LAW REVIEW 1038

Proposed Legislation To Promote Hiring of Recent Veterans

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1.2—USERRA-Discrimination Prohibited

The Department of Labor (DOL) reports that the unemployment rate among veterans age 18-24 is 21%. Among non-veterans in the same age group, the unemployment rate is only 16.6%. For decades, military recruiters and recruiting advertising have claimed that serving in the military prepares the individual for better employment prospects after separation. It appears this trend could be changing

There are several reasons why employers see recent military service as a disqualification rather than a qualification for civilian employment, but most importantly for recent veterans in the under-25 age group, they can be called back to active duty even if affiliations with National Guard or Reserve units have ceased.

Let us assume that Joe Smith graduated from high school in June 2005, just after his 18th birthday, enlisted in the Army, and reported to boot camp in September 2005. Joe served on active duty for four years, including two tours in Iraq, and left active duty in September 2009. Joe did not affiliate with the Army Reserve or Army National Guard after he left active duty. Nonetheless, he will be a member of the Individual Ready Reserve (IRR) until September 2013, when he completes his eight-year obligation and receives an honorable discharge.

Until recent years, recall from the IRR was only a theoretical possibility, but no longer. Civilian employers are very much aware of the possibility (indeed, the likelihood) that someone in Joe's status will be called back to active duty. This possibility of recall is a powerful disincentive to hiring someone like Joe— as he may be called away from the job shortly after the employer incurs the cost of training him.

Section 4311(a) of the Uniformed Services Employment and Reemployment Rights Act (USERRA) makes it unlawful for an employer to discriminate *in initial employment* based on an individual's obligation to perform service in the uniformed services. (Discrimination with respect to promotions and retention in employment is also unlawful.) See 38 U.S.C. 4311(a). Deciding not to hire an individual like Joe Smith because of an active duty recall possibility is clearly unlawful, but if the employer is clever and subtle such discrimination may be most difficult to prove. Moreover, Joe may not want to start a new job with a new employer by suing or threatening to sue.

In dealing with the elevated unemployment rate among recent veterans, we need "carrots as well as sticks" (in the memorable words of the Honorable Dennis McCarthy, the Assistant Secretary of Defense for Reserve Affairs and former ROA Executive Director). On May 24, 2010, Sen. Max Baucus (Montana) introduced S. 3398, the proposed "Veteran Employment Transition Act of 2010" (VETA). The next day, Rep. Timothy J. Walz (Minnesota) introduced an identical bill (H.R. 5400) in the House of Representatives.

If enacted, VETA would create a new target group for the Work Opportunity Tax Credit. The target group would consist of veterans who have left active duty in the last five years. VETA would eliminate the requirement (under current law) that the veteran must have received unemployment compensation in order to be eligible for this employer hiring incentive.

VETA would also create a simplified and likely more effective process requiring the military service to educate the separating service member about this program and to give the member documentation of eligibility. The idea is that the recent veteran would take that documentation to prospective employers and would quickly find employment.

Readers: please contact your Senators and your Representative and urge them to support S. 3398 and H.R. 5400.

If you have questions, suggestions, or comments, please contact Captain Samuel F. Wright, JAGC, USN (Ret.) (Director of the Service Members Law Center) at swright@roa.org or 800-809-9448, ext. 730.