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I Signed a Contract and Received a Corporate Signing Bonus, and Now I Have Joined the Army

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1.8—Relationship between USERRA and other laws/policies

Q: I graduated from college in 2012. I found a good job as a junior executive with a major national corporation. The company paid me a signing bonus, and I signed a contract in which I agreed that I would stay with the company for at least two years and that if I left short of the two-year point (for whatever reason) I would be required to repay the signing bonus in full.

Recently, I enlisted in the Army as an officer candidate. I have orders to report to Officer Candidate School (OCS) in February. I am in great shape and very confident that I will graduate from OCS and receive my commission as a Second Lieutenant in late spring of 2014, followed by assignment as a platoon commander.

My Army enlistment is the standard military enlistment, for eight years. I expect to remain on active duty for four years, or until early 2018, at which time I will leave active duty and affiliate with the Army Reserve or Army National Guard. Of course, all these plans are tentative, and I could remain on active duty for a 20-year career.

When I report to OCS in February, I will still be four months short of completing my two-year obligation to my civilian employer, under the contract that I signed. Under these circumstances, am I required to repay the signing bonus?

A: No.

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As is explained in Law Review 1281³ (August 2012), you will be entitled to reemployment at this corporation after you leave active duty, provided you meet five simple criteria:

- a. You must have left your civilian job for the purpose of performing service in the uniformed services. Clearly, that is what you are doing.⁴
- b. You must have given the employer prior oral or written notice. You certainly can give the notice now, before you report to OCS in February.
- c. You must not have exceeded the cumulative five-year limit on the duration of the period or periods of uniformed service, relating to the employer relationship for which you seek reemployment.⁵
- d. You must have been released from the period of service without having received a disqualifying bad discharge enumerated in section 4304 of USERRA, 38 U.S.C. 4304.
- e. You must have made a timely application for reemployment with the pre-service employer, after release from the period of service.⁶

If you leave your corporate job to report to active duty in early January, as you expect, the company will be required to treat you as being on “furlough or leave of absence” from the company during your active military service. USERRA provides:

“(1) Subject to paragraphs (2) through (6), a person who is absent from a position of employment by reason of service in the uniformed services shall be—
(A) *deemed to be on furlough or leave of absence* while performing such service; and
(B) entitled to such other rights and benefits not determined by seniority as are generally provided by the employer of the person to employees having similar seniority, status, and pay who are on furlough or leave of absence under a contract, agreement, policy, practice, or plan in effect at the commencement of such service or established while such person performs such service.”

38 U.S.C. 4316(b)(1) (emphasis supplied).

Section 4302(b) of USERRA provides:

³ Please see www.servicemembers-lawcenter.org. You will find 962 articles about laws that are especially pertinent to those who serve our country in uniform, along with a detailed Subject Index and a search function, to facilitate finding articles about very specific topics. Captain Wright initiated this column in 1997, and we add new articles each week. We added 122 new articles in 2012 and another 140 so far in 2013.

⁴ Many people incorrectly believe that USERRA only applies to persons joining the National Guard or Reserve. In fact, USERRA applies equally to persons joining the Active Component of the Army, Navy, Marine Corps, Air Force, or Coast Guard. Please see Law Review 0719 (May 2007).

⁵ All involuntary service and some voluntary service are exempted from the computation of your five-year limit. Please see Law Review 201 (August 2005) for a detailed discussion of what counts and what does not count toward your five-year limit.

⁶ After a period of service of 181 days or more, you have 90 days to apply for reemployment. 38 U.S.C. 4312(e)(1)(D). Shorter deadlines apply after shorter periods of service.

“(b) This chapter *supersedes* any State law (including any local law or ordinance), *contract*, agreement, policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or benefit provided by this chapter, including the establishment of additional prerequisites to the exercise of any such right or the receipt of any such benefit.” 38 U.S.C. 4302(b) (emphasis supplied).

Your right to a statutory leave-of-absence under section 4316(b) of USERRA supersedes the contract you signed with the company in exchange for the signing bonus. A lawsuit by the company to recoup the signing bonus, if brought while you are on active duty, would almost certainly be unsuccessful.

Let us assume that you serve on active duty for four years and leave active duty in early 2018. At that point, you will almost certainly be entitled to reemployment under USERRA, in that you left the job for military service and gave prior notice to the civilian employer, you have not exceeded the five-year limit, you have been released from active duty without a disqualifying bad discharge, and you have made (or certainly can make) a timely application for reemployment with the company.

If you leave active duty in 2018 and choose not to apply for reemployment, the company could conceivably sue you and prevail at that time. Under the Servicemembers Civil Relief Act (SCRA), statutes of limitations do not run *for you or against you* while you are on active duty. See 50 U.S.C. App. 526(a).

When you leave active duty, we suggest that you return to work at the company⁷ at least long enough to complete the remaining five months of your contractual obligation.⁸ If you stay on active duty long term, as a career Army officer, certainly the company will not stand in your way.

As a practical matter, this whole issue is not a problem. The company is most unlikely to sue you for “breaching” your contract by enlisting in the military. Let us consider some historical precedents here.

On December 7, 1941, air and naval forces of Japan attacked the United States Navy’s Pacific Fleet at its base at Pearl Harbor, Hawaii, killing almost 3,000 Americans. President Franklin D. Roosevelt referred to the date as “the date which will live in infamy” and obtained a declaration of war from Congress, with only one dissenting vote. Ted Williams was already an established

⁷ You should at least offer to return to work, by certified mail, to meet your obligations under the contract. At that point, the company may not want you back and may offer to release you from your contract.

⁸ You may not even need to remain five months. Under section 4316(a) of USERRA, 38 U.S.C. 4316(a), you are entitled to be treated, upon reemployment, as if you had been continuously employed by the civilian employer during the time you were away from work for uniformed service. If you had not reported to active duty in January 2014, you would have completed your 24-month obligation by June 2014, so in early 2018 you should be treated as an employee who has completed the obligated employment time and who is free to resign at his or her pleasure.

baseball star when he left a lucrative contract (at least lucrative by 1940s standards) with the Boston Red Sox to enlist in the Marine Corps. Ten years later, Williams was recalled to active duty, from the Marine Corps Reserve, for the Korean War. Did the Red Sox sue Williams for breaching his contract with the team? *Of course not.*

On September 11, 2001, 19 terrorists commandeered four airliners and crashed them into three buildings and a field, killing almost 3,000 of our fellow Americans and setting off a period of emergency that continues to this day, and creating the “date which will live in infamy” for our time. Defensive back Patrick Tillman was moved to enlist in the Army and serve in Special Forces in Afghanistan. Did the Arizona Cardinals sue him for breaching his contract with the team? *Of course not.*