

LAW REVIEW¹ 19082

September 2019

Special Additional Sick Leave for New Federal Employees who Are Disabled Veterans

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Q: I am a retired Specialist (E-4) of the Army. I enlisted in the Army in 2006, shortly after I graduated from high school. In 2007, I was wounded in action in Iraq—I lost both legs and suffered internal injuries. The Army kept me on active duty until 2010, as I was treated for my wounds and processed for a military disability retirement. After I left active duty, I received

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.

additional medical treatment and rehabilitation from the United States Department of Veterans Affairs (VA). My VA disability rating is 60%.

Finally, in 2019, my recovery had progressed sufficiently that I considered myself ready for full-time civilian employment. As a disabled veteran with a VA rating of 30% or more, I am entitled to a ten-point veterans' preference.³ Using that preference, I landed a good job with a federal agency.

As a federal employee, I earn four hours of sick leave per two-week pay period. But I am not permitted to go into the hole on sick leave. Several times each month, I need to go to VA medical appointments, and these appointments are not available during weekend or evening hours. As a new federal employee, I have not yet had the opportunity to earn a significant positive balance of sick leave. How am I supposed to make these medical appointments when I have no sick leave to use?

I have read with great interest several of your "Law Review" articles about the application of USERRA to disabled veterans. How does USERRA apply to my situation?

A: USERRA does not apply to your situation because you are not a *reemployed* veteran. You did not leave a federal civilian job to go on active duty in 2006. You have valuable legal rights, but not under USERRA. You have rights under the Rehabilitation Act of 1973,⁴ the Americans with Disabilities Act of 1990,⁵ and the Veterans Preference Act of 1944, later modified by the Act of September 6, 1966.⁶

In 2015, Congress enacted a provision that was intended to address a situation exactly like your situation. That provision reads as follows:

During the 12-month period beginning on the first day of [Federal] employment, any employee who is a veteran with a service-connected disability rated at 30 percent or more is entitled to leave, without loss or reduction in pay, for purposes of undergoing medical treatment for such disability for which sick leave could regularly be used.⁷

³ See 5 U.S.C. 2108(2).

⁴ Public Law 93-112, 87 Stat. 355.

⁵ Public Law 101-336, 104 Stat. 327.

⁶ Public Law 89-554, 80 Stat. 410.

⁷ 5 U.S.C. 6329(a), added by Public Law 114-75, section 2(a), 129 Stat. 640; amended by Public Law 115-238, Section 2(a), 132 Stat. 2450; amended by Public Law 115-364, section 1(a), 132 Stat. 5088. A new federal civilian employee is entitled to up to 104 hours of this special sick leave during his or her first year of federal civilian employment, and this is in addition to the four hours of sick leave per pay period that the employee earns as a federal employee.

Q: What happens when I have used up all my special sick leave, my regular sick leave, and my annual leave?

A: After you have exhausted your sick leave and annual leave, you have the further right to leave without pay, but job-protected, for medical treatment, under a 1930 Executive Order that is still in effect. That Executive Order reads as follows:

With respect to medical treatment of disabled veterans who are employed in the executive civil service of the United States, it is hereby ordered that, upon the presentation of an official statement from duly constituted medical authority that medical treatment is required, such annual or sick leave as may be permitted by law *and such leave without pay as may be necessary shall be granted* by the proper supervisory officer to the disabled veteran in order that the veteran may receive such treatment, all without penalty in his efficiency rating.

The granting of such leave is contingent on the veteran's giving prior notice of definite days and hours of absence required for medical treatment in order that arrangements may be made for carrying on the work during his absence.⁸

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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

⁸ Executive Order 5396 signed by President Herbert Hoover on 7/17/1930 (emphasis supplied). Please see Law Review 13080 (June 2013) for further discussion of this Executive Order.

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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