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USERRA COVERAGE FOR FUNERAL HONORS DUTY

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Q: In "Law Review Number 45" (June 2002), you quoted the definition of "service in the uniformed services" that is included in the Uniformed Services Employment and Reemployment Rights Act (USERRA). [38 U.S.C. 4303(13)] I noted that the definition includes "a period for which a person is absent from a position of employment for the purpose of performing funeral honors duty as authorized by section 12503 of title 10 or section 115 of title 32."

I am the commanding officer of a Naval Reserve Center. About once a month, I am tasked to provide one or two members for a "funeral honors detail" for a veteran who died somewhere in this large state. Sometimes, many hours of travel are required to get to the funeral and back. I have been using the full-timers on my staff (enlisted TARs) for this duty, but this is getting to be a major burden for them. I have thought about using Naval Reservists who drill here for this duty. Does a Reservist have the right to time off from his or her civilian job to perform funeral honors duty?

A: Yes. In 2000, Congress added the quoted language to 38 U.S.C. 4303(13). Even before that amendment, the definition of "service in the uniformed services" was certainly broad enough to cover funeral honors duty, but the 2000 amendment is useful for purposes of emphasis.

About three years ago, Congress made military funeral honors detail a statutory entitlement for any veteran (not just military retirees). Upon request by the family or the funeral director, a detail of at least two service members must be provided. At least one of the two must be of the same service as the decedent.

Providing these details is a major burden on the armed forces, especially over the next several years as the large cohort of World War II veterans passes away. Much of the burden of providing these details will fall upon the Reserve components, especially for funerals held far from the nearest active military installation.

I am concerned about the additional burden that providing funeral honors details will put on the already-strained relationship between Reservists and their civilian employers. An employer who is supportive of National Guard and Reserve training and mobilization may have difficulty accepting the necessity for these funeral honors details. Moreover, these funeral honors duties will, almost by definition, be very short-notice affairs. At Arlington National Cemetery, there is often a considerable lag time between the death and the funeral, but in most other places the funeral is held within three or four days after the death.

I have a suggestion as to how you can minimize the burden on employer

support. I suggest that you recruit a cadre of all-but-retired senior enlisted Reservists. I envision a pool of very senior enlisted Reservists who do not drill, do not perform annual training, and are unlikely to be recalled to active duty except in the most dire of circumstances imaginable. If such a person demands a day off six or 10 days per year to perform funeral honors duty, that won't be a great additional burden on an already-overtaxed employer-employee relationship. That is my suggestion. ROANote: To arrange for a military funeral honors detail for a relative, call 1-877-645-4667. In most cases, funeral directors make these calls. The services provide these funeral honors details at no charge, so the funeral director should not charge the family for this service. Additional information can be found at the Web site: www.militaryfuneralhonors.osd.mil.

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