

New Court Ruling Takes Aim at Pay for Short-Term Military Leave

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A recent federal appeals court ruling should be a strong warning to employers to re-evaluate their policies on employee leave time.

A three-judge panel of the U.S. Court of Appeals for the Third Circuit ruled that an [employer must pay a U.S. serviceman](#) for his time off to fulfill his service in the Naval Reserve. A lower court originally had sided with the employer, Federal Express, for denying payment for short-term military leave.

However, the appeals court decided the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) requires employers to pay reservists for short-term military leave where they choose to pay other employees for comparable forms of leave.

In [Travers v. Federal Express Corporation](#), Travers sued his employer after Federal Express refused to pay for his time off to fulfill his service in the Naval Reserve. USERRA entitles employees taking military leave to the "other rights and benefits their employers give to employees taking similar kinds of leave." Travers argued that he was entitled to paid leave under USERRA because Federal Express pays employees who miss work for other reasons such as jury duty, illness and bereavement, among other reasons. The lower court dismissed Travers' complaint, finding that USERRA does not entitle servicemembers to paid leave. The Third Circuit reversed the lower court's dismissal and revived the litigation, siding with Travers. The court found that USERRA does not allow employers to treat servicemembers differently, noting that "FedEX allegedly pays employees for some leave but declines to compensate Travers for leave taken to serve his country."

Employers who offer short-term paid leave for employees in other circumstances will need to re-evaluate their practices and provide paid leave for short term military service, such as attendance at training drills and the two-week annual training camp that many servicemembers are required to attend. Servicemembers cannot be compelled to use vacation or other paid time off benefits to cover this time.

If you have any questions on how this could affect your company's time off policies, please [contact me](#) or any member of the [Barley Snyder Employment Practice Group](#).

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