



www.HRhero.com

# FLORIDA

## EMPLOYMENT LAW LETTER

Part of your Florida Employment Law Service

G. Thomas Harper, Editor  
www.HarperGerlach.com

Vol. 21, No. 9  
November 2009

### What's Inside

#### **Crisis Preparedness**

Learn how to best prepare for this year's flu season ..... 2

#### **Arbitration**

How much consideration is required to make an agreement binding? ..... 3

#### **Benefits**

Make sure you are in compliance with new mental health parity law ..... 4

#### **FL Court Shorts**

Court clarifies validity of using waivers for future ADEA claims ..... 5

#### **FL News in Brief**

EEOC charges local packing companies with retaliation, discrimination ..... 7

### On HRhero.com

#### **Military Service**

The U.S. government is withdrawing a large number of troops from Iraq. What are your obligations to returning employees who are looking to reenter the workforce? At www.HRhero.com, you can find the following tools to help you follow the law:

- HR Executive Special Report — You & USERRA: An Employer's Guide to Military Leave, [www.HRhero.com/special\\_reports/militaryleave.shtml?M818](http://www.HRhero.com/special_reports/militaryleave.shtml?M818)
- HR Sample Policy — Military/Reserve Leave, [www.HRhero.com/lc/policies/508.html](http://www.HRhero.com/lc/policies/508.html)

© M. Lee Smith Publishers LLC

### MILITARY SERVICE

## Greater protections for active Florida National Guardmembers

*In July 2009, the amendments to Florida's military affairs law, which afford greater protection to National Guardmembers returning to work from state active duty, became effective. Section 250.482 of the statute fills in the gaps left by the Uniformed Service Employment and Reemployment Rights Act of 1994 (USERRA). Let's take a look at the amendments and how they may affect you.*

### **USERRA**

USERRA states that returning service members must be reemployed with the same seniority in the job they would have attained had they not been absent for military service. Additionally, they are entitled to the same status, pay, and other rights and benefits determined by seniority. There are, however, exceptions to the requirement, including if your circumstances have changed so that reemployment is impossible, unreasonable, or would impose an undue hardship on operations. The law does not apply to state military duty or state call-ups by the National Guard.

### **Florida military affairs law and amendments**

Florida's military affairs law, Section 250.482, requires that troops ordered into active state service not be penalized by either private or public employers or postsecondary institutions.

Troops returning from active service are required to promptly notify their employer of their intent to return to work. The amendments to the law now entitle the employee returning from active service to:

- the seniority he had attained on the date he was called to state active duty and any other rights and benefits resulting from the seniority; and
- any additional seniority he would have attained had he remained continuously employed and the rights and benefits that come with that seniority.

In addition, you are not allowed to require an individual returning from active duty to use vacation, annual, compensatory, or similar leave for the period the member was on active duty. However, the employee may elect to do so.

The amendments provide four exceptions to the reinstatement requirement. Specifically, you are exempt from providing reinstatement if:

- (1) business circumstances have changed to the extent that reemployment is impossible or unreasonable;
- (2) reinstatement would impose an undue hardship on business operations;
- (3) the position the Guardmember left to enter active duty was for a brief,

Harper Gerlach PL — [www.HarperGerlach.com](http://www.HarperGerlach.com) — is a member of the *Employers Counsel Network*



nonrecurring period and there was no reasonable expectation that it would continue indefinitely or for a significant period; or

- (4) you had legally sufficient cause to terminate the Guardmember at the time he left for state active duty.

However, if you choose not to reinstate, the burden is on you to show that one of the four exceptions exists. Also, the law is specific in its application to only members returning from "active duty," which is defined by the law.

### ***Bottom line***

The amendments to Florida's military affairs law bring the statute in line with many of USERRA's requirements. The law extends the USERRA-type protections to troops who are called up for active duty in the service of the state. When faced with an employee seeking to return to his job after an absence due to military service, be aware that he is protected by both federal and state laws. ❖

For a copy of this article please send an e-mail request to Tom Harper at:  
[gth@harpergerlach.com](mailto:gth@harpergerlach.com)

To subscribe to the Florida Employment Law Letter or for more information on this monthly newsletter visit:  
<http://hrhero.com/flemp.shtml>