



New York City Fire Department

September 12, 2001

It is difficult to put anything into words after this week's tragic events. Our Prayers and condolences go out to the members of the New York City Fire Department on their tragic loss that they have sustained. Our heart felt sorrow also goes out to the many lost, injured and missing. May their families find comfort in those around them.

On behalf of the Northern Illinois Alliance of Fire Districts, we offer both our prayers and our services. We will assist you in any way possible! Please contact me and I will facilitate for your needs.

May God bless and protect "all" who serve as our saviors.

Respectfully,
Jack L. Mancione, President
Northern Illinois Alliance of Fire Protection Districts



Military Leave

by Doug Shaeffer, Arthur J. Gallagher

As a result of the recent terrorist attacks in the United States, the President has begun to call up military reserve personnel. Employers have certain obligations to their employees called up to serve as well as those employees who may join the service.

The following is an excerpt from a Questions & Answers fact sheet from the Gallagher Benefit Services Compliance Unit. It addresses the areas of the legislation that apply to employer sponsored benefits. In addition to the Q&A in its entirety, a Technical Bulletin on the legislation mentioned below is available by request. You may call Doug Shaeffer at 630-285-3442 or email your request to doug_shaeffer@ajg.com for copies of our Bulletin and complete Q&A.

Q. Is there a federal law that governs absences from work necessitated by employees' military service?

A. Yes. The Uniformed Services Employment and Reemployment

Rights Act of 1994 (USERRA) provides for military leaves of absence and reemployment of eligible employees when they return from military leave. USERRA also protects employees from discrimination because of their military service.

Q. Am I covered by USERRA?

A. Yes, if you are a civilian employer. USERRA applies to all civilian employers, whether private or public. It has no size-of-business threshold for coverage.

Q. What status does an employee have during military service?

A. The employee is deemed to be on a statutorily mandated furlough or leave of absence.

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Q. Is military leave paid or unpaid?

A. USERRA does not require pay during military leave. However, a number of companies voluntarily pay reservists the difference between their regular wage and the military pay received during annual summer training. Some state statutes require pay for public employees during military duty.

An employer *may not* deduct monies from the pay of an exempt worker for absences due to temporary military leave. The employer may offset any payment the employee receives for such service. If an employer makes deductions from an exempt worker's pay for military leave, the worker's exemption from overtime may be forfeited and the actions may make the worker and other workers in similar situations eligible for overtime.

Q. What benefits do I have to give employees during their military leave?

A. Employees on military leave are entitled to participate in any rights and benefits not based on seniority that are available to employees having similar seniority, status, or pay who are on nonmilitary leaves of absence. Such rights and benefits might include year-end bonuses, insurance (health insurance is discussed below), accrual of sick or vacation days, or any other benefit not based on longevity of employment that is available to other employees on leaves of absence.

Leave-of-absence rights and benefits to which persons on military leave are entitled include not only those available at the time their military service begins, but also any that become effective during their military service. If there is a variation among rights and benefits of different types of nonmilitary leaves of absence, the most favorable treatment must be provided to employees on military leave. However, persons on military leave are not entitled to leave-of-absence rights and benefits greater than those they would have had if they had remained continuously employed.

Q. Can I require employees to pay for these leave-of-absence benefits during military leave?

A. Yes, but only to the same extent that other employees on leave absence would be required to pay.

Q. How are health benefits affected by military leave?

A. USERRA gives employees on military leave a right to COBRA-like health benefit continuation, even if their employers are not covered by COBRA. (COBRA exempts employers with fewer than 20 employees.) If health plan coverage of an employee or the employee's dependents would otherwise end because of the employee's military leave, the employee may elect to continue the coverage for up to 18 months.

Premiums. An employee who elects to continue coverage cannot be required to pay more than the normal employee share of any premium if the employee's military service is 30 or fewer days. If

the employee's service is 31 or more days, the employee can be required to pay no more than 102 percent of the full premium for coverage.

CHAMPUS coverage. An employer cannot terminate continuation of health plan coverage on the basis of a service member's eligibility for coverage of dependents under the Civilian Health and Medical Program for the Uniformed Service.

Waiting periods, exclusions. USERRA bans the imposition of an exclusion or waiting period upon persons reemployed after military leave or their dependents. An exception to this ban applies to service-connected injuries or illnesses.

Q. What seniority does an employee have after military service?

A. Reemployed persons are entitled to the seniority they would have attained if they had remained continuously employed. Time spent in the military is thus counted as time on the job.

Q. What benefits do I have to give after military service?

A. Reemployed persons are entitled to all benefits based on seniority that they would have attained had they remained continuously employed. A right or benefit is seniority-based if it is determined by or accrues with longevity in employment. Time in the military plus time prior to military service must be counted in calculating seniority-based benefits.

