

LAW REVIEW 855

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CATEGORY: 1.17-- USERRA Discrimination

Mobilized Reservist Should Not Miss Out on Promotion Opportunities

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“[Federal] Agency promotion plans must provide a mechanism by which employees who are absent because of ... uniformed service can be considered for promotion.” 5 C.F.R. 353.106(c).

This subsection is part of the Office of Personnel Management regulations promulgated to implement the Uniformed Services Employment and Reemployment Rights Act (USERRA) within the federal government. It is my impression that this requirement is seldom honored by federal agencies.

Joe Smith, a federal employee, was recalled to active duty in the Army Reserve, and he will spend most of 2008 in Iraq. While he is on active duty, a promotion opportunity will come up at the agency—something exactly within his interest and expertise. Joe will not learn of the opportunity, much less have the chance to apply. We really don't want Joe to concentrate on his civilian job while he is serving our country at the tip of the spear. But at Joe's agency, opportunities like this one come up infrequently. If Joe misses this opportunity, it will likely be many years before another such opportunity arises.

I have a suggestion to address this issue. Before he departs his civilian job to go on active duty, Joe should give a *limited power of attorney* to a trusted colleague at work, someone who is familiar with Joe's qualifications and interests. The colleague will then use the power of attorney to apply for promotion opportunities at work while Joe is away on active duty. If the agency refuses to consider the application on the grounds that Joe is not present to make the application in person, or to be interviewed, the agency is violating section 4311(a) of USERRA, 38 U.S.C. 4311(a).