

LAW REVIEW¹ 19043

May 2019

Reinstatement of Health Insurance Coverage that Is Not through your Civilian Job

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[Update on Sam Wright](#)

1.8—Relationship between USERRA and other laws/policies

4.4—SCRA right to reinstatement of health insurance upon return from uniformed service

Q: I am a Lieutenant Commander in the Judge Advocate General's Corps of the Navy Reserve and a member of the Reserve Organization of America.³ I have read with great interest many

¹ I invite the reader's attention to www.roa.org/lawcenter. You will find more than 1700 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouse Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about very specific topics. The Reserve Officers Association (ROA) initiated this column in 1997. I am the author of more than 1500 of the articles.

² BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General's Corps officer and retired in 2007. I am a life member of ROA. For 42 years, I have worked with volunteers around the country to reform absentee voting laws and procedures to facilitate the enfranchisement of the brave young men and women who serve our country in uniform. I have also dealt with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans' Reemployment Rights Act (VRRA—the 1940 version of the federal reemployment statute) for 36 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. 4301-35). I have also dealt with the VRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice, and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. You can reach me by e-mail at SWright@roa.org.

³ At its September 2018 annual convention, the Reserve Officers Association amended its Constitution to make all service members (E-1 through O-10) eligible for membership and adopted a new "doing business as" (DBA) name: Reserve Organization of America. The full name of the organization is now the Reserve Officers Association DBA the Reserve Organization of America. The point of the name change is to emphasize that our organization represents the interests of all Reserve Component members, from the most junior enlisted personnel to the most senior officers. Our nation has seven Reserve Components. In ascending order of size, they are the Coast Guard Reserve, the Marine Corps Reserve, the Navy Reserve, the Air Force Reserve, the Air National Guard, the Army Reserve, and the Army National Guard. The number of service members in these seven components is almost

of your “Law Review” articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA) and other laws that are especially pertinent to those who serve our country in uniform. I am particularly interested in Law Review 19042 (May 2019).

On the civilian side, I am a self-employed attorney. Because I am self-employed, I do not have health insurance through a civilian job. I have health insurance coverage for myself, my husband, and our two children through my state bar association. If I am called to active duty or volunteer for active duty, will USERRA give me the right to suspend my civilian health insurance coverage and reinstate it upon release from active duty?

A: USERRA does not apply because your health insurance is not through your civilian job, but you have a very similar right under the Servicemembers Civil Relief Act (SCRA). The pertinent SCRA section is as follows:

- (a)** Reinstatement of health insurance. A servicemember who, by reason of military service as defined in section 703(a)(1) [[50 USCS § 4023\(a\)\(1\)](#)], is entitled to the rights and protections of this Act shall also be entitled upon termination or release from such service to reinstatement of any health insurance that--
 - (1)** was in effect on the day before such service commenced; and
 - (2)** was terminated effective on a date during the period of such service.
- (b)** No exclusion or waiting period. The reinstatement of health care insurance coverage for the health or physical condition of a servicemember described in subsection (a), or any other person who is covered by the insurance by reason of the coverage of the servicemember, shall not be subject to an exclusion or a waiting period, if--
 - (1)** the condition arose before or during the period of such service;
 - (2)** an exclusion or a waiting period would not have been imposed for the condition during the period of coverage; and
 - (3)** in a case in which the condition relates to the servicemember, the condition has not been determined by the Secretary of Veterans Affairs to be a disability incurred or aggravated in the line of duty (within the meaning of section 105 of title 38, United States Code [[38 USCS § 105](#)]).

equal to the number of personnel in the Active Components of the armed forces, so Reserve Component personnel make up almost half of our nation’s pool of trained and available military personnel. Our nation is more dependent than ever before on the Reserve Components for national defense readiness. Almost a million Reserve Component personnel have been called to the colors since the terrorist attacks of 9/11/2001.

(c) Exceptions. Subsection (a) does not apply to a servicemember entitled to participate in employer-offered insurance benefits pursuant to the provisions of chapter 43 of title 38, United States Code [[38 USCS §§ 4301](#) et seq.].

(d) Time for applying for reinstatement. An application under this section must be filed not later than 120 days after the date of the termination of or release from military service.

(e) Limitation on premium increases.

(1) Premium protection. The amount of the premium for health insurance coverage that was terminated by a servicemember and required to be reinstated under subsection (a) may not be increased, for the balance of the period for which coverage would have been continued had the coverage not been terminated, to an amount greater than the amount chargeable for such coverage before the termination.

(2) Increases of general applicability not precluded. Paragraph (1) does not prevent an increase in premium to the extent of any general increase in the premiums charged by the carrier of the health care insurance for the same health insurance coverage for persons similarly covered by such insurance during the period between the termination and the reinstatement.⁴

You need to notify the insurance carrier that you are going on active duty, and you need to terminate the insurance as of the date of entry on active duty. When you leave active duty, you need to reinstate your civilian health insurance immediately.

⁴ 50 U.S.C. 4024.