

**Number 70, April 2003 (Web site only):
Adequate Travel and Rest Time before Reporting to Military Training**

By CAPT Samuel F. Wright, JAGC, USNR*

Q: I am the state judge advocate of the National Guard of my state. I have read and I frequently utilize your Law Review articles, especially those that address the Uniformed Services Employment and Reemployment Rights Act (USERRA).

In Law Review Number 7 (November 1998), you addressed the deadline for returning to work after a period of fewer than 31 days of military training or service. You wrote that the Reserve component member must report for work after the completion of the period of service, the time required for safe transportation from the place of service to the member's residence, and a period of eight hours (for rest).

Here in my state, we have had a separate but similar problem arise, especially with such public sector employers as police and fire departments. Some of our National Guard members work late Friday night and then try to drive through the early morning hours, to arrive at the National Guard armory in time for muster at 0700 Saturday morning. Sometimes, they are so tired they don't get much out of the training on Saturday and in some cases this could be a real safety issue.

We recently had a tragedy that seems to be related to this phenomenon. It involved an Army National Guard first lieutenant who was also a police officer. He worked an eight-hour shift one Friday evening, then tried to drive 200 miles to his National Guard drill, which began at 0700 on Saturday. He never made it. He fell asleep at the wheel and crashed into a tree about 10 miles short of the National Guard armory. What does USERRA provide about travel and rest time before reporting to military training?

A: Unfortunately, tragedies like the one you report are sometimes necessary to get people to sit up, take notice, and to take action. From time to time, disputes of this kind arise between employers and their employees who are members of the Reserve components. How much time off must the employer give an employee before the employee has to report for weekend drills or other military obligations? The Department of Labor (DoL) has taken the position that an employee must be afforded enough time off from the civilian employer so that he or she can travel safely to the duty location and arrive fit to perform the military service. Such factors as the nature of the civilian job, the nature of the military duty to be performed, travel time, and other factors should be considered in arriving at an answer for a particular situation. In most cases, it will be more than simply travel time.

USERRA gives DoL the authority to prescribe regulations implementing this law with regard to states, political subdivisions of states, and private employers. See 38 U.S.C. 4331(a). I hope that DoL will move expeditiously to promulgate USERRA regulations, and that those regulations will address the important question that you have raised.

* Military title used for purposes of identification only. The views expressed in these articles are the personal views of the author and are not necessarily the views of the Department of the Navy, the Department of Defense, the Department of Defense or the U.S. government.