

Employees in the Armed Forces

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SUMMARY

Architecture firms need to be aware of federal employment regulations for employees enrolled in the military.

WHEN EMPLOYEES ARE MOBILIZED

Many professional services firms face the risk of a mobilization of National Guard and Reserves personnel. Mobilization of an employee confers obligations on the employer that must be managed properly. All firms should be aware of the requirements of the Uniformed Services Employment and Reemployment Rights Act (USERRA).

Under the act, individuals who leave a civilian job for voluntary or involuntary service in the uniformed services are entitled to reemployment in their preservice job if they meet certain criteria. An employee's long-term absence can disrupt a firm's operations whether that employee is a clerical, technical, or professional staff member. Improper treatment of the absence, however, can result in additional costs and conflicts for the firm.

WHO QUALIFIES

Qualified individuals are entitled to prompt reinstatement and must be treated, for seniority and pension purposes, as if they had been continuously employed. They are also entitled to immediate reinstatement of health insurance coverage under the employer's plan; waiting periods and exclusions due to preexisting conditions are prohibited.

For the purposes of USERRA, a qualified employee is one who meets the following criteria:

- The employee left the firm for military service and gave notice to the civilian employer.
- The period of military activation is five years or less.
- The employee was released from active duty under honorable conditions.

- The employee reported back to work in a timely manner or made a timely application for reemployment after release from service.

Note that there is no firm size exemption to the law.

All firms must treat returning employees lawfully. The law does not supersede any employer policy, contract, or state law that may provide greater or additional rights.

MILITARY DUTY AND PROFESSIONAL LIABILITY

Congress has created civil protections that allow some professionals to suspend professional liability policies while on active duty. This protection presently does not apply to architects but may be extended to architects in the near future. The protection covers refund of premiums attributable to active duty time and guarantees reinstatement of insurance upon termination of active duty. It also stays civil or administrative actions for damages on the basis of alleged professional negligence or other professional liability for those whose coverage has been suspended under this protection while on active duty.

More Best Practices

The following AIA Best Practices provide additional information related to this topic:

- 07.01.03 Personal Use of Documents: A Sample Firm Policy
- 07.01.06 Sample Philanthropic Leave Policy
- 07.02.03 How the Talent Strain Affects Architecture Firms

Keywords

- Practice, Personnel management, Personnel benefits, Time off, Leaves of absence



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