

**Number 25, May 2001:
Use of Federal Government Equipment and Time for Reserve Unit
Activities**

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Q: I am a civilian employee of the Department of Defense (DoD) and also a Naval Reserve lieutenant commander. I serve as the executive officer of my Naval Reserve unit. During our drill weekend last month, the copier at the Reserve Center broke down. I asked my civilian supervisor for permission to use the copier at my civilian office to make 25 copies of our four-page Plan of the Month (POM). She denied my request, saying that the Naval Reserve is not part of the mission of our DoD agency and that my requested use of the copier would be impermissible. It seems to me that the Naval Reserve is part of DoD and that my request to use the copier should have been granted. Was my supervisor correct in denying my request? Name withheld.

A: Probably not. I have obtained a copy of a letter dated 4 January 1999 from Robert P. Murphy, general counsel to the comptroller general, written to Lorraine Lewis, general counsel of the Office of Personnel Management (OPM). The letter has been assigned comptroller general number B-277678, and it is of some precedential value. Mr. Murphy stated the bottom line as follows: "Thus, some use of employee time and agency equipment to carry out limited, incidental Guard and Reserve functions falls within the parameters of activities that an agency may permit."

Q: Where do you draw the line between permissible and impermissible uses of federal government equipment and time to support functions of my Naval Reserve unit?

A: There is no bright line, but Mr. Murphy provided some guidance in the final paragraph of his 1999 letter, as follows:

"It may be advisable for OPM, after consultation with DoD and other interested agencies, including the General Services Administration, to provide some general guidelines as to the amount of time and types of agency equipment that may be used for this purpose and under what circumstances this is permitted. For example, it appears appropriate to provide that the use of agency resources may not interfere with the agency's mission and the employee's responsibilities to the agency. It may also be appropriate to limit the use of agency resources for this purpose to situations where the employee is called upon to perform some incidental Guard or Reserve function which the employee cannot reasonably schedule for nonworking hours or for which he or she cannot make reasonable arrangements to carry out elsewhere."

In other words, you should be very careful not to abuse this privilege. I suggest that you bring the comptroller general's opinion letter to the

attention of your supervisor and your agency's personnel office in a respectful and non-confrontational manner. You should not construe the letter as a blanket authorization to use your agency's copier and other equipment. You should seek prior permission from your supervisor before using such equipment to perform Reserve unit functions. You should not use the equipment without such permission. If permission is granted, you should try to schedule the use of the equipment in such a way as to minimize the impact on your civilian office. For example, you could produce the unit's POM early in the morning or late in the afternoon, outside your own normal working hours and when you are not likely to inconvenience your co-workers who need to use the copier for agency business.

Q: One of our unit members is employed by the United States Department of Labor. Maybe I'll ask her to produce the unit's POM next month. Is the permissibility of using Federal agency equipment and time for limited and incidental Reserve unit activities limited to DoD?

A: No. In his letter, Mr. Murphy wrote, "Although not all federal agencies' missions are as closely connected to the missions of the Guard and Reserves as is DoD's, all agencies would appear to have some interest in furthering the governmental purpose of, and national interest in, the Guard and Reserves." The same considerations and principles apply to all federal agencies.

Q: Another unit member works for the State of Maine, and most other members work for private employers. Is the Comptroller General opinion letter binding on non-Federal employers?

A: No. In his letter, Mr. Murphy cited, in support of his conclusion, the Uniformed Services Employment and Reemployment Rights Act (USERRA), which can be found in Title 38, United States Code, sections 4301-4333 (38 U.S.C. 4301-4333). In 38 U.S.C. 4301(b), Congress expressed the "sense of Congress that the Federal Government should be a model employer in carrying out the provisions of this chapter." Mr. Murphy relied in part on that language.

Neither USERRA nor any other federal law requires an employer to allow an employee to use the employer's equipment to perform Reserve unit activities. Similarly, the employer is not required to permit employees to perform Reserve unit functions while on employer-paid time.

Especially if your unit has been deployed for lengthy periods, you may find that some of the employers are deeply resentful of the time employees spend away from work while on active duty or active duty for training. An employer may even be looking for an excuse to fire one of your unit members. If you suspect that to be the case, you should go out of your way to avoid giving the employer any such excuse.

Q: At least annually, our unit is required by higher authority to conduct a recall exercise. When that occurs, we call each unit member, usually at work.

If the member is not by the telephone when we call, he or she must return the call as soon as possible. In some cases, this will be a long distance call. Does this use of employer time and equipment (telephones) concern you?

A: Yes, especially outside the federal government. As I have stated, federal law does not explicitly require an employer to permit even trivial uses of the employer's time and equipment for Reserve unit activities. Because of the increasing reliance on the Reserve components, we have managed to annoy many employers about the big things, like frequent and lengthy deployments. I think that we should avoid annoying employers with the little things, like recall exercises during working hours. We (ROA) have brought this concern to the attention of each Reserve component chief.

Q: Time out! I am sure that an employer rarely fires an employee who receives and returns a call from his or her child's school or babysitter. Are you saying that it would be lawful for an employer to fire an employee who receives and returns a recall exercise call while at work?

A: No. Assume the employer fires the Reservist-employee under such circumstances. If it can be proved that the employer does not routinely fire employees for other non-work calls that are not related to Reserve component service, that would seem to be reasonably good proof that the employer has violated 38 U.S.C. 4311, USERRA's anti-discrimination provision. However, our goal should be to avoid "employer support" problems, not to win lawsuits.

* Military title 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. Captain Wright recently completed an 11-month stint on the ROA staff, first as Acting Director of Naval Services Affairs and then as "ombudsman." Although he is no longer employed by ROA, he will attempt to continue this column, as a member. You can write to him at ROA, or you can send him an e-mail at swright@roa.org.