

TOUR OF DUTY: An Overview of Employer/Employee Rights & Responsibilities related to Military Service

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Presented by:

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Topics Included

- Veterans' Preference Rights
- Military Leave – Washington Law
- Uniformed Services Employment and Reemployment Rights Act (USERRA)



Veterans Preference Rights

- 2 types of veterans' preference for public employment
- General Preference - RCW 73.16.010
- Percentage Point Preference –RCW 41.04.010



Veterans Preference Rights

- Can a Veteran get both preferences?



NO!

Veterans Preference Rights

Which Preference Applies?



Veterans Preference

- Use of competitive examination = Percentage Point Preference under RCW 41.04.010
- No competitive examination = General Preference under RCW 73.16

Veterans Preference

- General Preference:

Veterans' preferred
in appointment
and employment



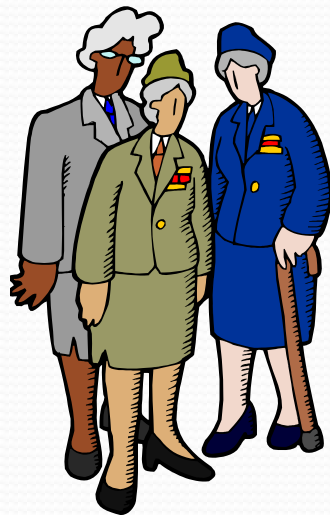
Veterans Preference

- Who qualifies for general preference?
 - An honorably discharged soldier, sailor, or marine who is a veteran of any war of the U.S., or
 - A veteran of any military campaign for which a campaign ribbon was awarded, or
 - A widow or widower of the above, or
 - A spouse of an honorably discharge veteran who has a service connected permanent and total disability

Veterans Preference

Is a veteran automatically entitled to the position under the general preference?

- No, a veteran does not have an absolute preference over any non-veteran seeking the same job.



Veterans Preference

- **Percentage Points Preference:**
 - (Scoring criteria preference)

In all **competitive examinations** shall give a scoring criteria status to **all veterans as defined in RCW [41.04.007](#)**, by adding to the **passing mark, grade or rating only**, based upon a possible rating of one hundred points as perfect a percentage

Veterans Preference

- added percentage points

- RCW 41.04.007 defines Veteran as:
 - A person who is honorably discharged and is a member of
 - Any branch of armed forces of U.S. & has fulfilled his or her initial military service obligation;
 - Women's air force service pilots;
 - Reserves, National Guard, Coast Guard and has been called into federal service by a presidential select reserve call-up for at least 180 cumulative days;
 - Civil service crewmember of a U.S. army transport service or naval transportation service vessel in ocean going service from 12/7/1941-12/31/1946;
 - Member of Philippine armed forces/scouts during armed conflict from 12/7/1941- 8/15/1945; or
 - U.S. merchant mariner with an oceangoing vessel operated in Korean or Vietnam waters during the statutorily designated timeframe, and who received military condemnation.

Veterans Preference Points - Hiring

- Ten Percent if served during:
 - Period of War, or
 - Armed Conflict; AND
 - Does not receive military retirement

FIRST APPOINTMENT
ONLY

- Five Percent if did **not** serve during:
 - Period of War, or
 - Armed Conflict; AND
 - Does not receive military retirement

FIRST APPOINTMENT
ONLY

Veterans Preference Points - Promotions

- **Five percent if veteran employee:**
 - **called to active military service from public employment**
 - **promotional examinations**

For First Promotion Only

(Note: no required period of active military service)



Veterans Preference Points - Promotions

- What does “*called to active military service*” mean?



MILITARY LEAVE – WA LAW

- Public Employers must grant a military leave of absence not exceeding 21 days - RCW 38.40.060.
- To allow employee to report for required military duty, training or drills including those in the national guard or on active status.

