

Number 42, April 2002: Progress on Exemptions From USERRA's Five-Year Limit

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In "Law Review Number 6" (September 1998), I explained that USERRA has a five-year limit on the duration of service. The limit is cumulative, but only so long as you are employed by or seeking re-employment with that particular civilian employer. When you start a new job with a new employer, you receive a fresh five-year limit.

I also explained in "Law Review Number 6" that there are several exemptions from the five-year limit. Involuntary service and some kinds of voluntary service are exempted from the five-year limit, even with respect to the same civilian employer. Some of these exemptions require the "secretary concerned" (the service secretary) to make a written determination and certification.

In "Law Review Number 29" (October 2001), I reported: "Just recently, Jayson L. Spiegel, ROA's executive director, has written to appropriate officials of the Departments of the Army, Navy, Air Force, and Transportation (Coast Guard). Mr. Spiegel suggested to these officials that they ensure that appropriate language be included in activation orders, so that volunteers for the present emergency will have their service exempted from the five-year limit." One of the letters to which I referred was a letter dated 17 September 2001, from Mr. Spiegel to the Hon. Michael L. Dominguez, assistant secretary for Manpower and Reserve Affairs, Department of the Air Force.

In a memorandum for the chief of staff, dated 7 December 2001, Secretary Dominguez directed the Air Force chief of staff as follows: "If the purpose of a member's orders is for the direct or indirect support of such missions and operations [Operation Noble Eagle, Operation Enduring Freedom, Operation Northern Watch, Operation Southern Watch, or other missions and operations associated with the national emergency], then affected service members are to have the following statement included in their orders: 'The period of service under these orders is exempt from the five-year limit as provided in 38 U.S.C. 4312(c)(4)(B).' If circumstances prevent placing this authority on the activation orders, the authority shall be included in a separation document and retained in the service member's personnel file." (Secretary of the Navy Gordon R. England issued a very similar directive on 11 March 2002.) What Secretary Dominguez directed in his 7 December memorandum was almost word-for-word identical to what Mr. Spiegel suggested in his 17 September letter.

The result of Secretary Dominguez' order is that Air Force Reservists and Air National Guard members who volunteer for the present emergency will have this period of service exempted automatically from their five-year limits. It will not be necessary for them to apply for individual secretarial

determinations. We are still working on the Department of the Army and the Department of Transportation. Please watch this space for reports of further progress. ROA

Captain Wright was employed as an attorney for DoL for ten years. He was largely responsible for drafting USERRA, along with one other DoL attorney. He also helped to write the successful appellate briefs for the veterans in both the Imel and the Akers cases. Most recently, he was on active duty for 71 days (May–July 2001), including 40 days in Bahrain. Please see his July 2001 “Law Review” article.

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