**4.20 USERRA – 38 U.S.C. § 4312 – Reemployment**

In this case, [name of plaintiff] makes a claim under the Uniformed Services Employment and Reemployment Rights Act, also called USERRA.

Under USERRA, employees who leave civilian jobs to serve in the military are entitled to reemployment rights and benefits upon their return from service. [Name of plaintiff] claims [he/she] was entitled to be reemployed by [name of defendant]. [Name of defendant] denies [name of plaintiff] was entitled to such a right.

To succeed on [his/her] claim, [name of plaintiff] must prove each of the following facts by a preponderance of the evidence:

First: [Name of plaintiff] left employment with [name of defendant] to perform service in a uniformed service;

Second: [Name of plaintiff] gave [name of defendant] advance notice of the service – unless it was impossible or unreasonable to give notice;

[Third: The cumulative length of [name of plaintiff]’s absences from employment with [name of defendant] due to periods of military service was not more than five years;]

Fourth: After completing the service, [name of plaintiff] timely returned to [name of defendant] or applied for reemployment with [name of defendant]; and

Fifth: [Name of plaintiff] was separated from the service under honorable conditions.

[Name of Armed Forces Branch/Army National Guard/Air National Guard] is a “uniformed service.”

For the first element, “service in a uniformed service” means the voluntary or involuntary performance of duty. It includes:

active duty;

active duty for training;

initial active duty for training;

inactive duty training;

full-time National-Guard duty;

a person’s absence from a position of employment for an examination to determine the person’s fitness to perform any of these duties; and

a person’s absence from employment for performing funeral-honors duty.

For the second element, if you find that [name of plaintiff] left employment with [name of defendant] to perform service in a uniformed service, you must decide whether [name of plaintiff] gave [name of defendant] advance notice of [his/her] obligation [or was excused from giving notice because it was impossible or unreasonable]. The advance notice to [name of defendant] of [name of plaintiff]’s obligation or intention to perform military service can be written or oral, and it may be informal.

[For the third element, add up the number of days or months that [name of plaintiff] was absent from his employment with [name of defendant].]

For the [third/fourth] element, a “timely return” depends on how long [name of plaintiff]’s period of service was.

[**Period of service less than 31 days or for a period of any length for the purpose of a fitness examination:** To establish a timely return for purposes of reemployment, [name of plaintiff] must prove by a preponderance of the evidence that [he/she] reported to [name of defendant] no later than the start of the first full regularly scheduled work period on the first full calendar day after [he/she] completed service – except that [he/she] is not required to report before eight hours past the time needed for safe transportation from the place of service to [his/her] home. For example, if [name of plaintiff] completes [his/her] service, travels home, and arrives at ten o’clock in the evening, [he/she] cannot be required to report to [name of defendant] earlier than six o’clock the next morning- eight hours after arriving home.

If it is impossible or unreasonable for [name of plaintiff] to report within that period through no fault of [his/her] own, [he/she] must report to the employer as soon as possible after the eight-hour period.]

[**Period of service more than 30 days but less than 181 days:** To establish a timely return for purposes of reemployment, [name of plaintiff] must prove by a preponderance of the evidence that [he/she] applied to return to work no later than 14 days after [he/she] completed the military service. The application that [name of plaintiff] submitted does not need to follow any particular format and [he/she] may make it orally or in writing. If it is impossible or unreasonable for [name of plaintiff] to apply within 14 days through no fault of [his/her] own, [he/she] must submit the application to [name of defendant] not later than the next full calendar day after it becomes possible to do so.]

[**Period of service more than 180 days:** To establish a timely return for purposes of reemployment, [name of plaintiff] must prove by a preponderance of the evidence that [he/she] applied to return to work no later than 90 days after [he/she] completed the military service. The application that [name of plaintiff] submitted does not need to follow any particular format and [he/she] may make it orally or in writing.]

[**Prompt reemployment:** To prove that [name of defendant] violated the reemployment requirement of USERRA, [name of plaintiff] must prove by a preponderance of the evidence that [name of defendant] failed to offer [him/her] reinstatement as soon as was practicable under the circumstances. Uncertainty or mistake about what rights USERRA grants – on the part of either [name of plaintiff] or [name of defendant] – does not affect USERRA’s prompt reinstatement requirement. [Name of defendant] must prove that unusual circumstances justified or excused any delay in [name of plaintiff]’s reemployment.]

**Special Interrogatories to the Jury**

**Do you find from a preponderance of the evidence:**

That [name of plaintiff] left employment with [name of defendant] to perform service in a uniformed service?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

If your answer is “No,” this ends your deliberations, and your foreperson should sign and date the last page of this verdict form. If your answer is “Yes,” go to the next question.

[That [name of plaintiff] gave [name of defendant] advance notice of the service/That it was impossible or unreasonable for [name of plaintiff] to give advance notice of the service]?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

If your answer is “No,” this ends your deliberations, and your foreperson should sign and date the last page of this verdict form. If your answer is “Yes,” go to the next question.

[ That the cumulative length of [name of plaintiff]’s absences from employment with [name of defendant] because of military service does not exceed five years?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

If your answer is “No,” this ends your deliberations, and your foreperson should sign and date the last page of this verdict form. If your answer is “Yes,” go to the next question.]

That [name of plaintiff] timely returned to [name of defendant] or timely applied for reemployment with [name of defendant] after completing the service?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

If your answer is “No,” this ends your deliberations, and your foreperson should sign and date the last page of this verdict form. If your answer is “Yes,” go to the next question.

That [name of plaintiff] was separated from the service under honorable conditions?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

So Say WE All.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Foreperson’s Signature

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_