



LABOR DEPARTMENT ISSUES FINAL REGULATIONS ON Rehiring Veteran Responsibilities



Chip Storey
The regulations use the phrase "escalator position" to explain the returning service member must be given

The Labor Department on December 16 released final rules to implement the Uniformed Services Employment and Re-employment Rights Act of 1994, explaining how employers must bring returning service members back to the

pay and benefit levels they would have had if military service had not intervened. Labor Secretary Elaine Chao has highlighted the following key points of the new rules:

1. The regulations generally require employers to reinstate returning service members within 2 weeks after they apply for re-employment, absent unusual circumstances.
2. Returning service members must receive the same seniorities, status, and pay, they would have attained if they had remained continuously employed, generally without exception.
3. Service members must follow specific time tables and procedures when they report back to work.
4. A service member's disability incurred during military service does not impede the right to reinstatement at the same seniority, status, and pay. Employers must make reasonable efforts to accommodate a disability if it limits the service member's ability to perform the job.
5. Service members have specific rights for continued coverage under their employers' health care and pension plans.

A returning service member is eligible for re-employment by meeting five criteria. First, the employee must have been in uniformed service during the absence from civilian employment. The employer also must have received advance notice of the employee's uniformed service. The employee must have no more than five years of cumulative uniformed service away from the particular employer. The service member must return to work or apply for re-employment according to the regulation's timetable. The service member must not have received a disqualifying discharge or other-than-honorable separation from service. Although a returning service member must meet these requirements, employers may not condition a service member's re-employment on the ability to provide documentation of all requirements.

The regulations use the phrase "escalator position" to explain the returning service member must be given the same seniority, status, and pay, that would have been attained had the military service not intervened. The term means that a returning service member should ride the "moving escalator of terms and conditions affecting the particular [pre-service] employment" comparable to the position that would have been held had the service member remained continuously with that civilian employer.

The regulations final health care provisions are similar but not identical to those of COBRA. Upon re-employment, a service member must be reinstated in the employer's health plan without a waiting period or exclusion. The regulations also provide details for how employees choose and pay for continued coverage during military service, the amount they must pay, a health plan administrator's obligations, and the types of health plans covered.

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EMPLOYEE MEMBERSHIP GROUPS Are Expanding



Preston Pierce
...unions have been talking about forming various types of employee membership groups, perhaps as an intermediate step to traditional unions.

Due to the steady decline of organized labor representation among the private workforce, unions in recent years have turned to other measures to increase their numbers. The first method is probably their attempt to pressure employers into agreeing to "neutrality agreements" or "card-check" agreements in which a union becomes bargaining representative without any explanation of the disadvantages of unions. For a number of years, in addition, unions have been talking about forming various types of employee membership groups, perhaps as an intermediate step to traditional unions. Although for many years these steps were more talk than action, now we are actually beginning to see some of it coming into fruition. What is going on, and why should employees be interested or concerned?

One method definitely on the unions' agenda, is to create new forms of unions including various types of employee associations in order to organize not only professional and technical workers, but also the ordinary rank and file. Various union groups currently have programs in which they recruit associate members in areas where there is no collective bargaining and gives those workers benefits such as legal defense and various types of publications. The theory is that when a lot of associate members at an employer sign up, the union sends in organizers and converts them to full members. The unions see a "potential growth in worker associations following the guild model," which dates back to medieval crafts, according to Lynn Kroly, a Senior Economist at the Rand Corp. Unions can not only start their own employee organizations, but could also partner with employee or professional associations that already exist.

The AFL-CIO has created a new affiliate for working people who do not have a union on the job. It is called Working America, which was launched by the AFL-CIO in late 2003, and is now the nation's fastest growing organization for working families. An example of their growth, is the fact that there are now two local officers of this organization in Pennsylvania, one in Pittsburgh, and one in Philadelphia. The organization has already recruited 35,000 members in Pittsburgh, and statewide they plan to recruit a total of 300,000 members by the end of the year. An example of their activities as published on their website are:

* Generated hundreds of hand written letters to defeat a tipped worker exemption to Oregon's minimum wage sought by business lobbyists;

* Helped pass a hospital levy in Hospital District 1 of King County, providing \$12.5 million in revenue for more hires that bolstered Seattle's emergency responders.

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EMPLOYMENT MEMBERSHIP GROUPS ARE EXPANDING continued from page 2

* Delivered over 60,000 hand-written letters to Senators urging them to oppose privatizing Social Security in 2005.

* Helped Bill Cervenik win the mayoral race in the Cleveland Suburb of Euclid, OH and defeat a recall of Cervenik by 775 votes by knocking on 3,200 doors in a week and identifying over 1,000 Cervenik supporters.

In 2006, Working America will reach out to nearly 50,000 people each week through intensive in-person recruitment campaigns in seven states and through a phone-canvassing program in 30 metropolitan and suburban areas around the country. Growth projections put the membership of Working America at 2 million members by the close of 2006.

The majority of Working America members (70%) identify themselves as moderates or conservatives, one-third are "born-again" Christians and one-third are National Rifle Association supporters. While many may have responded to divisive wedge social issues in the past, they are concerned about the economics of their jobs and lives.

"Working America gives working people in Philadelphia the chance to voice their opinion on bread and butter issues," said Patrick Eiding, President of the Philadelphia Council of the AFL-CIO. "Together we will hold corporate and political leaders accountable on the issues crucial to our families."

