

## LAW REVIEW<sup>1</sup> 09057

### **Veterans' Preference: Here are the eligibility standards for veterans earning special credits for federal civilian jobs**

By Captain Samuel F. Wright, JAGC, USN (Ret.)<sup>2</sup>

#### 8.0—Veterans' Preference

To be eligible for the five-point preference in getting and keeping a federal civilian job, you must have served on active duty (not active duty for training) during one of the following periods:

- During a war
- For more than 180 consecutive days other than for training, any part of which occurred after January 31, 1955, and before October 15, 1976
- During the Gulf War from August 2, 1990, through January 2, 1992
- For more than 180 consecutive days, other than for training, any part of which occurred during the period beginning September 11, 2001, and ending on the date prescribed by Presidential proclamation or by law as the last day of Operation Iraqi Freedom

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<sup>1</sup>I invite the reader's attention to <https://www.roa.org/page/LawCenter>. You will find more than 2000 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouse Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997.

<sup>2</sup>BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General's Corps officer and retired in 2007. I am a life member of ROA. For 43 years, I have worked with volunteers around the country to reform absentee voting laws and procedures to facilitate the enfranchisement of the brave young men and women who serve our country in uniform. I have also dealt with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans' Reemployment Rights Act (VRRA—the 1940 version of the federal reemployment statute) for 36 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. 4301-35). I have also dealt with the VRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice, and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. You can reach me by e-mail at [SWright@roa.org](mailto:SWright@roa.org).

- In a campaign or expedition for which medal has been authorized. Any Armed Forces Expeditionary medal or campaign badge, including Afghanistan (Operations Enduring Freedom (OEF), Iraqi Freedom (OIF)), Bosnia (Operations Joint Endeavor, Joint Guard, and Joint Forge), Global War on Terrorism, Persian Gulf, and others may qualify for preference.

For example, Joe Smith served on active duty in the Coast Guard from March 15, 1994, to March 14, 1998. Because his active duty period began after Jan. 2, 1992, and ended before Sept. 11, 2001, he is not eligible for the five-point preference, unless he served in a campaign or expedition for which a campaign medal has been authorized.

A military retiree in the grade of major or lieutenant commander or higher is not eligible for veterans' preference, unless he or she is a disabled veteran. If you qualify for a non-regular retirement, based on a combination of Active Duty and National Guard or Reserve service, you do not lose your veterans' preference until you actually qualify for the retired pay. Generally, that will be on your 60th birthday. If you have performed "contingency service" after Jan. 28, 2008, you may qualify for your non-regular retired pay some months before your 60th birthday.

Special rules apply to a person qualifying for veterans' preference based on holding a campaign medal or based on service between Aug. 2, 1990, and Jan. 2, 1992. If the person enlisted after Sept. 7, 1980, or entered on active duty after Oct. 14, 1982, he or she must have served on active duty continuously for 24 months or for the full period called or ordered to active duty. This service requirement does not apply to veterans with compensable service-connected disabilities or to veterans separated for disability in the line of duty or for hardship.

The following classes of persons qualify for a 10-point veterans' preference:

- A veteran who served at any time and who (1) has a present service-connected disability or (2) is receiving compensation, disability retirement benefits, or pension from the military or the Department of Veterans Affairs. Any person who received a Purple Heart qualifies as a disabled veteran.
- An unmarried spouse of certain deceased veterans, or the spouse of a veteran unable to work because of a service-connected disability.
- A parent of a veteran who died in service or who is permanently and totally disabled.

These rules, set forth in Title 5, U.S. Code, section 2108 (5 U.S.C. 2108), apply to veterans' preference in federal civilian employment. More than 40 states have state laws mandating veterans' preference in employment by the states and their political subdivisions (i.e., counties, cities, school districts). Most of those state laws are similar but by no means identical to the federal law. To determine if you are eligible for veterans' preference in state or local government employment, check the law of your particular state.

### **Please join or support ROA**

This article is one of 1800-plus “Law Review” articles available at [www.roa.org/page/lawcenter](http://www.roa.org/page/lawcenter). The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. New articles are added each month.

ROA is almost a century old—it was established in 1922 by a group of veterans of “The Great War,” as World War I was then known. One of those veterans was Captain Harry S. Truman. As President, in 1950, he signed our congressional charter. Under that charter, our mission is to advocate for the implementation of policies that provide for adequate national security. For many decades, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation’s defense needs.

Indeed, ROA is the *only* national military organization that exclusively supports America’s Reserve and National Guard.

Through these articles, and by other means, we have sought to educate service members, their spouses, and their attorneys about their legal rights and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA or eligible to join, but please understand that ROA members, through their dues and contributions, pay the costs of providing this service and all the other great services that ROA provides.

If you are now serving or have ever served in any one of our nation’s seven uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20. Enlisted personnel as well as officers are eligible for full membership, and eligibility applies to those who are serving or have served in the Active Component, the National Guard, or the Reserve.

If you are eligible for ROA membership, please join. You can join on-line at [www.roa.org](http://www.roa.org) or call ROA at 800-809-9448.

If you are not eligible to join, please contribute financially, to help us keep up and expand this effort on behalf of those who serve. Please mail us a contribution to:

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