

# Legal Connections



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## SERVING THOSE WHO HAVE SERVED

A person who voluntarily or involuntarily leaves civilian employment to serve in the uniformed services is entitled to certain benefits as outlined in the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended. Generally, many employers think of USERRA as applying to National Guard members or the reserve component of the Armed Forces; however, USERRA also covers active-duty uniformed service members in times of peace or war.



ANGELINA VEGA, ESQ.,  
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Unlike many employment laws, USERRA applies to all employers, regardless of size, and all types of uniformed service, to include training and performing authorized military funeral honors duty. It also applies to nearly all types of employment – full time, part time, probationary and seasonal, unless the employment was for a brief

time and there was no reasonable expectation of the employment continuing for an indefinite amount of time.

Cumulative employee time away while serving in the uniformed services is generally limited to five years, though USERRA does list some exceptions. For example, an employee who gives a resignation notice due to enlisting in the military as active-duty has reemployment rights with the employer for up to five years, as does a National Guard member who is called up for a three-week period of training prior to departing for a two-

year period of active-duty. This does not mean an employer is required to hold a job open for five years, but it does mean that an employee who returns from the uniformed service after a period of absence has a right to reemployment.

In fact, not only does the employee retain the right to reemployment, USERRA requires the employer to rehire the employee in an “escalator position.” This means that an employer must rehire the employee into a position the employee would have been in if not for resigning to serve. If this means that an employee would have been promoted to manager with a raise, the employer must rehire the employee into a manager position with the appropriate salary and benefits. An employee who is not qualified for the escalator position and cannot become qualified through reasonable efforts of the employer at no cost to the employee, must be placed into a position with similar seniority, status, and pay as the employee was in prior to departing for service.

There are requirements the returning employee must achieve to be eligible for rehire under USERRA. The employee must have provided advance notice of leave (unless it cannot be given for military necessity) and returned to work or applied for reemployment within a reasonable time after separating from the uniformed services. In addition to the less than five-year cumulative service, the employee must not have separated from service with a disqualifying discharge.

The above is only a small part of the reemployment rights for people who voluntarily or involuntarily serve. USERRA also covers employment discrimination, health insurance protection and enforcement. Employers who have returning employees who are exercising their rights under USERRA should seek further information and guidance from an attorney experienced in this area. ■

JOIN US FOR A REVIEW OF FULTON V. PHILADELPHIA AND THE LASTING IMPACT THE CASE WILL HAVE ON LGBTQ+ RIGHTS: CBALAW.ORG

## BUYING REAL ESTATE? HAVE IT INSPECTED!

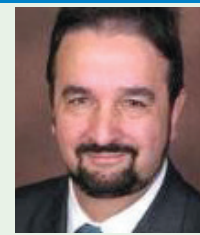
Central Ohio is in the midst of a record-shattering sellers’ market for residential real estate. Many residential properties are attracting multiple offers to purchase within hours of appearing on the Columbus Realtors’ Multiple Listing Service website. As might be expected, prospective buyers are doing everything they can to make their offers as attractive as possible. Closing dates are being adjusted, appraisal contingencies are being waived or mitigated, and more. These concessions are acceptable ways to make offers more attractive, as long as the buyer understands the potential consequences. Unfortunately, we have seen the occasional buyer agree to

purchase a residence without having the property inspected, which is extremely dangerous.

Ohio is a caveat emptor state for purchasers of real property. Buyers are legally responsible for inspecting the property for patent defects, which are defects that are readily observable. Sellers must disclose known latent defects, which are defects that are not readily observable. Most sellers must complete and submit to the buyer the Residential Property Disclosure Form, which is a comprehensive disclosure document. False statements or omissions on the Residential Property Disclosure Form are not actionable in court, but can be used as evidence in an action brought by a buyer

for vendor fraud.

Why the importance of obtaining an inspection prior to purchase? First, a good, professional inspection will reveal any patent defects in the property. Most buyers have little ability to spot such defects and even less ability to determine the potential cost of repairs. Second, should a latent defect be discovered following closing, having an inspection done prior to closing will increase the likelihood of success in a court action against the seller. In Ohio, all such legal actions are based on the law of fraud. To prove fraud, a plaintiff must prove (among other elements) that the seller made a false statement or omission



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of fact that the buyer reasonably relied on when purchasing the property. A buyer’s failure to have a property inspected is grounds for a defendant seller to claim that the buyer could not have reasonably relied upon any such misstatement or omission.

While this line of attack can be overcome, it is often effective in helping to secure a judgment for the seller defendant.

The bottom line: advise your buyer clients to always reserve the right to inspect the premises. The purchase offer should be contingent upon a satisfactory inspection, even if the buyer states in the offer that no request will be made to remedy defective conditions. ■



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March 24, 2020 12:00pm–1:30pm on Zoom

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As a sitting Justice on the Ohio Supreme Court, R. Patrick DeWine knows about the challenges of virtual practice firsthand. This class will teach effective advocacy strategies that will translate into the virtual world, along with practical tips to create winning arguments. 1.5 Professional Conduct CLE hours.

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