

LAW REVIEW¹ 19081

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What Is a Reserve Component Technician?

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[Update on Sam Wright](#)

1.1.1.8—USERRA applies to the Federal Government

1.8—Relationship between USERRA and other laws/policies

2.0—Paid leave for government employees who are Reserve or Guard members

Q: I am a Lieutenant (O-3) in the Navy Reserve and a member of the Reserve Organization of America.³ I have read with great interest several of your “Law Review” articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA) and other laws.

¹ I invite the reader’s attention to www.roa.org/lawcenter. You will find more than 1800 “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 1600 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 43 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. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. 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

On the civilian side, I am a GS-12 employee of a federal agency. I am very interested in my right to *paid* military leave when I am away from my federal civilian job for training or service in the Navy Reserve. I found a summary on the website of the United States Office of Personnel Management, at <https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/military-leave/>. This fact sheet includes the following statement: “5 U.S.C. 6323(d) provides that Reserve and National Guard Technicians *only* are entitled to 44 workdays of [paid] military leave for duties overseas under certain conditions.” (Emphasis by italics in original)

What is a “Technician?” Am I a Technician? Do I qualify for these 44 days of paid military leave under section 6323(d) of title 5 of the United States Code?

Answer, bottom line up front

No, you are not a Technician. We do not have Technicians in the Navy Reserve. If you were a Technician, you would know it.

Explanation

As I explained in footnote 2, our nation has seven Reserve Components. A Reserve Component is a great deal for the taxpayer because a Reserve Component is made up primarily (90-95%) of part-timers—traditional Reservists or National Guard members who are only paid for the days when they serve or train to serve. But a Reserve Component needs a cadre of full-timers to perform functions like recruiting, maintenance of equipment and aircraft, and preparing the training for upcoming drill weekends and other training periods. These full-timers are called Full-Time Support (FTS) personnel.

In the four Army and Air Force Reserve Components (Army Reserve, Army National Guard, Air Force Reserve, and Air National Guard), most of the FTS functions are performed by Technicians. A Technician is a civilian employee who is required, as a condition of his or her civilian employment, to maintain membership in one of the Reserve or National Guard units that he or she supports. During drill weekends and annual training periods, the Technician is usually there and participating in his or her military capacity, along with the part-timers. During regular civilian workdays, the Technician is working in his or her civilian capacity, but you may

Reserve, and the Army National Guard. The number of service members in these seven components is almost 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.

not recognize that because Technicians usually wear their military uniforms and observe military courtesies (saluting, etc.) while at work.

In the Navy Reserve, from which I retired in 2007, we have Training and Administration of Reserves (TAR) officers and enlisted personnel. The “TAR” terminology was dropped about 20 years ago, and these personnel are now called “FTS.” Unlike Technicians in the four Army and Air Force components, these FTS personnel serve in a military capacity all the time, not just during drills and annual training.

In the four Army and Air Force Reserve Components, there are also officers and enlisted personnel on Active Guard & Reserve (AGR) duty. Some are traditional Reservists and National Guard members who have gone on active duty for this purpose for limited periods (typically three years). Others serve for a full career and qualify for regular military retirement after they have served on military duty full-time for 20 years or more.

The Navy Reserve, Marine Corps Reserve, and Coast Guard Reserve do not use the “AGR” terminology, but they have officers and enlisted personnel on full-time active duty to perform Reserve Component full-time functions.

Q: What is the relationship between USERRA and 5 U.S.C. 6323?

A: Under section 4302 of USERRA, USERRA is a floor and not a ceiling on your rights with respect to your civilian employer. Section 4302 reads 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.⁴

Section 6323 of title 5 gives you *greater or additional rights* (the right to paid military leave) that are over and above USERRA. After you have exhausted your right to paid military leave, you still have the right to unpaid but job-protected military leave under USERRA.

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⁴ 38 U.S.C. 4302 (emphasis supplied).

This article is one of 1800-plus “Law Review” articles available at www.roa.org/lawcenter. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. New articles are added each month.

ROA is almost a century old—it was established in 1922 by a group of veterans of “The Great War,” as World War I was then known. One of those veterans was Captain Harry S. Truman. As President, in 1950, he signed our congressional charter. Under that charter, our mission is to advocate for the implementation of policies that provide for adequate national security. For many decades, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation’s defense needs.

Indeed, ROA is the *only* national military organization that exclusively supports America’s Reserve and National Guard.

Through these articles, and by other means, we have sought to educate service members, their spouses, and their attorneys about their legal rights and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA or eligible to join, but please understand that ROA members, through their dues and contributions, pay the costs of providing this service and all the other great services that ROA provides.

If you are now serving or have ever served in any one of our nation’s seven uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20. Enlisted personnel as well as officers are eligible for full membership, and eligibility applies to those who are serving or have served in the Active Component, the National Guard, or the Reserve.

If you are eligible for ROA membership, please join. You can join on-line at www.roa.org or call ROA at 800-809-9448.

If you are not eligible to join, please contribute financially, to help us keep up and expand this effort on behalf of those who serve. Please mail us a contribution to:

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