

LAW REVIEW¹ 118

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Right to Reinstatement of health Insurance after Service

By Captain Samuel F. Wright, JAGC, USN (Ret.)²

[About Sam Wright](#)

4.4—Right to Health Insurance Reinstatement after Military Service

Q: I am a warrant officer in the Army Reserve who retired last June from my career as a public school teacher. I have not yet retired from the Army Reserve, however, and recently was recalled to active duty. I have health insurance through the Teacher Retirement System (TRS), for which I pay \$200 per month. This represents about one-third of the total cost of that insurance, with the state picking up the balance.

Now that I have been recalled to active duty, I do not need my civilian health insurance, because if I get sick, or if my husband gets sick, we can use the military system. I asked the TRS to stop deducting the \$200 per month from my retirement check. TRS told me that if I drop out of the health insurance plan now I would not be allowed to rejoin upon leaving

¹I invite the reader's attention to www.roa.org/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 very specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997.

²BA 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.

active duty. It is unfair that I should have to pay \$200 a month for insurance that I do not need, just to be able to get it back later, when I do need it.

I printed out Law Review 10 ("Health Insurance") and Law Review 85 ("Reinstatement of Health Insurance Coverage After Military Service") and provided those articles to the TRS. A TRS lawyer responded, asserting that USERRA does not apply because I did not leave "employment" for this active duty period because I had retired from teaching several months before I was called to active duty.

It seems to me that USERRA does apply because I am eligible for the retirement benefits and the TRS health insurance only because I spent a whole career as a teacher. What do you think?

A: I think that your USERRA argument has merit, but there is another law that supports your case even more convincingly. I am referring to Section 704 of the new Servicemembers' Civil Relief Act (SCRA). See Law Review 116 in this issue for further information on this new Act.

Section 704 of the SCRA applies to a person who has been ordered to active duty (other than for training) under sections 688, 12301(a), 12301(g), 12302, 12304, 12306, or 12307 of Title 10 of the United States Code. It also applies to persons ordered to active duty under section 12301(d) of Title 10 during a period when members have been called to active duty under one of the other sections set forth above. Please check to ensure that your military orders cite one of these sections.

If you meet these criteria, you are entitled, upon release from the period of service, to reinstatement of any health insurance that was in effect on the day before the service commenced and that was terminated effective on a date during the period of service. Section 704(a) of the SCRA. There must be no waiting period and no exclusion of "pre-existing conditions" except for conditions that the Department of Veterans Affairs has determined to be service connected. [Section 704(b) of the SCRA.]

You must apply for reinstatement of your health insurance coverage within 120 days after the date of termination of or release from military service. [Section 704(d) of the SCRA.] I strongly suggest that you request reinstatement in writing and send the request by certified mail. ROA

**Military title used for purposes of identification only. The views expressed in these articles are the personal views of the author and are not necessarily the views of the Department of the Navy, the Department of Defense, the Department of Defense, or the U.S. government.

Update – March 2022³

³Update by Second Lieutenant Lauren Walker, USMC.

The location of the SCRA within the United States code changed in late 2015. Previously codified at 50 U.S.C App. §§ 501-597(b), there was an editorial reclassification of the SCR by the Office of the Law Revision Counsel to the United States House of Representatives that became effective on December 1, 2015.⁴ The SCRA is now codified at 50 U.S.C. §§ 3901-4043. The changes in codification have not changed the substance or application of the sections. Therefore, the application of the SCRA throughout this article applies the same today as it did when it was written.

The relevant sections cited throughout the article can be found as followed:

Section 704 of the SCRA discussing health insurance reinstatement can be found at 50 U.S.C. § 4024. There has been no change to this section to include the words “or income replacement insurance” after “health insurance.”

For a complete conversion chart for the SCRA please see *The Servicemembers Civil Relief Act Has Moved*.⁵

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This article is one of 2,300-plus “Law Review” articles available at www.roa.org/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 on 10/1/1922 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 almost a century, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation’s defense needs.

Through these articles, and by other means, including amicus curiae (“friend of the court”) briefs that we file in the Supreme Court and other courts, we educate service members, military spouses, attorneys, judges, employers, DOL investigators, ESGR volunteers, congressional and state legislative staffers, and others about the legal rights of service members and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA, 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.

⁴*The Servicemembers Civil Relief Act (SCRA)*, THE UNITED STATES DEPARTMENT OF JUSTICE, <https://www.justice.gov/servicemembers/servicemembers-civil-relief-act-scra> (last visited Mar. 10, 2022).

⁵Samuel F. Wright, *The Servicemembers Civil Relief Act Has Moved*, Law Review 15115 (Dec. 2015).

If you are now serving or have ever served in any one of our nation's eight⁶ uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20 or \$450 for a life membership. 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 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:

Reserve Organization of America
1 Constitution Ave. NE

⁶Congress recently established the United States Space Force as the 8th uniformed service.