

Layoff Found to be Valid Position of Reemployment Under USERRA

1 min read

Dec 18, 2012

By: Katherine K. Cheng Arnold

The Eighth Circuit Court of Appeals recently held that a layoff as a part of a workforce reduction is a valid “position of reemployment” for purposes of the Uniformed Services Employment and Reemployment Rights Act (USERRA).

A maintenance technician who was also in the military was laid off right after he returned to work following his military leave wherein he was deployed. The employer indicated that the termination was based on negative job evaluations and company-wide downsizing. The employee sued the employer for failure to provide reemployment as required by USERRA under 38 U.S.C. section 4312. The employee argued that layoff or termination was not a valid position of reemployment under the USERRA regulation. (The employee also raised that even if USERRA permitted termination to be a valid reemployment position, it only does so if the employee would have been terminated automatically. For example by seniority and not by discretion of the employer. However, the employee did not make this argument at the hearing on the motion for judgment, thus, the court did not consider this issue.) A jury found in favor of the employer. The employee sought to have the verdict directed in his favor by way of a post-trial motion, but his request was denied.

The U.S. Court of Appeals for the Eighth Circuit upheld the ruling in favor of the employer, finding that a layoff or termination is a valid position of reemployment under the USERRA escalator principle, which requires employers to place service members into positions of reemployment they would have had absent their military leave. In this instance, the employee’s position of employment would have been termination even if he had not taken leave for military service.

The significance of this case is that a member of the military can have their employment terminated while on duty if such termination is the position of employment that the employee would have had if his employment was not interrupted by military service. For more information read *Milhauser v Minco Products Inc.*

Topics

Leave, USERRA, Military