

LEGAL UPDATE

Employers May Have to Provide Paid Leave for Military Service

Employees who take off work for military duty may be entitled to paid leave from their employers, according to a decision by the U.S. Court of Appeals for the 7th Circuit. The Feb. 3, 2021, opinion in *White v. United Airlines, Inc.* held that the Uniformed Services Employee and Reemployment Rights Act (USERRA) requires employers to provide paid military leave to the same extent they provide paid leave for other absences, such as jury duty and sick leave. The opinion is the first circuit court ruling on the issue.

USERRA

USERRA states that employees absent from work due to service in the uniformed services are entitled to the **rights and benefits** generally provided to employees having similar seniority, status and pay, who are on furlough or leave of absence.

White v. United Airlines, Inc.

White, a United Airlines pilot and U.S. Air Force reservist, had not been paid (or allowed to earn credits toward profit-sharing) during his military leaves, usually lasting a day or two. United provided its pilots with paid leave and profit-sharing credit for other short-term leaves of absence, such as jury duty and sick leave. White sued United for violating USERRA.

Although the lawsuit was dismissed by the district court, on appeal, the 7th Circuit interpreted “rights and benefits” in USERRA to include payment during leave. The court reinstated the case and sent it back to the lower court for further proceedings, noting that **White must show that any paid leave of absence provided by United is comparable to any given stretch of military leave.** Factors to be considered in this analysis, the court said, are the duration and purpose of the leave, as well as the ability of the employee to choose when to take the leave.

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Highlights

- United Airlines was sued for violating USERRA by failing to provide paid military leave.
- After dismissal by the lower court, the 7th Circuit Court of Appeals, with jurisdiction over Illinois, Indiana and Wisconsin, reinstated the case on appeal.
- The court held that USERRA requires payment for military leave if the employer provides payment for comparable leaves.

The 7th Circuit found that paid leave falls within the set of “rights and benefits” defined by USERRA.



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