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A Military Retiree Must Wait at least 180 Days after Retirement To Start a new DOD Civilian Job

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[About Sam Wright](#)

9.0—Miscellaneous

The pertinent statute:

(a) For the purpose of this section, “member” and “Secretary concerned” have the meanings given them by section 101 of title 37.

(b) A retired member of the armed forces may be appointed to a position in the civil service in or under the Department of Defense (including a nonappropriated fund instrumentality under the jurisdiction of the armed forces) *during the period of 180 days immediately after his retirement* only if—

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, now doing business as the Reserve Organization of America (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.

(1) the proposed appointment is authorized by the Secretary concerned or his designee for the purpose, and, if the position is in the competitive service, after approval by the Office of Personnel Management; or

(2) the minimum rate of basic pay for the position has been increased under section 5305 of this title.

(3) [Deleted]

(c) A request by appropriate authority for the authorization, or the authorization and approval, as the case may be, required by subsection (b)(1) of this section shall be accompanied by a statement which shows the actions taken to assure that—

(1) full consideration, in accordance with placement and promotion procedures of the department concerned, was given to eligible career employees;

(2) when selection is by other than certification from an established civil service register, the vacancy has been publicized to give interested candidates an opportunity to apply;

(3) qualification requirements for the position have not been written in a manner designed to give advantage to the retired member; and

(4) the position has not been held open pending the retirement of the retired member.

5 U.S.C. 3326 (emphasis supplied).

Q: I am a recently retired Regular Army Colonel and a member of the Reserve Organization of America.³ I retired from the Army in August 2019. I agreed to remain on active duty for an additional year to give the Army time to assign a qualified Colonel for my highly specialized billet and in order to give me the time to train that Colonel. I will leave active duty, probably for the last time, in August 2020.

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 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 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. More than a million Reserve Component personnel have been called to the colors since the terrorist attacks of 9/11/2001.

I have applied for a Department of Defense (DOD) civilian position. It is very likely that I will be hired.

I understand that federal law requires a 180-day “cooling off period” before a military retiree can be hired for a DOD civilian job. Does my 180-day period start in August 2019, when I retired, or in August 2020, when I will leave active duty?

A: The pertinent statutory provision is section 3326 of title 5 of the United States Code (5 U.S.C. 3326). I have copied the entire text of that section, above.

Let us look to the plain language of the statute. The required 180-day cooling off period applies “during the period of 180 days immediately following his [the military retiree’s] retirement.” Thus, your 180-day period started running in August 2019 and expired in February 2020 and it is irrelevant that you agreed to remain on active duty for an additional year after retirement.

The apparent purpose of section 3326 is to give career federal civilian employees a fair shot at promotions and desirable vacancies—they should not lose out to retiring military personnel (especially senior officers) who can “grease the skids” for themselves in getting desirable DOD civilian jobs before they retire or who can benefit from skid-greasing by other senior officers who were until very recently their esteemed colleagues and subordinates. If you apply for a DOD civilian position through regular channels (the USAJOBS website operated by the Office of Personnel Management), and if the job you apply for is outside the military organization where you have served for the last five years, it is much less likely that someone will raise a ruckus about your starting a new DOD civilian job immediately after you leave active duty in August 2020.

I reviewed section 3326 in *United States Code Annotated*. There are only two annotations for this section, and both are to Comptroller General opinions that are irrelevant to your situation and your question. I believe that yours is a case of first impression. That means that there is no published court decision or Comptroller General decision on point.

Section 3326 was enacted in 1966 and has been amended several times. None of the amendments touch on your situation and your issue. There is nothing in the legislative history that would cause us to depart from the plain meaning of “180 days from retirement.” Your 180-day cooling off period started in August 2019 and ended in February 2020. There should be no legal impediment to your starting a new DOD civilian job in August 2020, immediately after you leave active duty.

Congress was presumably aware that military retirees are occasionally retained on active duty or recalled to active duty, voluntarily or involuntarily, for various reasons. If Congress had intended that your 180-day cooling off period start only after you leave active duty, it should have written that result into the text of section 3326.

Thank you for your three decades of service to our country in the United States Army, and good luck in your future Army civilian career.

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:

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