteran who has been unemployed for six months or longer. The existing tax credit for hiring veterans with a service-connected disability would also be raised to \$9,600.

Many federal and state programs are also available for these men and women to receive training and be reintegrated into the workforce. Several resources, including Employer Support of the Guard and Reserve (www.esgr.org) and the Department of Labor's VETS Program (<http://www.dol.gov/vets/>), provide services to servicemembers and employers to assist in these efforts. The Kentucky Office of Employment and Training also has Veterans Employment Representatives and Disabled Veteran Outreach Specialists specifically assigned to assist veterans with their employment and training needs (<http://oet.ky.gov/des/veteran/veteran.asp>).

In short, an employer in today's job market would be wise to actively recruit individuals who have returned from active duty in the military or have the prospect of being called to active duty at some point during their employment. These employees bring valuable skills and hiring them should be a serious consideration of any employer in this economic climate.

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