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New Jersey Teachers Receive Seniority Credit for Wartime Military Service, Even if it was before Start of Teaching Career

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- 1.1.1.7—USERRA applies to state and local governments
- 1.3.2.2—Continuous accumulation of seniority-escalator principle
- 1.8—Relationship between USERRA and other laws/policies

Q: I am a Sergeant First Class (E-7) in the Army National Guard, and I recently joined ROA. I was called to active duty for 18 months, from January 2004 to July 2005, and I was in Iraq for most of that time. After I returned from Iraq, I completed my college degree and earned a teaching license. In September 2009, I was hired as a teacher by a New Jersey school district. When I was hired, the school district gave me seniority credit for my 18 months of active duty in 2004-05, meaning that I was paid at a higher rate than other rookie teachers in 2009 who had never served in the military. Recently, the personnel director of the school district told me that I was erroneously given that seniority credit in 2009 and that my pay would be adjusted downward. She told me that I was not entitled to the seniority credit under the Uniformed Services Employment and Reemployment Rights Act (USERRA) because I did not leave a job with that school district in 2004 and did not return to the school district in 2005. Is the personnel director correct?

A: You are not entitled to seniority credit for your 2004-05 active duty period under USERRA, but you are entitled under a section of New Jersey state law, as follows:

“In computing length of service for seniority purposes, every teaching staff member who, after July 1, 1940, has served or hereafter shall serve, in the active military or naval service of the United States or of this State, including active service in the women's army corps, the women's reserve of the naval reserve, or any similar organization authorized by the United States to serve with the army or navy, in time of war or an emergency, or for or during any period of training, or pursuant to or in connection with the operation of any system of selective service, or who was a member of the American Merchant Marine during World War II and is declared by the United States Department of Defense to be eligible for federal veterans' benefits, shall be entitled to receive equivalent years of employment or seniority credit for that service as if the member had been employed for the same period of time in some publicly owned and operated college, school or institution of learning in this or any other state or territory of the United States, except that the period of that service shall not be credited toward more than four years of employment or seniority credit. *Any military or naval service shall be credited towards this employment or seniority credit including service that occurred prior to the member's employment as a teaching staff member.*”

New Jersey Statutes Annotated, section 18A:28-11.1 (emphasis supplied).

As I explained in Law Review 1281¹ and other articles, you must meet five conditions to have the right to reemployment under USERRA:

- a. You must have left a civilian job (federal, state, local, or private sector) for the purpose of performing voluntary or involuntary service in the uniformed services.
- b. You must have given the employer prior oral or written notice.
- c. You must not have exceeded the cumulative five-year limit on the duration of the period or periods of service pertaining to the employer relationship for which you seek reemployment.
- d. You must have been released from the period of service without having received a disqualifying bad discharge from the military.
- e. After release from the period of service, you must have made a timely application for reemployment with the pre-service civilian employer.

You did not leave a civilian job with this school district when you were called to active duty in January 2004, so USERRA simply does not apply to your 2004-05 active duty.

USERRA is a floor and not a ceiling on your rights as a person who has served in the uniformed services. Section 4302 of USERRA provides as follows:

“(a) Nothing in this chapter shall supersede, nullify or diminish any Federal or State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that establishes a right or benefit that is more beneficial to, or is in addition to, a right or benefit provided for such person in this chapter.

(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 (emphasis supplied).

Section 18A:28-11.1 of the New Jersey Statutes Annotated is an example of a state law that gives you greater and additional rights, beyond your rights under USERRA. This state law is not superseded or nullified by USERRA, to the extent that it gives you greater or additional rights.

¹ I invite the reader's attention to www.servicemembers-lawcenter.org. You will find 1,010 articles about USERRA and other laws 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 169 new articles in 2013.