U.S. Department of Labor

Assistant Secretary for
Veteran's Employment and Training
Washington, D.C. 20210

November 14, 2000

ASVET MEMORANDUM NO. 01-01

MEMORANDUM FOR: REGIONAL ADMINISTRATORS AND DIRECTORS FOR VETERANS' EMPLOYMENT AND TRAINING

FROM: ESPIRIDION (AL) BORREGO

SUBJECT: USERRA Amendments in Public Law 106-419 Relating to Funeral Honors Duty Performed by Reserve Component Members

PURPOSE: To advise field staff about new legislation providing clarification that members of the National Guard and Reserve who perform funeral honors duty under recently enacted provisions of law are protected under the Uniformed Services Employment and Reemployment Rights Act (USERRA). The USERRA amendment is at section 323 of Public Law 106-419, the "Veterans Benefits and Health Care Improvement Act of 2000," signed by the President on November 1, 2000.

BACKGROUND: As noted in the legislative history of this USERRA amendment, the Nation's veteran population is growing older. More and more veterans, particularly of the World War II era, are passing away. The Department of Veterans Affairs estimates an annual veteran death rate of over 600,000 by 1998, approximately 1,700 veterans' funerals per day.

Historically, the active military provided personnel to fill honors details at the funerals of veterans. However, the downsizing of the active forces has required the Defense Department to turn increasingly to its Reserve components to assist in performing this important duty. In recognition of this increased use of Guard and Reserve members for funeral honors duty, the Congress established new categories of inactive duty under which this duty is performed. The FY 2000 Defense Authorization Bill, Public Law 106-65, amended Title 10 (for Reservists) and Title 32 (for National Guard members) to authorize the performance of funeral honors duty. See 10 U.S.C. § 12503 and 32 U.S.C. § 115. Under both provisions, the duty is voluntary and the member is essentially unpaid, receiving only a fifty dollar allowance, a retirement point, and travel expenses (in some cases).

The USERRA amendment clarifies that the performance of funeral honors duty by members of the National Guard and Reserve under either 10 U.S.C. § 12503 or 32 U.S.C. § 115 is protected under USERRA. As this legislation was being developed, VETS was asked to provide technical assistance. It should be emphasized that such duty is already protected by USERRA, as it fits the original USERRA definition of "service in the uniformed services." The legislative history indicates that Congress also considered this amendment to be a clarification of USERRA and not a change in existing law.

ACTION: All VETS staff will share this information when performing USERRA outreach activities with Reserve component units, employers, Employer Support of the Guard and Reserve (ESGR) committees, and the general public.

In order to ensure uniformity in handling complaints related to this amendment, the following guidance will be followed until May 1, 2001 (180 days after enactment). Any VETS investigator receiving a complaint involving funeral honors duty performed by a Reserve component member must consult with the VETS National Office compliance staff (through the Regional office) before contacting the employer. This guidance is necessary to avoid any confusion regarding the 180-day "effective date" of the amendment.

ADDITIONAL INFORMATION: Questions on this memorandum should be directed to Nick Dawson of the VETS compliance staff at (202) 693-4711.

Attachment:

USERRA amendment (Section 323) excerpt from Pub. L. 106-419

S.1402

Veterans Benefits and Health Care Improvement Act of 2000

(Enrolled Bill (Sent to President))

SEC. 323. EMPLOYERS REQUIRED TO GRANT LEAVE OF ABSENCE FOR EMPLOYEES TO PARTICIPATE IN HONOR GUARDS FOR FUNERALS OF VETERANS.

(a) DEFINITION OF SERVICE IN THE UNIFORMED SERVICES- Section 4303(13) is amended--

(1) by striking `and' after `National Guard duty'; and

(2) by inserting before the period at the end `, and a period for which a person is absent from employment for the purpose of performing funeral honors duty as authorized by section 12503 of title 10 or section 115 of title 32.'.

(b) REQUIRED LEAVE OF ABSENCE- Section 4316 is amended by adding at the end the following new subsection:

`(e)(1) An employer shall grant an employee who is a member of a reserve component an authorized leave of absence from a position of employment to allow that employee to perform funeral honors duty as authorized by section 12503 of title 10 or section 115 of title 32.

`(2) For purposes of section 4312(e)(1) of this title, an employee who takes an authorized leave of absence under paragraph (1) is deemed to have notified the employer of the employee's intent to return to such position of employment.'.

(c) EFFECTIVE DATE- The amendments made by subsections (a) and (b) shall take effect 180 days after the date of the enactment of this Act.