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USERRA Still Applies in DoD's Consecutive Call-up Policy

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CATEGORY: USERRA Coverage

Q: The Department of Defense announced on Jan. 11, 2007, the demise of the 24-month cumulative limit on the amount of time an individual Reserve Component member can be involuntarily called to active duty. We may now recall again some National Guard and Reserve members who have already served two years of active duty since Sept. 11, 2001. Some of those folks already performed some additional active duty, voluntarily or involuntarily, prior to 2001. I am concerned that we may put somebody over the cumulative five-year limit under the Uniformed Services Employment and Reemployment Rights Act (USERRA). Is this a problem?

A: No. USERRA's five-year limit expressly excludes "any service ... performed by a member of a uniformed service who is ... ordered to or retained on active duty under section 688, 12301(a), 12301(g), 12302, 12304, or 12305 of title 10 or under section 331, 332, 359, 360, 367, or 712 of title 14." 38 U.S.C. 4312(c)(4)(A). (The title 14 sections pertain to the Coast Guard.) USERRA's five-year limit clearly excludes all involuntary service and some voluntary service. See Law Review 201 at www.roa.org.

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