

# Justice Department Settles First USERRA Class Action Suit

Although the Uniformed Services Employment and Reemployment Rights Act (USERRA) has been on the books since the first Gulf War, the responsible federal agencies only published regulations for the law in 2005. That's when real enforcement began.

One of the first investigative targets was American Airlines. Many of its pilots serve in the armed services and their military obligations take them out of civilian cockpits for extended periods of time. Now the U.S. Department of Justice (DOJ) has reached a settlement with the airline in a class-action suit brought by pilots who alleged that the company's benefits-accrual practices violated USERRA. This marks the first-ever settlement of a USERRA class-action suit.

After receiving several complaints, the DOJ looked into American's practice of not allowing employees away on military duty to accrue vacation and sick leave benefits. DOJ had a problem with that practice because pilots who took comparable leave for other reasons continued to accrue those benefits during their absence. The DOJ claimed the practice discriminated against employees who were reservists and National Guard members.

USERRA requires employers to treat all benefits that aren't based on seniority the same for military and nonmilitary member employees. USERRA regulations state that vacation time is a nonseniority-based benefit. Additionally, if those benefits vary based on the type of leave involved, employees on military service must get the most favorable treatment of any of those types of leave.

Under the settlement, American will pay 353 pilots a total of \$345,772 for their lost benefits. Currently employed pilots in the class will receive sick leave credits worth \$215,000. American will have to bring its policies and procedures into compliance as part of the settlement as well.

## **More USERRA pitfalls for employers**

The Justice Department has stepped up its USERRA enforcement efforts in recent months. The DOJ sued the New York State Correctional Services for failing to adjust an employee's seniority after he passed a make-up promotion exam. The department claims USERRA requires the adjustment to avoid penalizing the man for his military service.

USERRA regulations hold many pitfalls for employers—who should view this settlement as a wake-up call. Review your policies to ensure that employees with military obligations have the same benefits and protections as employees taking other types of leave, such as sick leave, vacation time or leave taken under the FMLA or similar state laws.

Any discrepancy in leave rights could potentially be found to discriminate against reservists and National Guard members.