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# Federal Civilian Employees Who Are Disabled Veterans Have the Right to Time off from their Jobs for Medical Treatment—Thank You President Hoover

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1.3.1.1—Left job for service and gave prior notice
1.8—Relationship between USERRA and other laws/policies

**Q: I am a retired Army Reserve Colonel and a life member of ROA. I have worked for the Department of the Army, as a civilian, for many years. In my Army Reserve capacity, I was recalled to active duty and deployed to Iraq in 2007, and I was wounded in action. After medical treatment and rehabilitation, I left active duty and returned to my civilian job in late 2010. In 2011-12, I needed much additional time off from work for follow-up surgery and rehabilitation related to my 2007 wounds.**

**After I exhausted all my sick leave and annual leave in my civilian job, I asked for additional time off, without pay. The Army, as my civilian employer, denied my request and forced me to retire, several years before I had planned to retire. Now, I am largely recovered, and I want to return to work. My employer tells me that my retirement cannot be undone.**

**A friend of mine told me that a 1930 Executive Order gave me the right to time off from my civilian federal job for medical treatment, because I am a disabled veteran. Could this be true?**

**A:** Yes, it is true. With a lot of help from the very helpful librarians at the Law Library of Congress, I found that Executive Order and I also verified that it has not been rescinded or superseded—it is still in effect.

This is Executive Order 5396, signed by President Herbert Hoover on July 17, 1930. The title is "Special Leaves of Absence to be Given Disabled Veterans in Need of Medical Treatment." It reads as follows in its entirety:

"With respect to medical treatment of disabled veterans who are employed in the executive civil service of the United States, it is hereby ordered that, upon the presentation of an official statement from duty constituted medical authority that medical treatment is required, such annual or sick leave as may be permitted by law *and such leave without pay as may be necessary shall be granted* by the proper supervisory officer to a disabled veteran in order that the veteran may receive such treatment, all without penalty in his efficiency rating.

The granting of such leave is contingent upon the veteran's giving prior notice of definite days and hours of absence required for medical treatment in order that arrangements may be made for carrying on the work during his absence." Emphasis supplied.

The President does not have the authority, absent a statute, to order private parties to do things, but the President certainly has the authority to direct federal agencies in how they carry out their business. An Executive Order survives the end of the term of the President who signed it. Twelve (12) Presidents have taken office and have left office since President Hoover completed his single term and was succeeded by President Franklin D. Roosevelt on March 4, 1933. But Executive Order 5396 remains in effect because neither President Roosevelt nor his most recent 12 successors (including President Obama) have rescinded or superseded it.

The language that President Hoover signed so long ago is quite explicit. Such leave without pay as is necessary *shall* (meaning must) be granted. President Hoover set forth the simple conditions that the federal employee must meet to be entitled to this special leave. Imposing additional conditions or limitations is inconsistent with the legal maxim *expressio unius est exclusio alterius.*[1]

As I explained in Law Review 965, the Uniformed Services Employment and Reemployment Rights Act (USERRA) gives an individual the right to reemployment after *service in the uniformed services,* provided he or she meets the five simple conditions that are described in Law Review 1281 and other articles. USERRA defines the term *service in the uniformed services.* The definition includes time needed to be away from civilian employment for a medical or other *examination* to determine fitness to perform uniformed service, but it does not include time away from civilian work for medical *treatment* necessitated by something that happened while the individual was on active duty.

During the 111th Congress (2009-10), Representative Lloyd Doggett of Texas introduced a bill (H.R. 466) that would have amended USERRA to add such treatment to USERRA's definition of *service in the uniformed services.* That bill passed the House but not the Senate. It also did not pass during the 112th Congress (2011-12).

Private sector employers and state and local governments are not required to give employees time off for medical treatment necessitated by military service, but federal agencies are required to do this, because of an Executive order that was signed almost 83 years ago.

**UPDATE--DECEMBER 2019**

For more information about "Hoover leave" under Executive Order 5396, please see Law Review 19111 (December 2019).

[1] That is Latin for "to express one is to exclude all the others." Please see Law Review 969 for a detailed discussion of this important legal concept. I invite the reader's attention to www.servicemembers-lawcenter.org. You will find 902 articles that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index and a search function, to facilitate finding articles about very specific topics. I initiated this column in 1997, and we add new articles each week. We added 122 new articles in 2012, and we have added another 80 articles so far in 2013.