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Immediate Reinstatement of Air National Guard Member Who Had Smallpox Vaccination

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Q: I am the civilian lawyer for the Tennessee National Guard, and I have utilized your Law Review articles on ROA's Web site. We have a nurse in the Tennessee Air National Guard who is also a nurse for the regional hospital of the U.S. Department of Veterans Affairs (VA). He received a smallpox vaccination during a drill weekend, as part of the Department of Defense vaccination program. The VA hospital has said that he must wait 21 days for reinstatement to his civilian job, because during that period he could conceivably "infect" patients with whom he comes in contact. How does the Uniformed Services Employment and Reemployment Rights Act (USERRA) apply to this situation?

A: It appears to me that this Air National Guard member meets USERRA's eligibility criteria as to prior notice, performance of service in the uniformed services, and reporting back to work in a timely manner. Accordingly, he was entitled to immediate reinstatement in his civilian job after his drill weekend. I invite your attention to Law Review 8 (December 1998 and on the ROA Web site: www.roa.org).

I consulted Col Ronald Harris, USAFR, concerning the medical questions that are pertinent to this case. He currently serves on ROA's executive committee as one of the Air Force committeemen, and he has served as ROA's national surgeon. In his Air Force Reserve capacity, Colonel Harris is the deputy director of the Milvax Agency for Medical and Reserve Affairs, Office of the Surgeon General of the Army. Colonel Harris has informed me that there is no reasonable medical basis for making this nurse (or others similarly situated) wait 21 days to be reinstated in his civilian job, so long as he adheres to the necessary infection-control procedures. The Centers for Disease Control (CDC) also shares this opinion. This nurse and all other medical personnel should be adhering to those procedures, whether or not they have been vaccinated recently.

The bottom line is that this Air National Guard member was entitled to immediate reinstatement. The VA should reinstate him now and should pay him back pay. I have urged the Veterans' Employment and Training Service, U.S. Department of Labor, to take a strong stand in this and all similar cases.
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* 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.