MILITARY LEAVE – WA LAW

- Leave of absence is granted when:
 - Member of WA national guard, army, navy, air force, coast guard or marine corps reserve of the U.S., or of any organized reserve or armed forces of U.S.
 - Voluntary or involuntary call to active duty



MILITARY LEAVE – WA LAW

- Is any of the military leave of absence paid?
- All 21 days is paid!
- Receive 21 days during each year beginning October 1 and ending September 30

MILITARY LEAVE – WA LAW

- What if your call to active duty or training is longer than 21 days?
 - Temporary leave of absence is granted but without pay
WAC 357-31-370
 - Employment will be reinstated per requirements of
RCW 73.16 or USERRA



MILITARY LEAVE – WA LAW

- Are the seniority, anniversary, or increment dates affected by being on military leave without pay status?
 - Seniority & Salary are credited as if employee never left
 - Anniversary date is not adjusted
 - Credit shall be given to rate of vacation leave accrual, but individual does not accrue vacation leave while on LWOP



FAMILY MILITARY LEAVE – WA LAW

- Military Family Leave Act RCW 49.77
- Washington State supports the families of military personnel by providing a spouse with leave to spend time with his or her military spouse prior to deployment or during leave from deployment.

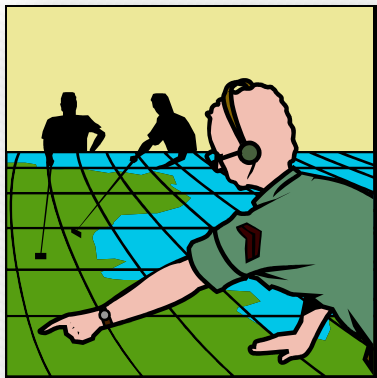


FAMILY MILITARY LEAVE – WA LAW

- How much leave is provided? 15 days
- Is the leave paid? Unpaid (but may substitute)
- How often? 15 days per deployment
- When can I use leave?
 - **A period of military conflict** exists, and
 - Receive notification of impending call or order & before deployment, or
 - During military spouse's leave from deployment

FAMILY MILITARY LEAVE – WA LAW

- Period of military conflict means:
 - A period of war declared by US Congress, executive order of President or when a member of a reserve component of the armed forces is ordered to active duty pursuant to 10 U.S.C. 12301 & 12402.



FAMILY MILITARY LEAVE – WA LAW

- To take leave you must:
 - Provide notice within 5 business days of receiving official notice of an impending call or order to active duty or of a leave from deployment



FAMILY MILITARY LEAVE – WA LAW

- Will I have a job when I return from leave? Yes!
RCW 49.77.030(2)
- Must be restored to the position of employment held by the employee prior to commencement of leave or to an equivalent position . . . RCW 49.78.280
- Equivalent Position – what is that?
 - same pay, benefits and other terms & condition, and
 - within a 20 mile radius of former position

USERRA Overview

- Underlying purpose of USERRA
- What are the requirements for a returning service member to gain protections of USERRA?
- What are the protections of USERRA?

USERRA Background Information

In general, USERRA:

Prohibits **employment discrimination** on basis of past military service, and current or future military obligations

Grants **reemployment rights** for persons absent from employment because of military service

Preserves **benefits** for persons absent from employment because of military service

Prerequisites for Coverage

- Employee must hold a civilian job
- Absence due to military service
- Advance notice of military service
- Military service cannot exceed 5 years
 - With certain periods excluded
- Report back in a timely manner
- Separation under honorable conditions



Absence Due to Military Service

- “Service in the uniformed services” includes:
 - Active and Reserve components of the Armed Forces of the United States (to include National Guard duty under Federal authority);
 - Public Health Service;
 - As designated by President in emergencies;
 - Voluntary or involuntary call-ups; and
 - Intermittent disaster response service/training
- USERRA does NOT cover national guard duty in state status for disaster relief, riots, etc.

