

A Human Resources Director with a Local School District presented this question:

Question: A teacher has been on military leave since August 2007. As of June 2012, he will have been on Extended Military Leave for five school years. Is the school district obligated to continue to hold his position as the teacher expects to return to his teaching position effective October 2012?

The School District Personnel Support staff then consulted with Dr. Diane Juffras, Associate Professor for Public Law, School of Government, University of North Carolina at Chapel Hill.

Dr. Juffras provided the following answer:

In my opinion, the school district probably does have to return the teacher to his position even though five years has already expired. I say "probably" because it depends on the actual orders he received for his last extension of his deployment.

The Uniformed Services Employment and Reemployment Rights Act (USERRA) at 29 U.S.C. 4312(a) sets the normal total cumulative length of time for which an employee may be on military leave and expect to be returned to his or her position at 5 years. However subsection (c) of section 4312 sets forth a series of exceptions to this rule. My understanding is that for the last few years, almost all orders issued for new or continued deployments have cited the critical mission or operational mission exceptions, thus rendering the five-year rule inapplicable.

29 U.S.C. 4312(c):

c) Subsection (a) shall apply to a person who is absent from a position of employment by reason of service in the uniformed services if such person's cumulative period of service in the uniformed services, with respect to the employer relationship for which a person seeks reemployment, does not exceed five years, except that any such period of service shall not include any service--

(1)

(2)

(3)

(4) performed by a member of a uniformed service who is--

(A) ordered to or retained on active duty under section 688, 12301(a), 12301(g), 12302, 12304, or 12305 of title 10 or under section 331, 332, 359, 360, 367, or 712 of title 14;

(B) ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress. as determined by the Secretary concerned;

(C) ordered to active duty (other than for training) in support, as determined by the Secretary concerned, of an operational mission for which personnel have been ordered to active duty under section 12304 of title 10;

(D) ordered to active duty in support, as determined by the Secretary concerned, of a critical mission or requirement of the uniformed services;