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Q. Is time in the military to be credited to pension and profit sharing plans?

A. Yes. Upon reemployment of a returning service member, military service must be considered work with an employer for vesting and benefit accrual purposes. The employer must fund any resulting obligation. However, the person is entitled to accrued benefits from employee contributions only to the extent that the person repays the employee contributions. Repayment of employee contributions can be made over a period that is three times the duration of the military service, so long as the repayment period does not exceed five years.

Please note that this is not intended to be a comprehensive explanation of the legislation or employer's obligations to their employees. The Veterans' Employment and Training Service (VETS) of the U.S. Department of Labor, which enforces USERRA, is available to answer questions of employers and employees about their rights and responsibilities under USERRA. VETS can be reached at 1-800-442-2VET.

Employers with questions about their rights and responsibilities toward National Guard members and reservists may also contact the National Committee for Employer Support of the Guard and Reserve. The Committee, an agency of the Defense Department, can be reached at 1-800-336-4590.



Court Denies Workers' Compensation to Discharged Firefighter after he is Injured Responding to a Fire

by Carolyn Welch Clifford (cclifford@otbkc.com), Ottosen Trevarthen Britz Kelly & Cooper, Ltd.

The Third District Appellate Court of Illinois recently upheld the denial of workers' compensation coverage to a terminated volunteer firefighter who was injured while helping to extinguish a farm field fire. In the case of *Pearson v. Industrial Commission*, 318 Ill.App.3d 932, 743 N.E.2d 685, 252 Ill.Dec. 817 (3rd Dist. 2001), the plaintiff, Mark Pearson, had filed an application for workers' compensation after he had sustained injuries to his foot that became pinned between the clutch and the floorboard of his tractor that he was using to help fight a field fire.

Pearson had served as one of the Clover Township Fire Protection District volunteer firefighters from March 1993 through March 1994. However, on March 8, 1994, he was terminated for failing to attend the District's meetings. Seven months later, in October of 1994, Pearson saw the field fire and reported it to the District. After directing the firefighters to the scene, Pearson offered to get his tractor and disk to assist in putting out the fire. One of the firefighters contacted the fire chief, informing him of Pearson's offer to help, and the chief replied that Pearson's assistance "would be appreciated." Once Pearson returned with his tractor, the firefighters directed him to the south end of the field, which Pearson began disking in an effort to extinguish the fire.

Welcome New NIAFPD Member – Newport Township FPD, Wadsworth, IL

Illinois Fire Chiefs Association 51st Annual Conference

October 23-26, 2001 Peoria, IL

NIAFPD 9th Annual Conference

February 14-17, 2002

The Hyatt Regency Oak Brook, IL

THANK YOU RICHARD HARGRAVES

Richard Hargraves has resigned from the Board of Trustees of the Bloomingdale Fire Protection District. Rich and his wife Valerie moved from their home because of commercial development. He served as a Director of the NIAFPD since 1998. The members of the NIAFPD extend our thank you for the years of service to our organization and the fire service of Illinois you have given so freely.

**The NIAFPD extends our deepest sympathy to
Past President, Stanley Rundell, on
the passing of his wife Mae.**

Pearson drove his tractor into a deep washout, pinning his left foot between the clutch and floorboard, resulting in a chronic Lisfranc injury. Thereafter, Pearson filed for workers' compensation benefits that were denied by both an arbitrator and the Industrial Commission based on their finding that no employer/employee relationship existed between Pearson and the District. Pearson had admitted that he was not paid for his services and that he had no expectation of being paid. Instead, he testified that he helped fight the fire out of concern for his neighbors and the community. This appeal followed.

Pearson argued that an employer/employee relationship existed by implication and that application of the "emergency doctrine" to the facts of the case created the relationship. Section 1(b)(2) of the Illinois Workers' Compensation Act (820 ILCS 305/1(b)(2)) defines an employee as "[e]very person in the service of another under any contract of hire, express or implied, oral or written . . ." The court explained that although this definition is to be "broadly construed," there can be no employer/employee relationship (and therefore no liability under the Act) unless there can be a contract for hire, either express or implied.

Fire Guard is a quarterly publication of:

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Mark Your Calendar!

Board of Directors Meeting
Saturday, November 10, 2001 • 9:00 a.m.
Glenside Fire Protection District

NIAFPD Membership Meeting
Saturday, November 10, 2001 • 10:00 a.m.
Glenside Fire Protection District

For further information contact
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YOUR FIRE GUARD NEWSLETTER!

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