

LABOR TRENDS

A FEW GOOD MEN AND WOMEN: Employing Veterans and Noncareer Military Personnel

BY GREGORY J. OSSl

One of the biggest components of increased production is the labor workforce. To obtain increased production coal producers either have to get more from the existing workforce or hire additional workers.

As many are painfully aware, it's not as easy as it used to be to get good, experienced miners, technicians, and electricians. The baby boomers are starting to retire, Eastern coal reserves are rapidly depleting, and family mining traditions are ending with more sons and daughters choosing different vocations.

Often, at any given operation, the new hires are mostly red (or green) hats with no mining experience. While they can be hard workers, it takes time to get the experience necessary to operate efficiently. Mining coal is a much more complicated task and the equipment is much more sophisticated today. Maintaining and operating this equipment requires significant technical training—training which many new hires likely do not have. This adds to the cost of production as the mine operator must spend considerable amounts of time and expense ensuring that they receive the proper training.

A good source of new recruits just might be the men and women arriving in our hometowns from their tours of active duty in Iraq, Afghanistan, and other places, in search of full-time private

employment. There are many reasons why these individuals are likely good candidates for mining jobs, but the biggest may be the incredible technical training they have received courtesy of Uncle Sam. Other good reasons are that military life and structure has taught them to be hardworking, responsive, and disciplined as well as good listeners—a key to good safety practices.

Consider the example of Maytag Corp., a well-known large appliance maker. Maytag has a repair service that has been successfully reducing its shortage of repairmen by targeting discharged military personnel. The reasons it cites in targeting these men and women are: the advanced electronic training they receive, their respect for the chain of command, and their ability to follow orders. Other corporations such as Home Depot and Toyota North America also have recruiting programs that target military personnel.

When looking to hire veterans or even in managing employees who also serve noncareer positions in the military, there are some important legal requirements to consider beyond those that apply to all applicants and employees. These requirements are created in the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). USERRA applies to all employers and provides certain employment protections for employees who have served or are serving in the Armed Forces, National Guard, or the commissioned corps of the Public Health Service.

USERRA provides such individuals with protection from discrimination, reemployment rights, continued health coverage while on military leave and preservation of certain pension benefit accrual rights and seniority rights. USERRA covers all employees and all employers. Unlike other employment and antidiscrimination statutes, there is no minimum threshold number of employees before coverage applies to an employer. Similarly, there is no minimum service with an employer requirement: eligible employees are covered from day one with the employer.

Because the coal industry is subject to constant mergers and acquisitions, an important note for the unwary is that successors-in-interest of an employer are responsible for complying with USERRA for the same persons as the original employer, even if they were not aware of such claims at the time of acquisition. A successor-in-interest is determined based on the substantial continuity of business operations and the workforce as well as similarity of jobs, production methods, equipment, and supervisors.

Specifically, USERRA prohibits employers from discriminating on the basis of military service against employees and applicants who are, or have been, members of the military. In addition, employers may not take adverse employment action against any person who has sought the protection of USERRA.

Reemployment rights also are covered under USERRA. Essentially, employees who are absent from work because of service in the military are entitled to be reemployed after being dis-

YOUR RIGHTS UNDER USERRA
THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

USERRA protects the job rights of individuals who voluntarily or involuntarily leave employment positions to undertake military service. USERRA also prohibits employers from discriminating against past and present members of the uniformed services, and applicants to the uniformed services.

REEMPLOYMENT RIGHTS

You have the right to be reemployed in your civilian job if you leave that job to perform service in the uniformed service and:

- you ensure that your employer receives advance written or verbal notice of your service;
- you have five years or less of cumulative service in the uniformed services while with that particular employer;
- you return to work or apply for reemployment in a timely manner after conclusion of service; and
- you have not been separated from service with a disqualifying discharge or under other than honorable conditions.

If you are eligible to be reemployed, you must be restored to the job and benefits you would have attained if you had not been absent due to military service or, in some cases, a comparable job.

RIGHT TO BE FREE FROM DISCRIMINATION AND RETALIATION

If you:

- are a past or present member of the uniformed service;
- have applied for membership in the uniformed service; or
- are obligated to serve in the uniformed service;

then an employer may not deny you any of the following because of this status:

- initial employment;
- reemployment;
- retention in employment;
- promotion; or
- any benefit of employment.

In addition, an employer may not retaliate against anyone assisting in the enforcement of USERRA rights, including testifying or making a statement in connection with a proceeding under USERRA, even if that person has no service connection.

HEALTH INSURANCE PROTECTION

- If you leave your job to perform military service, you have the right to elect to continue your existing employer-based health plan coverage for you and your dependents for up to 24 months while in the military.
- Even if you don't elect to continue coverage during your military service, you have the right to be reinstated in your employer's health plan when you are reemployed, generally without any waiting periods or exclusions (e.g., pre-existing condition exclusions) except for service-connected illnesses or injuries.

