

LAW REVIEW 939

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CATEGORY: 1.3.1.1—Left Job for Service and Gave Prior Notice

Let's Try To Limit the Burden on Your Employer

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Since the terrorist attacks of Sept. 11, 2001, more than 700,000 National Guard and Reserve personnel have been called to the colors for the Global War on Terrorism, and some have been called up two, three, or even four times. Our nation's Reserve Components have been transformed from a "strategic reserve" (to be mobilized only in the case of a major worldwide military conflict) to an "operational reserve" (routinely called upon to participate in military operations, such as the ongoing campaigns in Iraq and Afghanistan).

This transformation puts burdens not only on Reserve Component members and their families, but also on their civilian employers and their colleagues at work.

The Uniformed Services Employment and Reemployment Rights Act (USERRA) protects the civilian jobs of those who leave civilian jobs for voluntary or involuntary military service—from a drill weekend to five years of full-time active duty. Congress enacted USERRA in 1994 as a complete rewrite of the Veterans' Reemployment Rights (VRR) law, which can be traced back to 1940.

Some Reserve Component members have significant influence on their civilian work schedules. Many Reserve Component members can, to some extent, control the timing of their military training periods. If you can control your military or civilian schedule, you should make a good-faith effort to schedule your military training periods around your civilian work days, and to schedule your civilian work days around your military training periods. You should do your best to attain and maintain your military proficiency while minimizing the burden on your civilian employer.

It is important that you give your employer as much advance notice as possible whenever you will be away from work for military training or service, including inactive duty training or drills. If you give your employer only hours of advance notice that you will miss a scheduled work day because of military duty, the employer may lose revenue or incur additional costs. USERRA arguably permits you to give the notice at the last minute, but don't add to the employer's burdens just to prove that you can.

I respectfully submit that it is the duty of Reserve Component leaders (unit commanders and up) to establish schedules for military training and service that are predictable and to give the notice to the civilian employers. Section 4312(a)(1) of USERRA [38 U.S.C. 4312(a)(1)] provides that the notice to the civilian employer may be provided either by the individual who is to perform uniformed service or by "an appropriate officer of the uniformed service in which the service is to be performed."

Unit commanders and even higher authorities should give notice to civilian employers of drill schedules, annual training, and voluntary or involuntary calls to active duty. Let's take the burden off the individual Reserve Component member (especially a junior enlisted member) in dealing with the employer's annoyance and resistance. The notice should come from the unit commander or even the overall commander of the Reserve Component.

The Global War on Terrorism may last for a generation or more. If we are going to continue to rely upon Reserve Component members for major contributions, we need to formulate and implement policies that are sustainable over the long haul.