The Third Circuit Court of Appeals recently held that the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) entitles employees to paid short-term military leave in certain circumstances, following the Seventh Circuit’s similar holding in White v. United Airlines, Inc. In Travers v. Federal Express Corporation, Gerard Travers sued his employer, FedEx, under USERRA, alleging that the company wrongfully withheld paid leave benefits for leave he took as part of his Naval Reserve service. USERRA generally entitles employees taking military leave to the “other rights and benefits” that an employer gives to similarly situated employees taking similar kinds of leave. Travers argued that he should have
received paid leave for short-term military service under USERRA because FedEx gave other employees paid leave when they had to miss work for things such as jury service, illness, and bereavement. After his claim was dismissed by the Eastern District Court of Pennsylvania, Travers appealed to the Third Circuit.

The Third Circuit agreed with Travers. By reading sections 4316(b)(1) and 4303(2) together, the Third Circuit found the statute creates a comparator for employers to determine compliance with USERRA, where Group 1 includes employees on leave for military service and Group 2 includes employees with “similar seniority, status, and pay who are on . . . leave of absence” for other reasons. If Group 2 gets something that Group 1 does not, then Group 1 is denied “other rights and benefits” under USERRA. Because FedEx provided paid leave for Group 2 when those employees missed work for jury duty, bereavement, and health reasons, but did not provide paid leave to Travers or Group 1, FedEx denied Group 1 a “right and benefit” protected by USERRA.

Employers can use the court’s comparator to determine whether their paid-leave policies comport with the Third Circuit’s interpretation of USERRA.

© 2021 Bradley Arant Boult Cummings LLP

National Law Review, Volume XI, Number 239