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Help! I Lose Money When I Drill

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Q: I am a Reservist, and I also work for an oil refinery. Like a hospital or a prison, an oil refinery operates 24 hours per day, 365 days per year. I work a 40-hour week, five consecutive eight-hour days, but not always Monday through Friday. I work many weekends. Several times per year, my civilian work schedule conflicts with my drill schedule: I am scheduled to work at the refinery on the same weekend when I am scheduled to drill.

When this happens, the employer gives me time off from work, without pay, as required by the Uniformed Services Employment and Reemployment Rights Act (USERRA). My problem is that I lose money. I am a junior enlisted Naval Reservist, and my pay for four drills (all day Saturday and Sunday) is substantially less than I would make for working 16 hours at the refinery.

It's not fair. When I joined the Naval Reserve, the recruiter told me that my drill pay would be in addition to, not instead of, my regular civilian pay. It hasn't worked out that way in my case.

As you have suggested, I gave my employer notice of my drill weekends for all of FY05. The employer knows when I need to drill, generally on the first weekend of every month. I want the employer to rearrange my work schedule around my drill schedule, so that I will not lose money by going to my Naval Reserve training. This would not be a big problem for the employer, and nobody would end up working more weekends than they otherwise work, just different weekends. I think that my request is reasonable and the employer should be required to make this accommodation for me.

A: This is Monroe v. Standard Oil Co., 452 U.S. 549 (1981). The Supreme Court held that the employer was not required to rearrange Mr. Monroe's civilian work schedule to ensure that he not lose money by attending his National Guard drills. The employer was required to give Mr. Monroe the time off, but the employer was not required to pay him for hours not worked. The employer was not required to pay differential pay or to give Mr. Monroe the opportunity to make up the missed hours later.

It should be noted that the Supreme Court decided Monroe 13 years before Congress enacted USERRA. As I explained in Law Review 152, Congress enacted USERRA in 1994 as a complete rewrite of and replacement for a law that can be traced back to 1940. Three years ago, the United States District Court for the Western District of Texas determined that Monroe is no longer good law, because the statutory language that the Supreme Court construed in 1981 was changed in 1994. See Rogers v. City of San

Antonio, 211 F. Supp. 2d 829 (W.D. Tex. 2002). The employer appealed, and just recently the Court of Appeals reversed. See Rogers v. City of San Antonio, 2004 U.S. App. LEXIS 24831 (5th Cir. Dec. 2, 2004). The bottom line is that Monroe is still good law, at least in the Fifth Circuit.

I get this question from time to time, but much more frequently I get the mirror image of your question. I frequently hear from Reserve Component members who strenuously object to being forced to work on days they would otherwise have off, to make up for days that they missed because of military training. Please see Law Reviews 103 and 140.

* Military title used for purposes of identification only. The views expressed herein are the personal views of the authors and should not be attributed to the U.S. Marine Corps, the Department of the Navy, the Department of Defense, or the U.S. government. The best way to reach Captain Wright is by e-mail, at **samwright50@yahoo.com**.