

Number 91, September 2003: Notice and Documentation Requirements

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Q: I am a Naval Reserve officer. I perform inactive duty training (drills) one weekend per month and annual training (AT) for about two weeks, once a year. I work for a very small company, with only 12 employees. When I contact the owner of the company about my need to be away from work for drills or AT, he always demands "to see your orders." I do not normally receive written orders for drill weekends, and my orders for AT often come very late. I really don't want to share these military documents with my civilian employer.

In Law Review 7 (November 1998), you wrote, "If your period of service is fewer than 31 days, you are not required to submit documentation." That means that I do not have to show the employer my orders for a two-week ADT. Correct?

A: You are confusing the pre-service notice requirement [38 U.S.C. 4312(a)(1)] with the post-service documentation requirement [38 U.S.C. 4312(f)(1)]. If you are to be away from work for "service in the uniformed services," you must give prior notice to the civilian employer, unless giving prior notice is precluded by military necessity or otherwise impossible or unreasonable. Law Review 5 (August 1998) discusses this notice requirement in some detail.

You are not required to provide any documentation when you give notice to your employer of an upcoming period of service, but I strongly recommend that you share with the employer whatever paperwork you have. Your AT orders are not a military secret, and you should not be reluctant to provide a copy to your employer.

It is true that some civilian employers have an inflated idea of the kind of paperwork that Reservists typically receive from the military. You can probably get your unit's commanding officer (CO) to provide you the unit drill schedule on unit stationery. That will probably satisfy the employer. If not, you could request that your CO contact your employer, or invite the employer to contact your CO. Your employer probably just wants reassurance that you really are performing service during the times you are away from work.

If you are submitting an application for re-employment (meaning that your period of service was for at least 31 days), the employer has the right to demand documentation with your application. If the documentation is readily available, you must provide it as a condition for re-employment. The documentation should establish that your application is timely, that you have not exceeded the five-year limit on the duration of the period or periods of

service relating to that employer, and that you are not disqualified from re-employment by virtue of having received a punitive or other-than-honorable discharge. See 38 U.S.C. 4312(f)(1).

If your period of service was fewer than 31 days, such as a drill weekend or a 12-day AT, the documentation requirement under section 4312(f)(1) does not apply. Nonetheless, you always have the burden of proof on the eligibility criteria, as described in Law Reviews 5–7. This means that you must be able to prove that you meet each of the eligibility criteria, including proving that you performed service in the uniformed services during your absence from work.

I recommend that whenever you return from a period of service, whether for five hours or five years, you bring with you some evidence that you have performed service during the absence. The point here should be to get along with your civilian employer, not to pick a fight about every last jot and tittle of the law. For practical advice about getting along with your employer, I suggest that you contact the National Committee for Employer Support of the Guard and Reserve (ESGR), at 1-800-336-4590, or view the ESGR Web site at www.esgr.com. ROA

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