

USERRA Requires Paid Leave if Comparable Leaves Are Paid

Employees who take off work for military duty may be entitled to paid leave from their employers, according to a Feb. 3, 2021, federal appeals court decision. The case, [*White v. United Airlines, Inc.*](#), was brought by a United Airlines pilot whose short leaves from work for Air Force Reserve duty were unpaid, although United paid pilots for other short-term leaves of absence, such as jury duty and sick leave.

The 7th Circuit Court of Appeals considered language in the Uniformed Services Employee and Reemployment Rights Act (USERRA) requiring that employees on military leave be provided the rights and benefits generally provided to similar employees on other leaves. Finding that “rights and benefits” included paid leave, the court reinstated the case and sent it back to the lower court for further proceedings.

Importantly, the 7th Circuit noted that White, the plaintiff, must now **show that any paid leave of absence provided by United is comparable to any given stretch of military leave**. Factors to be considered in this analysis, the court said, are the duration and purpose of the leave, as well as the ability of the employee to choose when to take the leave.

The 7th Circuit Court’s jurisdiction covers Illinois, Indiana and Wisconsin.