Sec. 1. EMPLOYEE MILITARY LEAVE

Any Raul Yzaguirre Schools for Success ("RYSS") employee who is absent from employment due to voluntary or involuntary service in the uniformed services is entitled to certain rights and benefits under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) if:

1. The employee (or an appropriate officer of the uniformed service in which the employee serves) has provided written or verbal notice of such military notice to RYSS (unless notice cannot be given because of military necessity or is unreasonable or impossible to provide);
2. The cumulative length of the absence and all previous absences from employment with RYSS does not exceed five years; and
3. The employee reports to or submits an application for reemployment to RYSS and applies with all other applicable requirements.

For purposes of leave under USERRA, "uniformed service" means the Armed Forces; the Army National Guard, and the Air National Guard when an individual is engaged in active duty for training, inactive duty training, or full-time National Guard duty; the commissioned corps of the Public Health Services; and any other category of persons designated by the President of the United States in time of war or emergency.

The term "service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty; active duty for training; initial active duty for training; inactive duty training; full-time National Guard duty; state active duty for a period of 14 days or more; state active duty in response to a national emergency declared by the president under the National Emergencies Act, 50 U.S.C. 1601 et seq.; state active duty in response to a major disaster declared by the president under Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5170; a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty; a period for which a system member of the National Urban Search and Rescue Response System is absent from a position of employment due to an appointment into federal service under Section 327 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act; and a period for which a person is absent from employment for the purpose of performing funeral honors duty.

The term "state active duty" means training or other duty, other than inactive duty, performed by a member of the National Guard of a state not under 32 U.S.C. 502 or under U.S.C. Title 10; in service to the governor of a state; and for which the member is not entitled to pay from the federal government.

A person who is re-employed by RYSS under USERRA is entitled to the seniority and other rights and benefits that he or she held on the date that uniformed service commenced, plus the additional

© 2023 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.

seniority, rights, and benefits that would have been attained had he or she remained continuously employed.

38 USC 4303(13), (15)-(16), 4316(a).

a. *Exception*

RYSS is not required to re-employ an employee if:

1. Circumstances at RYSS have changed so as to make re-employment impossible or unreasonable;
2. The re-employment of the employee would cause undue hardship for RYSS;
3. The employment with RYSS from which the employee leaves to perform uniformed service is for a brief, nonrecurrent period and there is no reasonable expectation that employment with RYSS will continue indefinitely or for a significant period; or
4. The employee is separated from uniformed service with a dishonorable or bad conduct discharge, under other than honorable conditions, or in other circumstances outlined in federal regulation at 20 C.F.R. § 1002.135.

38 U.S.C. 4312(d).

b. *Termination of Leave Entitlement*

An employee's entitlement to USERRA leave by reason of the service of such person in one of the uniformed services terminates upon the occurrence of any of the following events:

1. Separation from uniformed service with a dishonorable or bad conduct discharge;
2. Separation from uniformed service under other than honorable conditions, as characterized pursuant to regulations prescribed by the U.S. secretary concerned; or
3. Dismissal permitted under or a dropping from the rolls pursuant to 10 U.S.C. 1161(a) (dismissal of commissioned officers).

38 U.S.C. 4304.

© 2023 Schulman, Lopez, Hoffer & Adelstein, LLP
All rights reserved.
SLHA Schulman, Lopez, Hoffer & Adelstein, LLP