ENFORCEMENT

- The U.S. Department of Labor, Veterans Employment and Training Service (VETS) is authorized to investigate and resolve complaints of USERRA violations.
- For assistance in filing a complaint, or for any other information on USERRA, contact VETS at 1-866-4-USA-VETS or visit its website at <http://www.dol.gov/vets>. An interactive online USERRA Advisor can be viewed at <http://www.dol.gov/olaws/userra.htm>.
- If you file a complaint with VETS and VETS is unable to resolve it, you may request that your case be referred to the Department of Justice or the Office of Special Counsel, depending on the employer, for representation.
- You may also bypass the VETS process and bring a civil action against an employer for violations of USERRA.

The rights listed here may vary depending on the circumstances. This notice was prepared by VETS, and may be viewed on the internet at this address: <http://www.dol.gov/vets/programs/userra/poster.pdf>. Federal law requires employers to notify employees of their rights under USERRA, and employers may meet this requirement by displaying this notice where they customarily place notices for employees.

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LABOR TRENDS CONTINUED

charged from their duties if: the employee gave advance notice of the military leave; the employee's cumulative absence is not greater than five years; the employee timely notifies the employer of intent to return to previous employment; and, the employee was honorably discharged.

There are exceptions to each of the four conditions enumerated above, so each employee's request for reemployment must be evaluated based on the factors specific to that employee. However, an employer may not have to reemploy a person if the employer's circumstances have changed such that reemployment is impossible, unreasonable or may impose an undue hardship on the employer.

Similar to continuation coverage mandated by COBRA, USERRA requires the employer to provide continuation coverage for health benefits to those employees that take a leave of absence to serve in the military. This continuation coverage must be provided for up to 24 months. Employees that elect to continue coverage may be required to pay up to 102% of the full health benefit plan premium, unless the employee performs services for the military for less than 31 days. In that case the employee cannot be required to pay more than the employee's share, if any, for health benefits coverage.

USERRA further protects pension and seniority rights, and is particularly applicable for defined benefit pensions and employer matching contributions to 401(k) accounts. Employees who are reemployed after military duty do not incur a break in service with the employer. Time spent performing military service also counts

towards vesting and accrual of benefits for those reemployed. Such time also counts towards eligibility for Family and Medical Leave Act benefits. An employer can also be required to make contributions to a pension plan, including multiemployer plans, on behalf of a reemployed person for the period that this person was serving in the military. USERRA also requires that those employers who provide benefits based on seniority restore the returning service member to his or her proper place on the seniority ladder.

All employers, including those that are fully aware of their obligations under USERRA, should note that the Act was recently amended to require that, effective March 10, 2005, employers must post a notice informing employees of their rights under USERRA. This new notice requirement can be met by using the notice created by the U.S. Department of Labor, available from its website at <http://www.dol.gov/vets>. This notice must be posted where the employer currently posts its other workplace notices.

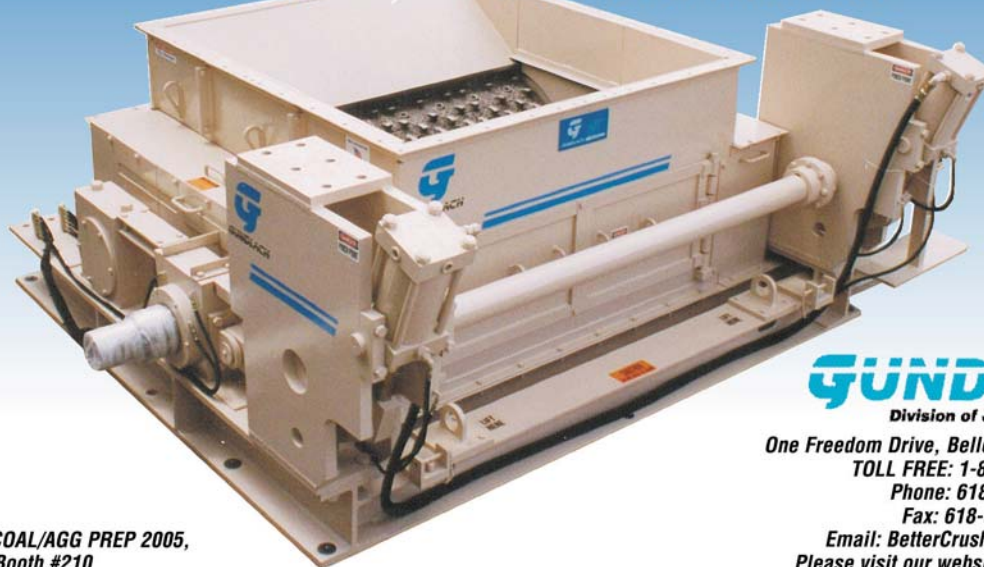
As the many thousands of individuals leave active duty, there exists an opportunity to employ individuals that have skills that could translate to faster learning of mining techniques and better respect for safety procedures than other new miners without such military training. With proper knowledge of the particular legal requirements, an employer can gain a valuable recruit and give someone a head start in a new career.

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