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*Squire Patton Boggs Summer Associate Clara Davis discusses the U.S. Supreme Court’s recent decision interpreting the Uniformed Services Employment and Reemployment Rights Act (USERRA).*

On July 29, 2022, the United States Supreme Court ruled that state sovereign immunity does not bar state employers from lawsuits under the Uniformed Services Employment and Reemployment Rights Act (“USERRA”). The decision carries immediate implications for state employers and reminds private sector employers of the importance of compliance with USERRA. In this blog post, we’ll go over the Torres decision, provide an overview of USERRA compliance, and examine the
implications of the Court’s decision.

Le Roy Torres joined the U.S. Army as a reservist in 1989. In 2007, he left his job as a state trooper in Texas to serve his country in Iraq. He returned home with a lung condition that made it impossible for him to resume his previous duties as a state trooper. When the Texas Department of Public Safety (DPS) could not find Mr. Torres a different position as an accommodation for his condition under USERRA, he sued.

Mr. Torres had good reason to believe that DPS would grant his request for accommodations. USERRA requires employers to make “reasonable efforts” to accommodate disabilities incurred by veterans while deployed. If such an accommodation proves impossible, employers must offer servicemembers an equivalent position or the “nearest approximation . . . in terms of seniority, status, and pay. . . .”

Pursuant to USERRA’s jurisdictional requirements, Torres sued DPS in a Texas court in 2017. However, the State of Texas argued that state sovereign immunity barred his lawsuit. The ensuing dispute made its way from a Texas trial court to the U.S. Supreme Court, calling into question the principles underlying the concept of state sovereign immunity along the way.

USERRA

USERRA has the stated purpose of encouraging military service, minimizing disruption to the lives of servicemembers, and preventing discrimination against servicemembers.

Although Congress passed USERRA in 1994, the law stems from a much longer line of legislation protecting the employment rights of veterans. The Selective Training and Service Act of 1940 (STSA) was the first of such efforts. The STSA, however, did not apply to state or local governments. It was not until the Vietnam War that Congress expanded protections to veteran employees of state and local governments by allowing servicemembers to bring civil suits against states as employers.

Today, USERRA guarantees service members returning to the civilian workforce the same position that they would occupy had they never left. In this manner, the statute follows what is referred to as an “escalator principle” to ensure that servicemembers accrue seniority and benefits while deployed. With regard to service-related disabilities, USERRA requires employers to make reasonable efforts to accommodate disabilities or to provide employment in an equivalent position if such accommodation proves impossible.

A servicemember may not gain USERRA benefits if dishonorably discharged or discharged for bad conduct. Furthermore, servicemembers must give employers advance notice of service-related absences to the extent possible and generally may not accrue more than five years of combined absences per employer. An employer may be excused from USERRA obligations if compliance would create an “undue hardship” that imposes a “significant difficulty or expense” for the employer.

THE DECISION
The Court was confronted with the issue of whether private parties can sue a state employer under USERRA. USERRA states that “[i]n the case of an action against a State (as an employer) by a person, the action may be brought in a State court of competent jurisdiction in accordance with the laws of the State.” The State of Texas, however, argued that this provision was unconstitutional.

Generally, courts may not adjudicate disputes brought by private individuals against a state. However, the Torres Court acknowledged several exceptions to this rule, such as when states consent to suit, when Congress abrogates state immunity under the Fourteenth Amendment, and, lastly, when the Constitution implies a waiver of sovereign immunity.

The Supreme Court recently established a test to determine if a state has waived sovereign immunity in PennEast Pipeline Co. v. New Jersey: (1) if federal power at issue is “complete in itself” and (2) if “the States consented to the exercise of that power – in its entirety – in the plan of the Convention.”

In a 5-4 decision written by Justice Breyer on the eve of his retirement, the Supreme Court found that “Congress’ power to build and maintain the Armed Forces fits PennEast’s test.” Congress enacted USERRA under its war powers in Article I of the Constitution. Accordingly, when states ratified the Constitution, the war powers “were given by the States, entirely and exclusively to the Federal Government.” Chief Justice Roberts, Justice Sotomayor, Justice Kavanaugh and Justice Kagan joined Justice Breyer in the majority. Justice Thomas dissented along with Justices Alito, Gorsuch, and Barrett, reasoning that the issue in question had already been decided by another case and taking issue with the majority’s interpretation of the text of USERRA.

**IMPLICATIONS**

For state employers, the decision’s implications prove quite straightforward. Simply put, state employers – like private employers – must adhere to the provisions of USERRA and allow servicemembers access to the same position or its equivalent upon return from service. In the case of servicemembers like Torres who experience a service-related disability, state employers should be prepared to provide accommodations or an equivalent condition to avoid liability.

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