

LAW REVIEW 840

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CATEGORY: 1.3-Left job for Service

My Mobilization Comes at a Terrible Time for my Employer

By CAPT Samuel F. Wright, JAGC, USN (Ret.)

Q: I am a Soldier in the Army Reserve and I am being mobilized for deployment to Iraq. I received only a few days of notice of this mobilization, and it comes at a terrible time for my civilian employer. I just started a major project at work, and I am the only employee qualified to complete this particular project. My employer has asked me to ask the Army for a one-month delay on my report date, so that I can finish the project. Help!

A: In January, I participated in ROA's Defense Education Forum conference on employer-Reservist relations. The issue of giving civilian employers adequate notice of mobilizations was discussed in great detail. LTG Jack Stultz, the Chief of Army Reserve, stated that the Army Reserve is moving toward providing Reservists and their civilian employers at least one year of notice of mobilizations, and maybe up to two years. LTG Stultz also acknowledged that there have been circumstances where far less notice has been provided.

I am very much in favor of providing civilian employers as much advance notice as possible in order to minimize the burden on those employers caused by removing key employees for many months at a time. I also urge the Reserve Components to provide notice to civilian employers directly at the same time individual servicemembers are notified.

Section 4312(a) (1) of the Uniformed Services Employment and Reemployment Rights Act (USERRA) requires that the individual member "or an appropriate officer of the uniformed service in which the service is to be performed" provide advance notice to the civilian employer, unless providing advance notice is precluded by military necessity or otherwise impossible or unreasonable. There have been cases where mobilizing members have withheld notice from their employers until the last minute, perhaps out of fear of the employer's reaction to the news. There have also been cases where the individual employee gave no notice whatsoever or gave only oral notice that was difficult to prove after the employer denied receiving advance notice. If the head of the Reserve Component or the commander of the unit being mobilized notifies the employer by certified mail, and retains records of the mailing, many problems can be avoided.

Now let us turn to your particular situation. A change in Army Reserve policy to provide more notice in the future does not help you and your employer with your impending mobilization.

Your unit will likely first deploy to an Army base in the United States for about a month of pre-deployment training. If the Army gives you a one-month delay in your deployment, you will miss that training and have to deploy directly to Iraq. This presents a safety issue: your safety and the safety of your colleagues in the unit. The Army could exempt you from this mobilization, because of the needs of your civilian employer, but that would mean bringing in a member of another unit that is not being mobilized at this time. This also would necessarily mean even less advance notice for that individual's civilian employer. More importantly, that individual would not be someone who has trained with your unit for many months or years; bringing in a new person, even if that person has been well trained in a similar unit, could adversely affect the effectiveness and safety of the deploying unit.

Your best course of action is to bring this situation to the attention of your unit's commanding officer, through the chain of command, and ask the commanding officer to contact your employer. Good luck, and you be careful out there.