

LAW REVIEW 1249

May 2012

NY Court: Calculations for Military and Regular Leave Benefits Not the Same

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1.1.1.7—USERRA Applies to State and Local Governments

1.3.2.11—Vacations, Holidays and Days Off

1.4—USERRA Enforcement

State Military Leave Laws—New York

Wright v. City of Jamestown, Index No. K1-2007-1805

After more than four years of litigation, an upstate New York Supreme Court (trial court) held that a local police department's method of pro-rating vacation and leave time for officers on extended military leave violates the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).

The Chautauqua Supreme Court found that the City of Jamestown Police Department improperly pro-rated vacation and leave time of an officer and Army Reservist who was repeatedly called to active duty between 2002 and 2010. In granting Detective Timothy H. Wright's cross-motion for summary judgment on March 23, 2012, the court in Mayville, N.Y. said he is "entitled to receive his vacation and leave time as if he had been continuously employed."

Since 1987, Wright has worked for the Jamestown Police Department. Wright is also a member of the U.S. Army Reserve. During the summer of 2002, he was called to active duty and deployed to Afghanistan for a year. In 2004, he was again called to active duty and deployed to Iraq for a year. Each time he returned from active duty and recommenced work at the police department, he received little to no vacation time despite his years of service. Contrary to the City's collective bargaining agreement (CBA), the City improperly based vacation and leave entitlements on the number of days worked the previous year.

After Wright was again called to active duty in 2007, he sued the City and the police department for violating his USERRA rights. Wright has alleged that the City denied him benefits he was entitled to under 38 U.S.C. §4316(a), but he also alleged that the City retaliated against him on the basis of his military service in violation of 38 U.S.C. §4311(b) by taking adverse actions against him, such as negative write-ups and counseling. Additionally, he claimed his military service was a motivating factor in the police department's denial of promotion in violation of 38 U.S.C. §4311(a) and NYS Civil Service Law.

The city claimed that it did not discriminate against Wright; it merely treated him as it would treat any other police officer on authorized leave. The court, however, noted that this rationale strayed from the intent of 38 U.S.C. §4316(a), which entitles a service member to "benefits that such person would have attained if the person had remained continuously

employed.” It is important to note that the City’s CBA explicitly conditioned vacation and leave entitlements on years of service and not on work performed in the prior year. The terms of that agreement were clear and unambiguous and the City’s policy of pro-rating Wright’s vacation entitlement denied him benefits to which he was otherwise entitled.

The court has yet to decide Wright’s claim for denial of promotion and retaliation; however, the court refused to grant the City’s motion for summary judgment on these two issues. Unfortunately, Wright will have to wait a little longer to receive his vacation he so deserves. The City has appealed the decision to the New York Supreme Court, Appellate Division, Fourth Department.

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