

O Say Can You See? Federal Courts Say Military Members Entitled to Paid Leave

By **Monica L. Frantz**

This week, the federal appellate court in Pennsylvania ruled that workers who take leave to serve in the military must be paid for that time if their employers offer other forms of comparable short-term paid leave. The Third Circuit Court of Appeals held that paid leave is a “right and benefit” under the Uniformed Services Employment and Reemployment Rights Act (USERRA). **That is, if an employer provides paid leave for some reasons (such as jury duty, bereavement, and illness), then it must also pay servicemembers who are on military leave.**

The decision was issued in a case brought by a Navy reservist who sued his employer seeking regular wages for the time he spent on military leave. He claimed that his employer violated USERRA—the federal law granting job protections to those who serve in the military—by providing paid leave to employees for various reasons but not for military leave. The Court sided with the reservist, concluding that USERRA “does not allow employers to treat servicemembers differently by paying employees for some kinds of leave while exempting military service.”

The decision in the Third Circuit case is similar to a Seventh Circuit case from February in which a United Airlines pilot who served on reserve duty for the U.S. Air Force brought a class action lawsuit on behalf of himself and other pilots who took periodic unpaid leaves of absence to attend military training.

These decisions are only legally binding in Pennsylvania, New Jersey, Delaware, Illinois, Indiana, and Wisconsin. However, with consistent decisions by these two influential federal appellate courts, it is likely that courts nationwide will rule similarly in the inevitable future cases.

We are recommending that all employers begin reviewing their military leave policies and assess the benefits being provided to employees. That is, if you pay employees for *some* kinds of absences, you’ll likely need to pay for *military leave* as well.

For additional guidance regarding this topic, please contact one of the listed Roetzel attorneys.

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