



NO. 72 — May 2006

DOL Publishes Final Regulations Interpreting the Rights of Employees and Obligations of Employers Under USERRA

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With over 500,000 National Guard and Armed Forces Reserves mobilized since September 11, 2001, employers are more likely than ever to encounter legal challenges under the Uniformed Services Employment and Reemployment Rights Act (“USERRA”). USERRA, enacted in 1994, prohibits discrimination and establishes reemployment and benefit protection rights for returning military personnel. Since March 2005, the Department of Labor (“DOL”) has required employers to provide employees a notice of their USERRA rights. The DOL publishes a poster satisfying this notice requirement.

Under USERRA, employers are required to return veterans to the same or equivalent position they held prior to military leave and it places a mandate on employers to reasonably accommodate a disabled veteran. Employees in temporary, part-time, probationary, and seasonal employment positions are covered under USERRA, as are employees on strike, layoff, or leave of absence. USERRA governs nearly all employers, including private employers of any size.

Recently, the DOL issued the first regulations covering USERRA. The regulations provide interpretation and specific guidance on a number of issues surrounding the statute. While the regulations do not impose any new obligations on employers, the DOL’s goal in issuing the regulations was to help clarify the “responsibilities of employers and the rights of returning service members.”

Unlike the statute itself, the USERRA regulations provide a definition of employer. Unlike most other federal employment laws, the definition of an employer under USERRA is broadly defined to include supervisors and managers. Thus, individual supervisors and managers who have control of employment opportunities may be personally liable for USERRA violations.

In addition, the regulations also expand on the “escalator” principle under USERRA. The escalator principle provides that a service member who properly returns from a qualified leave be permitted to step back into the position the employee would have occupied had he or she remained continuously employed during the period of the employee’s military leave. The regulations address the elevator principle under the following six specific circumstances: (1) an employer who uses a seniority or bidding system for job assignments; (2) promotions based on an employer’s discretion rather than pure seniority; (3) reductions in force, layoffs, and disciplinary procedures; (4) bargaining units on strike at the time of reemployment; (5) apprenticeships; and (6) probationary periods.

The regulations further outline three statutory defenses available to an employer under



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USERRA. The first defense provides that an employer does not have to reemploy an employee if the employer's circumstances have changed so as to make reemployment impossible or unreasonable. As an example, the regulations provide that an employer would not need to rehire a veteran if a reduction in the workforce was implemented while the employee was on military leave, which would have included the employee. The second defense allows employers to justify not reemploying an employee by showing that reemployment would impose an undue hardship on the employer. For instance, an employer would not need to rehire an employee who is no longer qualified for a position due to disability, even after the employer made reasonable efforts to help the employee become qualified. A final statutory defense may be available to the employer if the employment was for a brief, non-recurrent period without reasonable expectation that employment would continue indefinitely. However, this defense must be narrowly construed. For example, an employee may have a reasonable expectation that a seasonal job would be available next season. Employee expectations of reemployment can be addressed in employment policies.

With the ongoing return of thousands of mobilized reserves, employers will continue to face the challenge of complying with their legal obligations to employees under USERRA while balancing the needs and demands of a business. The USERRA regulations will provide assistance in guiding employers in making key decisions concerning employees returning from military duty but advice of counsel is recommended to revise employment policies and documents to comply with USERRA, while protecting the employer's interests.

For more information regarding interpretation and application of USERRA and its impact on your business and your current policies, procedures and employment documents, please contact the law firm of Seaton, Beck, & Peters, P.A. at (952) 896-1700 or www.seatonlaw.com and ask for any available attorney. We would be happy to assist you.

Seaton, Beck & Peters Launches New Website

CHECK OUT OUR NEW LOOK AT

WWW.SEATONLAW.COM

ANNOUNCING UPCOMING SEMINAR:
**LAWFULLY PROTECTING YOUR
BUSINESS ASSETS**

June 13, 2006

8:30 a.m. - 12:00 p.m.

(8:00 a.m. Registration and Continental Breakfast)

Marriott, Minneapolis Airport
2020 American Boulevard East, Bloomington, MN 55425
952-854-7441

COST:

\$25.00 per person if registered by June 6

\$35.00 per person for registrations received after June 6

REGISTRATION:

To register please contact Jennifer Blomberg at 952-896-1700, via e-mail at jblomberg@seatonlaw.com, complete & fax attached registration, or visit our website at www.seatonlaw.com.

In today's environment, employers must take diligent steps to protect their business assets. Failure to take appropriate steps to protect business assets before, during, and after the hiring process may lead to unanticipated and significant losses. On the other hand, if an employer oversteps legal boundaries to protect their business assets, it may subject itself to myriad of lawsuits by applicants, employees, and former employees. This program will discuss lawful methods to protect your business assets through interviewing, background checks and computer forensics.

Fax, E-mail or "None of the Above?"

If you are receiving this *LawFax*, you or another member of your organization is a client, a member of one of the trade associations or chambers of commerce of which we are members also, or have requested a subscription to our periodic *LawFax*. If you'd rather receive our *LawFax* by e-mail, or if you no longer wish to receive it, please e-mail us (firm@seatonlaw.com) or call our toll-free number (800-268-5008) and we will change your *LawFax* subscription to e-mail or delete you from our database.

This communication is intended for general informational purposes only and is not intended to constitute legal advice with respect to any individual facts or circumstances. You are urged to consult with one of our attorneys regarding your own situation and your specific question. We would be happy to help!

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LAWFULLY PROTECTING YOUR BUSINESS ASSETS

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(8:00 a.m. Registration and Continental Breakfast)

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2020 American Boulevard East, Bloomington, MN 55425

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Legal Issues Associated With Protecting Your Business Assets

Tom Revnew – Seaton Beck & Peters, PA.

8:30 a.m. to 9:30 a.m.

Companies use a variety of methods to protect their business assets from the interviewing process to the use of employment policies and procedures. If these methods are inappropriately used, however, employers face unanticipated legal risks. This segment will cover legal issues for employers to consider in protecting their business assets.

Hire Smart and Win!

Donna Ploof – RHR Informational Systems

9:45 a.m. to 10:45 a.m.

Don't play Jeopardy when hiring. Hire Smart! You win, the company wins and the applicant wins. But getting the right applicant into your job opportunity can be hard work when faced with proper interviewing and screening of applicants. You'll receive valuable tips on smart screening and hiring procedures through background screening.

Who's Watching Your Intellectual Property – Why Should You Care?

Jeremy Wunsch, LuciData, Inc.

11:00 a.m. to 12:00 p.m.

Intellectual property theft and technology related crimes within corporations have skyrocketed during the past few years. In fact, more than ever organizations are finding themselves entangled in costly litigation caused by inappropriate use of computers. Get information on how to use data forensics/content monitoring tools that may help you avoid costly litigation and protect your business!

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\$35.00 per person for registrations received after June 6

(payment in advance or at the door)

REGISTRATION:

To register please complete and fax back this registration form (fax: 952.896.1704), contact Jennifer Blomberg at 952.896.1700 or via e-mail at jblomberg@seatonlaw.com

Complete program materials and online registration available at www.seatonlaw.com.

Name: _____

Title _____ Company _____

Tel _____ Email _____

Additional attendees _____