

## Client Alert

January 2005

### **NEW LAW INCREASES AN EMPLOYER'S OBLIGATIONS WITH RESPECT TO EMPLOYEES ON MILITARY LEAVE \***

On December 10, 2004, President Bush signed into law the Veterans Benefits Improvement Act of 2004, which provides various housing, educational, and other benefits for veterans and their spouses. Of importance to employers, the Act also amends the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") in two significant ways. First, it extends the maximum period of continuing health insurance coverage for employees on a military leave of absence from eighteen months to twenty-four months. Second, it imposes an affirmative obligation on all employers to notify employees of their rights under USERRA. With the signing of this Act, employers must now more than ever be aware of their legal obligations as to employees who are serving our Country.

#### Continuing Health Insurance Coverage

For those employers who choose to provide health insurance coverage for their employees, USERRA requires that such coverage be continued while employees are on a military service related leave of absence. In other words, employees and their dependents are entitled to COBRA-like continuation coverage while out of work. During the first thirty days of military service, employees can receive this continuing coverage at their normal premium rate (i.e. the same rate as if they had not been absent). After thirty days, employers can charge employees up to 102% of the full premium rate under the plan.

When first enacted in 1994, USERRA set the maximum duration of continuing health coverage at eighteen (18) months. With the passage of the Veterans Benefits Improvements Act, the maximum duration of continuing health coverage has now been extended to twenty-four (24) months. The added period of time applies to any employee who elected continuing coverage on or after December 10, 2004.

#### Notice Requirement

The recent amendments also have added a posting requirement for employers. In particular, all employers (regardless of size) are required to provide employees with information concerning their rights and benefits under USERRA. This requirement can be satisfied by placing a poster in the place where employers customarily place notices to employees (for example, the same place where EEO and wage and hour posters are posted). Notably, this new requirement does not take effect until March 10, 2005. The Department of Labor is currently in the process of preparing a model poster that can be used by employers and will make this poster available in advance of the March 10 deadline.

#### Department of Labor Regulations

Finally, we also wish to remind you that the Department of Labor is currently in the process of preparing its first set of regulations interpreting USERRA. Proposed regulations were issued on September 20, 2004, and final regulations can be expected at some point in 2005. We will update you when the regulations are finalized.

## CONTACTS

\* *For more information concerning USERRA or these recent amendments, please contact one of the labor and employment attorneys at the Womble Carlyle office nearest you. Our labor and employment attorneys regularly advise clients on issues related to USERRA and numerous other employment-related laws and topics.*

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