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Returning to Work after Weekend Military Training

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Q: I am a member of the Naval Reserve. On the first weekend of every month, I perform a weekend of inactive duty training or drills. I train from 0700 to 1600 both Saturday and Sunday. My home, my civilian job, and the Naval Reserve Center where I drill are all in the same city. After I leave the center at about 1605 Sunday afternoon, I am generally home by 1630. My question is: When must I report back to my civilian job? I work Monday through Friday from 0800 to 1700, with an hour off for lunch.

On the Web site of the National Committee for Employer Support of the Guard and Reserve (ESGR-www.esgr.mil), I found a copy of the entire text of the Uniformed Services Employment and Reemployment Rights Act (USERRA), and I have studied that text in great detail. It seems to me that this is the pertinent language: "Subject to paragraph (2), a person referred to in subsection (a) shall, upon completion of a period of service in the uniformed services, notify the employer referred to in such subsection of the person's intent to return to a position of employment with such employer as follows: (A) In the case of a person whose period of service in the uniformed services was less than 31 days, by reporting to the employer-(i) not later than the beginning of the first full regularly scheduled work period on the first full calendar day following the completion of the period of service and the expiration of eight hours after a period allowing for the safe transportation of the person from the place of that service to the person's residence."

The way I read this language, my safe travel home takes me to 1630 on Sunday, and you add eight hours and you have Monday, 30 minutes after midnight. So, I don't have to report back to work at my civilian job until 0800 on Tuesday. Do you agree with this interpretation?

A: No. I think that your interpretation is contrary to the intent of Congress.

You have quoted accurately from Section 4312(e)(1)(A)(i) of USERRA. That would be Title 38, United States Code, section 4312(e)(1)(A)(i). Your interpretation of the words of the statute itself is not unreasonable, but I think that your interpretation is contrary to the intent of Congress. When a court is called upon to interpret a statute, the court starts with the words of the statute itself, but the court will also look to the intent of Congress, if it is possible to discern that intent from legislative materials created during the process of enacting the statute. Such materials are called the "legislative history" of the statute.

Congress enacted USERRA October 13, 1994. You can find 67 pages of USERRA's

legislative history in the 1994 volume of United States Code Congressional & Administrative News (USCCAN). Most of the 67 pages are excerpts from House Report Number 103-65, a comprehensive report on USERRA by the House Committee on Veterans' Affairs. That report starts on page 2449 of the 1994 volume of USCCAN.

On page 2462, you will find the following pertinent paragraph: "With regard to military service of less than 31 days, servicemembers would ordinarily be required to report for work at the beginning of the first regularly scheduled working period on the next working day after release from service. An employee, however, must be allowed a reasonable time to arrive back at his or her residence, a reasonable time to rest, and a reasonable time to travel to the place of employment. For example, an employer could not require a Reservist who returns home from weekend duty at 10:00 p.m. to report for work at 12:30 a.m. that night, even if it is the beginning of the next regularly scheduled work period the next day. The Committee believes that an employee must be in a position to arrive at work rested in order to perform safely at work. On the other hand, if the shift began at 6:00 a.m., the employee who arrives home at 10:00 p.m. the night before would be required to report to that shift." (Emphasis supplied.)

In your situation, your drill location and hours give you plenty of time to get reasonable rest Sunday night and report back to work at 0800 Monday. Waiting until Tuesday morning to report back to work, in your situation, would not be protected by USERRA.

Moreover, the point of USERRA is to enable you to perform your military duties without detriment to your civilian career and employment prospects. Congress did not intend that you use this important law as a way of escaping from work. My practical advice is that you return to work the next day after a drill weekend or annual training if it is possible for you to do so safely.

* 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.

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