

State Laws, USERRA, and a \$10,000 Judgment

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category: Relationship Between USERRA and Other Laws and Policies.:

Individual states and territories often have laws that provide employment and re-employment rights that either replicate or enhance the Uniformed Services Employment and Reemployment Rights Act (USERRA) type protections for military members. The state statutes frequently serve multiple purposes, providing protections and benefits to Active Duty as well as Reserve forces, but specifically providing coverage for National Guard troops when they are called upon by a state's governor for state Active Duty (SAD). States must provide re-employment protections when ordering their National Guard to SAD, because USERRA only provides protections for military members while performing service in federal military-duty status. [38 U.S.C. Sect. 4303(13) & (16)].

In addition to providing SAD call-up protections, state statutes can provide numerous other benefits to Reservists above and beyond USERRA protections. For example, in Minnesota there are state statutes providing pay differential for state of Minnesota employees called to active duty (Minn. Stat. Sect. 43A.183), tuition and textbook reimbursement for members of the National Guard (Sect. 192.501), a law making it a gross misdemeanor for any employer to discriminate against an employee due to military membership (Sect. 192.34), Soldier's and Sailor's Civil Relief Act protections for National Guard troops on state Active Duty (Sect. 190.055), full refunds for tuition and fees when a Reserve member is called to active duty and cannot complete post-secondary education course work (Sect. 192.502), and 15 days of paid military leave for all state, county, city and other public employees (Sect. 192.26).

How important are these state laws? Recently, a Minnesota Air National Guard explosive ordnance disposal (EOD) technician, Tech. Sgt. Scott Castleman, obtained a \$10,000 judgment in a lawsuit against the city that employs him as a firefighter. Castleman began working for the city as a firefighter during 1998. As a firefighter, Castleman works 24-hour shifts with one day on followed by two days off. Minnesota's military leave statute states that as a city employee, Castleman may take 15 "days" of paid leave per year for military duty. However, under the collective bargaining agreement between the city and the firefighters, Castleman was charged leave in 12-hour blocks of time, effectively charging him two days of paid military leave for each 24-hour shift he needed to take off for military duty. Although the term "day" is not defined in Minnesota's paid military leave statute, the Minnesota courts had previously ruled on the issue.

During 1994, under Minnesota's paid leave statute, the Minnesota Court of Appeals determined that firefighters working 24-hour shifts are entitled to 15, 24-hour

shifts off for military duty. In addition, the court found that any collective bargaining agreement language to the contrary is void. [*Howe, et al. v. City of St. Cloud*, 515 N.W.2d 77 (Minn. Ct. App. 1994); see also, *Boelter v. City of Coon Rapids*, 67 F. Supp.2d 1040 (D. Minn. 1999)].

Although Castleman provided his fire chief with the case law, he was only allowed 7.5 shifts off per year. Castleman requested help from DOL-VETS, but they turned his case over to Employer Support of the Guard & Reserve (ESGR) because it was based on state law. ESGR helped Castleman through numerous letters, phone calls, and e-mails to the mayor, city administrator, city council, and the city attorney. In addition, Castleman filed a grievance on the issue. His union, however, decided not to pursue the grievance because the city was following the contract language.

In January 2002, the city offered to prospectively grant Castleman 15, 24-hour paid shifts off per year for military duty, however, the city would not provide back pay for the 7.5 days of military leave per year that Castleman had lost since 1999. In the spring of 2002, Castleman filed suit against the city with the subsequent legal battle lasting over a year. Ultimately, the judge ruled for Castleman during November 2003 and the parties, during March 2004, agreed on a monetary settlement of \$10,000 for damages and attorney's fees.

In closing, it is important to understand the federal laws that provide military members protections and benefits, but it is equally important to be aware of the protections and benefits provided by state laws. Finally, great credit must be given to Scott Castleman who stayed the course through a long, arduous, and expensive process. Currently, Sergeant Castleman is mobilized as an EOD technician serving in Iraq.

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