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Time Off from Work for Military Medical Treatment

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Q: I am a member of the Army Reserve. I was called to active duty for 18 months and deployed to Iraq. While in that country, I was injured when an improvised explosive device detonated near the vehicle in which I was traveling. The Army treated me for my injuries, and I have largely but not entirely recovered. I was released from active duty, with the rest of my unit, and the Army gave me a "notice of eligibility" (NOE) so that I can get treatment at an Army hospital for my injuries for one year after I was released from active duty.

I have returned to work at my civilian job. I have made an appointment at an Army hospital about 400 miles away from my home, and the appointment is next week. Because of the distance involved, making that appointment means that I will have to miss a whole day of work at my civilian job, including the time it will take me to travel to the Army hospital and return to my home city.

I told my supervisor at work that I will not be at work next Thursday, because I must travel to an Army hospital for a medical appointment. He said, "I have had it up to here with this Army crap! If you miss one more day of work you're fired." I called the Army hospital, trying to make an appointment on a weekend or during evening hours. I was told in no uncertain terms that weekend and evening appointments are not available.

How do I resolve this dilemma? I need the civilian job, but I also need to get to this medical appointment.

A: The Uniformed Services Employment and Reemployment Rights Act (USERRA) gives you the right to time off from work (generally without pay) to perform "service in the uniformed services." That phrase is broadly defined in Section 4303(13) of USERRA, 38 U.S.C. 4303(13). "Inactive duty training" is specifically included in the definition.

Your Army Reserve unit needs to give you inactive-duty training orders for the appointment at the Army hospital, including travel time. This can be unpaid inactive duty training, for one retirement point. With such inactive-duty training orders, you have the legal right, under USERRA, to time off from work to go to the medical appointment. Without such orders, USERRA does not apply to your going to the medical appointment. I am informed that each Reserve Component has made arrangements for the issuance of inactive-duty training orders for medical appointments under circumstances like yours.

Q: That's a relief! A fellow soldier in my unit was injured in the same Iraq incident. His

injuries are much more severe than mine, and his disability is likely to be permanent. He has been medically disqualified from the Army Reserve. He has returned to work at the same company where I work. He is receiving ongoing medical care from a Department of Veterans Affairs (VA) medical facility in a distant city. His VA appointments are also of necessity held during regular business hours on business days. The company is also giving him a hard time about missing work for medical appointments. Does USERRA protect him?

A: Unfortunately, no. He is no longer a member of a uniformed service; he has been medically disqualified. His VA medical appointments are not “service in the uniformed services” as defined by USERRA. Perhaps we need a statutory amendment for this situation. I have brought this matter to the attention of Susan Lukas, ROA's legislative director.

He probably has the right to time off from work for medical treatment under the Family and Medical Leave Act (FMLA), a federal statute enacted in 1993. The FMLA gives an employee the right to up to 12 weeks off from work, generally without pay, for the birth or adoption of a child or the illness of the employee or a member of the employee's family.

To have rights under the FMLA, an employee must have been on the payroll for at least a year and must have worked at least 1,250 hours during the last year. Your colleague's time away from work for military service must be counted for purposes of both of these thresholds. Please see Law Review 54.

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