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Multiple Tours of Active Duty with Short Breaks

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[About Sam Wright](#)

1.3.1.3—Timely application for reemployment

A: For many years, including just recently, I have heard from Reserve and National Guard personnel who perform multiple active duty tours, often with short or not-so-short breaks in between. I am concerned about this scenario. I urge the services to avoid writing orders this way. If you need Josephine Smith for a year, give her one-year orders. Don't try to save a few bucks by giving her a series of five-day orders with weekends off.

As I have explained in detail in Law Review 15116 (December 2015) and many other articles, Josephine (or any service member or veteran) must meet five simple conditions to have the right to reemployment under USERRA:

¹ I invite the reader's attention to www.roa.org/lawcenter. You will find more than 1900 "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 1700 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.

- a. She must have left a civilian job (federal, state, local, or private sector) to perform voluntary or involuntary service in the uniformed services.
- b. She must have given the employer prior oral or written notice that she was leaving the job to perform service.
- c. Her cumulative period or periods of uniformed service, relating to the employer relationship for which she seeks reemployment, must not have exceeded five years.³
- d. She must have been released from the period of service without having received a disqualifying bad discharge from the military.⁴
- e. After release from the period of service, she must have made a timely application for reemployment.⁵

Josephine needs to meet all five conditions for each period of uniformed service that necessitated her absence from her civilian job. It is difficult for Josephine to meet these five conditions, especially the timely application for reemployment, if her service writes her orders as a series of short periods of service.

Perhaps Josephine has a series of short periods of duty because she is a serial volunteer. Josephine's civilian job is protected, no matter how burdensome her repeated duty periods may be on her civilian employer.⁶ But this is not to say that Josephine's service should accommodate her with military orders each time that she requests such orders. At some point, her service should tell her: "Thank you for volunteering, but this time we are going to find somebody else."⁷

This situation illustrates that Reserve and National Guard service members need detailed information about laws like USERRA. We, the Reserve Organization of America, are providing this information every hour of every day through our Law Review Library, available for free on

³ Please see Law Review 16043 (May 2016) for a detailed discussion of the five-year limit. There are nine exemptions to the limit—that is, there are nine kinds of service that do not count toward exhausting your limit. The period of regular active duty that you are about to start will likely not be exempt, but the expected duration (four years) is well within the five-year limit.

⁴ If you receive a punitive discharge by court martial or administrative discharge characterized as "other than honorable," you will not have the right to reemployment. See 38 U.S.C. 4304.

⁵ After a period of service of 181 days or more, she has 90 days to apply for reemployment. See 38 U.S.C. 4312(e)(1)(D). After a period of service of 31-180 days, she has 14 days to apply for reemployment. See 38 U.S.C. 4312(e)(1)(C). After a continuous period of service of fewer than 31 days, she must report for work at the start of the first regularly-scheduled work period on the first day after her release from the period of service and the time reasonably required for safe transportation from the place of service to her residence plus eight hours (for rest) after her arrival at home. See 38 U.S.C. 4312(e)(1)(A). In determining the deadline for you to apply for reemployment, it is the *actual period of service*, not the expected period of service, that controls.

⁶ Please see Law Review 30 (October 2001) and Law Review 19001 (January 2019).

⁷ I certainly do not approve of condemning Josephine for volunteering. Since 1973, when Congress abolished the draft, all military service has been voluntary.

the Internet. We need to get the word out to Reserve and National Guard service members about this valuable resource.

Please join or support ROA

This article is one of 1900-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:

Reserve Officers Association
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