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Standing up for our veterans

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Yesterday, Nov. 11, our country celebrated Veterans Day for the 91st year.

Veterans Day serves as a day to honor our veterans and appreciate the sacrifices they have made for our country. However, this appreciation should last longer than just one day. The commitment our veterans make to serve our country and, in turn, serve all of us, deserves respect in all factors of our life.

It seems obvious that the men and women who were willing to risk their lives for our country should never lack food, housing, or medical care. Their service for our country should ensure those needs are met. Unfortunately, this is not always the case. It should also be obvious that military service should not disadvantage veterans with respect to their terms and conditions of employment. Incredibly, however, some businesses do discriminate against employees who have served, or currently are serving, in the military. Employers have refused to reinstate veterans, paid veterans lower wages when they return, denied veterans benefits, and have even harassed veterans and discriminated against them because of their military involvement.

This is not only illegal but immoral as well.

Fortunately, our government continues to work to ensure this discrimination doesn't happen. In fact, the act that protects our veterans, the Uniformed Services Employment & Reemployment Rights Act (USERRA) was strengthened this past October when President Obama signed the Veterans' Benefits Act of 2010. The little-noticed Veterans' Benefits Act makes a number of important changes in programs and benefits available to veterans, including in particular employment benefits. Specifically, the act makes it illegal to pay veterans lower starting wages than their civilian counterparts. The act also makes it easier for veterans to sue companies that have acquired the company which discriminated against the veteran.

The Veterans' Benefits Act is a welcome addition to USERRA, which was enacted in 1994 to strengthen protections for our servicemen and servicewomen first enacted in 1940 as part of the Veterans' Reemployment Rights Act. Under the VRRA, employees needed to show that their military service was the sole factor motivating employment decisions which discriminated against them. USERRA strengthened the VRRA's protections by stating that (like most other anti-discrimination laws) military service only needed to be a motivating factor in a decision, not the only factor, for a serviceman or woman to prove unlawful discrimination.

USERRA itself provides that "A person who is a member of ... [or] has performed ... in a uniformed service shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership ...."

USERRA protects not just individuals who have served in one of the branches of the armed services, but also non-career military personnel.

Just two weeks ago, in Vega-Colon v. Wyeth Pharmaceuticals, the First Circuit Court of Appeals (which covers Maine) extended USERRA's reach to provide protection not just to those who have served or are currently serving, but also to individuals who have applied to serve.

The protections afforded to service members under USERRA are broader than under other federal anti-discrimination

laws. Unlike those laws, which generally require a minimum of 15 employees to be applicable, USERRA applies to employers of all sizes. It also applies to all employees who have served in the military — including temporary and probationary employees — not just full-time employees.

And, unlike most laws that permit an employer to ignore periods where an employee was absent from work for purposes of wages and benefits, USERRA requires employers to treat military personnel as if they had remained at work during their service.

Perhaps most importantly, unlike other federal laws which place the burden of proof on the employee, under USERRA the employer carries the burden of proof to justify its action. Thus, in Vega-Colon, the First Circuit declared that the employer there had to "demonstrate, by a preponderance of the evidence, that it would indeed have" extended a productivity improvement plan regardless of the employee's military service.

The Vega-Colon decision is also notable because it appears to be the first court to recognize that, like federal laws prohibiting a hostile work environment based upon race and sex, USERRA bans hostile work environments based upon an employee's military service. Although the employee there did not succeed in showing that he had been subjected to severe or pervasive harassment by his supervisor and co-workers, the First Circuit recognized that under the right set of circumstances, a veteran could make out such a claim.

It's hard to imagine that any business would disrespect a member of our military, let alone treat an employee worse because of his or her service. Unfortunately, that has not always proven to be the case.

But, hopefully, with the USERRA and its amendments, we can reduce this abhorrent practice. While we are still searching for solutions to provide our veterans with food, shelter, and medical assistance, we can be encouraged that our government is standing up for our vets when it comes to their employment. It's the least we can do.

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