Advance Notice to Employer

- Notice should be in writing
- No time frame specified in USERRA but Department of Defense recommends at least 30 days notice
- Exception to notice requirement: Military necessity or unreasonableness

Military Service Cannot Exceed 5 Years

- 5 year rule: Period of military service cannot exceed 5 cumulative years BUT
- 5 year rule does NOT include:
 - National Guard Training, Special Reserve, involuntary recall/retention, and/or service in time of partial mobilization, full mobilization or presidential selected reserve call-up



Report Back Timely

Deployed:

- Up to 30 days: report to work after safe travel + 8 hours
- 31 - 180 days: submit application for reemployment w/in 14 days
- 181 days or more: submit application for reemployment w/in 90 days
- Disabled/Impaired: up to 2 years to request reinstatement & employer must make reasonable accommodations unless doing so is an undue hardship
- If you do not meet the timelines: normal employer rules apply

Reapplication must indicate at a minimum: you formerly worked there, you are returning from military service and are requesting reemployment pursuant to USERRA



USERRA PROTECTIONS

- Protection from discrimination due to military status
- Prompt reemployment / training
- Accrued Seniority
- Health Insurance Coverage
- Special protection from discharge: Good Cause



Prompt Reemployment & Training

- USERRA defines prompt depending on length of service:
 - Fewer than 90 days then reinstatement is immediate
 - More than 90 days then reinstatement should take only a matter of days.
- In the position . . . in which the person would have been employed if the continuous employment of such a person had not been interrupted or a position of like seniority, status, and pay the duties of which the person is qualified to perform.

Prompt Reemployment & Training

- Employer is required to use reasonable efforts to re-qualify the employee for the job. Reasonable efforts do not cause undue hardship for employer.
- Disability: any other position which is equivalent in seniority, status, or pay, or position that is the nearest approximation to that equivalent

Seniority

- “A person who is reemployed under this chapter is entitled to the seniority and other rights and benefits determined by seniority that the person had on the date of the commencement of service in the uniformed services plus the additional seniority and rights and benefits that such person would have attained if the person had remained continuously employed.”

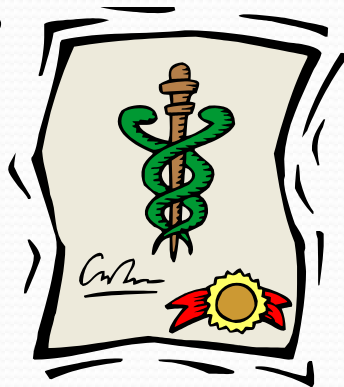
Health Insurance Coverage

- Upon return to civilian job, employee must be reinstated in the employer's health care plan.
- Employer cannot impose any waiting period or pre-existing condition exclusions except as determined by Dept. of Veterans Affairs.
- Offers continued coverage at option of employee during military service.



Health Insurance Coverage

- If you elect to continue coverage, you must pay the following depending on your length of service:
 - Under 31 days: regular employee share of premiums
 - 31 or more days: no more than 102% of the full premium under the plan (private), or
 - Take 1 day of leave per month & pay regular employee share of premiums



Special Protection From Discharge

- Grace Period – Can't be discharged from employment (except for cause)
 - < 30 days – no grace period
 - 31-180 days – 180 day grace period
 - >180 days – 1 year grace period

Questions?

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Susan Sackett DanPullo graduated from University of Puget Sound, School of Law, (Currently known as Seattle University Law School) in 1994 Cum Luda. She worked for the Thurston County Prosecutors Office for approximately eight years. During her time at the prosecutor's office she prosecuted misdemeanor, juvenile, and felony crimes. She also developed the Thurston County Youth Court program. Ms. DanPullo then worked as a public defender in King County for a year before joining the Washington State Attorney General's Office. As an assistant attorney general Ms. DanPullo has worked in several divisions including the Criminal Justice Division, where she developed the criminal program for prosecution of fraud cases arising from the Department of Labor and Industries. She currently works in the Labor and Personnel Division where she handles labor and personnel matters for state agencies. She is one of the Section Chiefs and leads the DSHS team. Ms. DanPullo is also on the Diversity Advisory Committee and has a strong interest in creating a diverse and inclusive work environment and community.