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Not Necessary to Establish Discriminatory Intent under Section 4312**

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The United States District Court for the Central District of California recently (24 September 2002) decided an important case under the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. 4301-4333. The case is *Jordan v. Air Products and Chemicals, Inc.*, 225 F. Supp. 2d 1206 (C.D. Cal. 2002)..

Kenneth Jordan gave proper advance notice that he would be away from his job for Naval Reserve training between 31 July and 17 August 2000. He reported back to work at the start of the day on 21 August 2000, his next regularly scheduled workday. The employer fired him immediately.

The case was decided upon cross motions for summary judgment. The employer contended that it was entitled to summary judgment because Jordan had presented no evidence that the employer's firing or refusal to rehire Jordan was based on discriminatory intent. Section 4311 of USERRA, the anti-discrimination provision, makes it unlawful to deny "re-employment" (among other things) because of certain protected activities (joining or applying to join a uniformed service, performing or applying to perform service in the uniformed services, etc.). [Section 4311 is discussed in detail in Law Review 11.] The employer contended that Jordan was required by section 4311 to prove that his membership in the Naval Reserve or obligation to perform service was a motivating factor in the employer's decision.

The court rejected the employer's contention. The court held that USERRA creates a mandatory duty [emphasis in original] for the employer to re-employ a returning employee who meets the eligibility criteria set forth in USERRA's section 4312. [Those eligibility criteria are discussed in detail in Law Reviews 5-7.] If you meet those criteria, you are entitled to re-employment as a matter of federal law, regardless of the reason why the employer does not want to re-employ you.

If you meet USERRA's eligibility criteria, you are entitled to be treated (for seniority, pension, and health insurance purposes) essentially as if you had been continuously employed. [See generally Law Reviews 4, 8, 9, 10, and 40.]

* Military title used for purposes of identification only. The views expressed in these articles are the personal views of the author and are not necessarily the views of the Department of the Navy, the Department of Defense, the Department of Defense or the U.S. government.