

Number 14, July 2000 (updated march 2003):

Effect of Reserve Drill Pay on Unemployment Compensation

By CAPT Samuel F. Wright, JAGC, USNR

Q: I am the commanding officer of a Naval Reserve unit in Missouri. An enlisted member of my unit recently lost her civilian job when her employer went bankrupt. She is drawing unemployment compensation (UC) while actively seeking other employment. She is required to report to the Missouri Department of Labor and Industrial Relations any income that she receives, including her Naval Reserve drill pay. Her drill pay is deducted from her UC payment, meaning that she gains no net financial benefit from coming to our unit's weekend drill. Her drill pay actually messes up two weeks of UC payments each month, because a week starts on Sunday and our unit drills on Saturday and Sunday. I think that this arrangement is very unfair. Before she lost her principal civilian job, her work schedule was Monday through Friday. Thus, the drill pay that she received was in addition to, not instead of, her regular civilian pay. UC is intended to compensate her for the loss of her principal civilian job. She is, in effect, being penalized for her participation in the Naval Reserve. I consulted with a Naval Reserve judge advocate at our Reserve Center. He told me that the Missouri Legislature attempted to exempt Reserve component drill pay from the computation of UC weekly benefits, but the Legislature learned that federal law requires that drill pay be deducted from UC payments. He cited Title 26, United States Code, Section 3309 (26 U.S.C. 3309).

The judge advocate also told me that 26 U.S.C. 3309 permits the states to exempt Army National Guard and Air National Guard drill pay when computing weekly UC payments. I think that the Naval Reserve, Air Force Reserve, Army Reserve, Marine Corps Reserve, and Coast Guard Reserve should be treated at least as generously as the Army National Guard and Air National Guard. What gives?

(Name withheld upon request)

A: In 1996, the Missouri Department of Labor and Industrial Relations inquired of the United States Department of Labor (DoL) as to whether Missouri could exempt Reserve component drill pay from weekly UC payment computation. DoL informed Missouri that exempting drill pay would violate 26 U.S.C. 3309. This year, DoL corrected the error. In fact, Federal law does not preclude Missouri or any other state from exempting drill pay from the computation of weekly UC payments. This is a question as to which each state has discretion. At least one state (Colorado) has chosen to exempt drill pay from the computation of weekly UC payments. The Missouri Legislature could enact a similar exemption if it chose to do so.

Section 3309 does not deal with the question of computation of weekly UC

payments. It deals with an entirely separate question: qualification for UC in the first place. The states are generally required to pay UC to State employees who lose their jobs through no fault of their own. Section 3309 contains a series of exemptions from this general requirement. Each of the exemptions deals with a situation where the "state employment" is by its very nature brief and intermittent.

Section 3309(b)(3)(C) exempts a state from the obligation to pay UC to "a member of the State National Guard or Air National Guard." (Emphasis supplied.) As you may know, the National Guard (Army or Air) has a dual federal-state status. A member of the Missouri Army National Guard is simultaneously a member of the Army National Guard of the United States (ARNGUS). The ARNGUS is a Reserve component of the United States Army, just like the Army Reserve.

When Governor Carnahan calls up a unit of the Missouri Army National Guard to mitigate the effects of a flood, he is calling them in their state status, not their federal status. What 26 U.S.C. 3309(b)(3)(C) means is that Missouri is not required to pay them UC when the flood is over and they return to their homes and civilian jobs. Members of the ARNGUS and the Air National Guard of the United States are not treated differently from members of other Reserve components with respect to the computation of weekly UC payments.

Q: It is good to know that members of the Naval Reserve are not being discriminated against, as compared to members of the Army National Guard and Air National Guard. Nonetheless, I still think that it is unfair that the member of my unit is penalized in her UC payments because of the money that she earns for attending our unit's drills. What do you think of the idea of an ROA national resolution calling upon Congress to exempt Reserve component drill pay from the computation of weekly UC payments, as Colorado has done?

A: Trying to address this issue at the federal level runs contrary to the trend in the law toward devolving discretion and responsibility to the states on matters of this kind. I think that a better approach is for the Department of Missouri, and the other ROA departments, to bring up this issue with the state legislatures. Captain Wright is ROA's acting director of Naval affairs. You can reach him during regular business hours. If you are calling about a question pertaining to your civilian job, it is probably not a good idea to call from work. Note: Captain Wright's title is used for purposes of identification only. The views expressed in this article should not be attributed to the Department of the Navy or the U.S. Government generally.