

LAW REVIEW 1102

USERRA's Five-Year Limit Applies to Employer Relationship

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1.3.1.2—Character and Duration of Service

Q: I have a question about the five-year limit under the Uniformed Services Employment and Reemployment Rights Act (USERRA). I went to work as a teacher for our local school district in 1999. In 2002, I was called to active duty for a year, and then I remained on active duty voluntarily for another seven years. I finally left active duty in July 2010. At that point, I studied your Law Review 206. I determined that my first year of active duty (2002-03) was exempt from the five-year limit, but the other seven years were not exempt. I understood and acknowledged that I was not eligible for reemployment in July 2010, because I was past the five-year limit.

In August 2010, I learned of a vacancy announcement by the school district, and I applied. In my application, I made clear that I was not applying for reemployment and that I understood that I was not entitled to reemployment, because I had exceeded the five-year limit. The district found me to be the best qualified among the 25 applicants, and I was hired, at the start of the 2010-11 school year. I have been treated as a brand-new rookie school teacher, just like I was in September 1999. I have not been given seniority or pension credit for my 1999-2002 employment by the district or for the 2002-10 military service.

Now, I have a new opportunity to do another six months of voluntary Active Duty for Special Work (ADSW). I recognize that this ADSW period is not exempt from the computation of the five-year limit under USERRA. If I leave my new school district job for another six-month ADSW period, will I have the right to reemployment under USERRA? When I started a new job with the school district in September 2010, was my five-year clock rewound?

A: I think that the answer is yes to both questions.

As I explained in Law Review 0766, and other articles, you must meet five eligibility criteria to have the right to reemployment under USERRA. In addition to the five-year limit, you must also show that you left a civilian position of employment for the purpose of performing service in the uniformed services and that you gave the civilian employer prior oral or written notice. You must show that you were released from the period of service without a punitive (by court martial) or other-than-honorable discharge and that you made a timely application for reemployment, after release from the period of service.

If you meet all five of these criteria, you are entitled to reemployment by the pre-service employer. If you fail to meet one or more of the criteria, you are not entitled to reemployment.

The five-year limit is set forth in section 4312(c) of USERRA as follows: "Subsection (a) [the right to reemployment] shall apply to a person who is absent from a position of employment by reason of service in the uniformed services if such person's cumulative period of service in the uniformed services, *with respect to the employer relationship for which a person seeks reemployment*, does not exceed five years, except that any such period of service shall not include any service-- ... [eight exemptions from the computation of the five-year limit]." 38 U.S.C. 4312(c) (emphasis supplied).

When you restarted your teaching career in September 2010, as a rookie teacher again, you started a new *employer relationship* with the school district. Thus, you have a fresh five-year limit for this new employer relationship. Thus, if you leave your teaching job for a new six-month ADSW period, you will have the right to reemployment after the end of that period. Of course, you must meet the other eligibility criteria with respect to prior notice to the school district, release from the new period of service without a bad discharge, and timely application for reemployment after release from this new period of service.