

## **FMLA and USERRA**

The Department of Labor (**DOL**) issued a memorandum to remind employers that active duty time counts toward eligibility to take time off from work under FMLA. The *Uniformed Services Employment and Reemployment Rights Act (USERRA)* entitles employees who also are members of the U.S. reserves or the National Guard to be absent from work to perform military service.

USERRA protects the employment benefits and reemployment rights of these employees. A reservist or Guard member who is taking military leave under USERRA might not have actually worked for his or her employer for a total of 12 months nor have met the 1,250 hours requirement when he or she left for military duty. The DOL reminds employers that they must count the months and hours that U.S. reservists or National Guard members would have worked if they had not been called to military duty toward the 1,250 hour requirement for FMLA eligibility.