



TEXAS

EMPLOYMENT LAW LETTER

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JUST ASK JACOB

What to do if an employee on probation is called up to active military duty

by Jacob M. Monty
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Q *One of our employees is serving a nine-month probationary period and has been called to active duty for two years. Are we required to make her a permanent employee? Or should we extend the probationary period and require her to complete it upon her return?*

A According to the Uniformed Services Employment and Reemployment Rights Act (USERRA), any veteran who has received a certificate showing satisfactory service in the uniformed services must be restored to her employment position prior to military leave. This federal law also contains specific reemployment requirements applicable to a probationary employee called to active duty. For example, under USERRA, if the period of military service exceeds 90 days, the veteran must be reemployed in the position she would have held except for the interruption caused by her deployment or a position of similar seniority, status, and pay if she is qualified for that position. Essentially, this law requires the employee to be reemployed in a position that she would have attained if not for the period of deployment. Thus, in this situation if the individual would have completed her probationary period had she not been called to active duty, then when she returns from her service, the employer should not extend her probationary period. Also, the veteran should be made a permanent employee if that would have the outcome had she not been called to military service.

Q *Our company has an intranet site. Is it enough to put PDFs of the labor law posters on the intranet site, or do we have to post physical posters as well?*

A Yes, employers must display physical posters at the workplace location where their employees report each day. Federal employment laws, such as equal

employment opportunity (EEO) rights and the Family and Medical Leave Act (FMLA), require that some posters be prominently displayed where job applicants as well as employees will see them. It is good practice for employers to post PDFs of the labor law posters on their intranet sites in addition to the physical posters. Posting regulations generally require physical posters to be displayed because federal law requires the notice to be posted in areas regularly frequented by all employees, and employees who do not have access to a computer on a regular basis would not have access to the notice via the company intranet.

Q *One of our employees has said he is dealing with a family member with mental health issues. He leaves for a few hours at a time and just says he'll be "offline." My boss says he has to tell me exactly what's going on. Is that legal?*

A Yes, an employee eligible for leave under the FMLA may request leave for serious health conditions, including physical and mental conditions, of immediate family members, such as a child, spouse, or parent of the employee. However, an employer may require that the need for leave for a serious health condition of the immediate family member be supported by a certification issued by a healthcare provider. The employer must allow the employee at least 15 calendar days to obtain the medical certification.

Q *Our VP wants to require salaried exempt employees to work 45 or more hours each week. Is there a maximum number of hours exempt employees may work?*

A There is no maximum number of hours an exempt employee may work. Employers can require their exempt employees to work as many hours as they choose. However, you should be aware that if you require exempt employees to work a certain number of hours and



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account for their work time on an hourly basis, you may jeopardize the status of the exempt employees if the accounting has the effect of treating them like hourly workers. It should be noted that according to the new overtime rules, which currently are on hold, employees classified as exempt who earn less than \$47,476 per year

will be required to receive overtime pay for any work that exceeds 40 hours per week.

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