

SCENARIO #1

5-year service limit

Background

- Alex is a salaried individual contributor with a steady tenure progression and has been with the company for 9 years.
- During that time, Alex has taken multiple military leaves for active duty, training, and emergency activations related to National Guard service, totaling 5 years and 4 months.
- HR notices that Alex's total time away appears to exceed 5 years and raises concerns about whether USERRA protections still apply.
- Alex has notified the company of another upcoming deployment.

Questions for the table

- 1** Is the employee eligible for USERRA protection for the upcoming deployment? Why or why not?
- 2** How does the 5-year cumulative limit apply here?
- 3** Which types of service may be excluded from the 5-year calculation?
- 4** What documentation can the employer request — and when?
- 5** How should the employer proceed before concluding USERRA protections no longer apply?

SCENARIO #2

Escalator principle and reemployment

Background

- Jordan was a high-performing employee who, before leaving for an 18-month voluntary active-duty deployment, was eligible for a promotion.
- During Jordan's absence, peers in similar roles were promoted and received pay increases as part of a restructuring.
- When Jordan returns within 90 days after completion of deployment, the employer offers reemployment in the same role held before deployment, at the same pay rate.

Questions for the table

- 1 Is the employee eligible for USERRA reemployment protection?
- 2 Does the escalator principle apply in this situation?
- 3 How should the employer determine the correct reemployment position?
- 4 What if the promotion was not automatic or guaranteed?
- 5 What steps should the employer take if the employee needs training for the escalator position?

SCENARIO #3

Documentation, verbal notice and orders

Background

- Taylor, an entry-level employee employed for 20 months, verbally informs their manager that they will need time off for National Guard training starting in two weeks.
- No written notice or military orders are provided.
- The manager asks HR whether they can delay approval until Taylor submits official documentation.
- Taylor leaves for training as scheduled without providing written confirmation.

Questions for the table

- 1 Is the employee eligible for USERRA protection based on verbal notice alone?
- 2 Can the employer require military orders before approving leave?
- 3 When, if ever, may the employer request or require documentation?
- 4 How should the employer document the leave internally?
- 5 What risks arise if the employer delays or denies the leave?

SCENARIO #4

USERRA vs. FMLA confusion points

Background

- Morgan has been employed for 10 months and has completed 1,100 hours of service when they are called to active duty. Morgan tells the employer they are unsure of leave length and may not return to work.
- Morgan’s deployment ultimately lasts one year, and Morgan applies for reemployment.
- The employer tells Morgan their position was filled but hires Morgan to a different, less senior position.
- After working for 3 months, Morgan requests FMLA leave to care for their father.
- The employer determines Morgan is not eligible for FMLA because they have not completed 12 months of service and denies the FMLA leave.

Questions for the table

- 1** Is the employee eligible for FMLA leave? Why or why not?
- 2** How should the employer calculate the months of service and hours worked for this employee, regarding FMLA eligibility?
- 3** Should the employer have reemployed Morgan to their original position?
- 4** Does the employee’s uncertainty about returning change the employer’s obligations?
- 5** How should HR respond to the employee’s statement that they “might not return”?