Working America membership allows those with on-line access to:

- * Vote online to determine the priorities of Working America;
- * Ask a lawyer about overtime pay (50,000 visitors over a six-week period after the launch);
- * Search which companies by industry and zip code are sending jobs overseas through its online Job Tracker (200,000 visitors and 500,000 searches of companies; visitors search company records on exported jobs, health and safety, as well as workers' rights);
- * Automatically calculate how much President Bush's Social Security privatization plan will cost them, depending upon their income; and
- * Reach out to elected and corporate leaders on top issues for working people.

Another example of an employee membership group, is the Dick's Employee Council formed at Dick's Sporting Goods in Smithton, Pennsylvania. This organization was created with the aide of the Steelworkers Union, and offers the following benefits:

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GALLUP POLLS PERCENT OF WORKERS

Experiencing Discrimination



Suzanne Roten
Gallup data indicates that 15% of all workers perceive that they had been subjected to some sort of discriminatory treatment . . .

A national Gallup poll on discrimination in today's workplace, conducted in conjunction with the 40th anniversary of the U.S. Equal Employment

Opportunity Commission (EEOC) addresses the perception of discrimination among American workers four

decades after the agency was founded through the enactment of Title VII of the landmark Civil Rights Act of 1964. Gallup data indicates that 15% of all workers perceive that they had been subjected to some sort of discriminatory treatment for the last year, when sexual orientation, nepotism, education, and other forms of bias not barred under federal law are counted. The report found that 31% of Asian respondents, 26% of Black respondents, 18% of Hispanic respondents, and 12% of White respondents said they experienced some sort of bias. In addition, 22% of female respondents and 9% of male respondents reported discrimination. When those numbers were broken down further, 27% of Black females, 26% of Black males, 22% of White females, and 3% of White males said they believed they had been subjected to discrimination.

Of those reporting discrimination, 21% said they believed it was based on their sex, 19% said it was based on their race or ethnicity, 14% said it was based on their age, 10% attributed it to nepotism or favoritism, and 7% attributed it to a disability.

When asked how the discrimination manifested itself, 28% said it was when they tried to get a promotion, 24% said

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GALLUP POLLS PERCENT OF WORKERS EXPERIENCING DISCRIMINATION continued from page 3

it involved compensation, and 11% said it involved harassment. Only 1% said the discrimination they experienced involved being fired.

It should be noted that the Gallup poll findings vary from EEOC's own data. For example, less than 3% of EEOC charges filed are linked to discrimination based on being Asian, and only 11% of the charges alleged national origin discrimination. Further, discharge is the most common form of discrimination reported in EEOC charges. For fiscal year 2005, 36% of the EEOC charges involved race bias, 31% involved sex discrimination, 29% alleged retaliation.

Cari Dominguez, Chair of the EEOC, explained the discrepancies as follows. "Once you're discharged, I don't think you have much to lose" by filing a charge with EEOC, but employees on the job may not want to "rock the boat." He said that cultural barriers and a lack of knowledge about statutory protections also contribute to not reporting certain charges to the EEOC.

The Gallup poll also sought to link the perception of discrimination to job satisfaction, desire to remain with their employer, and loyalty to the organization.

Ten percent of individuals who experienced discrimination said they were extremely satisfied with their company, versus 41% of those who said they have not experienced such bias. Forty-six percent of those reporting discrimination said they plan to stay with their employer, and 17% would recommend the organization to others; the figures for those not reporting bias were 71% and 47%, respectively.

The poll also sought to determine a connection between awareness of company diversity policies and employee satisfaction. Fifty percent of those surveyed who said they were very aware of their employer's efforts to create diversity said they were satisfied with their jobs, versus 29% of those who were somewhat aware or not aware of such efforts. According to a spokesperson for Gallup, "Any organization that has policies that were [well-publicized] and policies that are effective will be able to reduce the level of perceived discrimination."

Additional information is available at www.eeoc.gov.

www.wimberlylawson.com

EMPLOYMENT MEMBERSHIP GROUPS ARE EXPANDING continued from page 3

* Special, members-only rates on goods and services available only to union members and their families, through a "Union-Plus" program;

* Confidential counseling on employee rights in the workplace;

* Access to an on-line job skills development center offering 1,600 courses.

Probably the largest national employee associations, are those created at Wal-Mart. The sponsors of these groups include the United Food and Commercial Workers Union, the Service Employees International Union, and various other civil rights organizations. The group is particularly active in Texas and Florida, and in some areas charges membership dues of \$5.00 a month. The group is lobbying for Wal-Mart workers in the State of Florida, including unemployment and health care benefits. Union sponsors say that the union hopes that Wal-Mart workers would grow so emboldened and that

community support would grow so strong the unions could succeed at organizing some Wal-Marts in a few years.

Once the employee associations are formed, and are recognized as representatives of workers, it is easy for affiliation with a national union to then occur. Therefore, employers would be wise in seeking legal counsel should an employee association develop, because such associations also involve legally protected concerted activities.

The irony in much of this is that in the first half of the last century, it was employers that formed various employee associations, sometimes called "company unions," as an alternative to traditional unionism. Indeed, employers were so successful in such organizations, that a special provision in the Wagner Act was passed in the 1930's, providing that employers could not form or assist or interfere with "labor organizations."