

Does USERRA Apply to Service in the Coast Guard Auxiliary or the Civil Air Patrol? No, at least not yet.

By Robert D. Dittman, Esq.² and
Captain Samuel F. Wright, JAGC, USN (Ret.)³
[About Sam Wright](#)

1.1.3.6c—USERRA and the Coast Guard Auxiliary or the Civil Air Patrol

1.8—Relationship between USERRA and other laws/policies

¹ We invite the reader's attention to www.roa.org/lawcenter. You will find more than 2300 "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 specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997.

² Robert D. Dittman earned his Juris Doctor degree from St. Mary's University School of Law. He is a member of the State Bar of Texas and is admitted to practice before the United States Court of Appeals for the Armed Forces and the United States District Court for the Western District of Texas. He is in the private practice of law in Seguin, Texas, advising and representing clients with respect to risk management, criminal defense, and other matters. He has also been active for 27 years as an auxiliariest, first for the Civil Air Patrol and more recently for the Coast Guard Auxiliary. Robert D. Dittman contributed to this article in his personal capacity. The views expressed in this article should not be attributed to the Coast Guard Auxiliary/Coast Guard, the Department of Homeland Security, or the United States Government.

³ BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. Wright served in the Navy and Navy Reserve as a Judge Advocate General's Corps officer and retired in 2007. He is a life member of ROA and an elected member of the organization's Executive Committee. For 45 years, he has collaborated 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. He has also dealt with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans' Reemployment Rights Act (VRRRA—the 1940 version of the federal reemployment statute) for 40 years. He developed the interest and expertise in this law during the decade (1982-92) that he worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), Wright largely drafted the proposed VRRRA 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). He has also dealt with the VRRRA 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. Wright's paid employment with ROA ended 5/31/2015, but he has continued the work of the SMLC as a volunteer. You can reach Captain Wright by e-mail at swright@roa.org.

Q: I am a 28-year old attorney—I graduated from law school and passed the bar exam two years ago.⁴ I am an “associate” attorney at a major law firm. That means that I am a salaried employee, not a partner. After another five years of employment as an associate, I may be offered the opportunity to “fleet up” to partnership status.

I am also a “Vice Division Commander” in the Coast Guard Auxiliary (Auxiliary), and my responsibilities occasionally necessitate that I absent myself for a day or two from the law firm.⁵

Background on the Coast Guard Auxiliary

In 1939, Congress established “the Coast Guard Reserve”, consisting of privately-owned motorboats and yachts.⁶ This new organization was quite different from the Army Reserve, Naval Reserve, and Marine Corps Reserve, which had already been in existence since 1908, 1915, and 1916, respectively. In early 1941, ten months before the Japanese attack on Pearl Harbor brought our country into World War II, Congress enacted a new law,⁷ repealing the 1939 law.

The 1941 law established the Coast Guard Reserve that we know today, an organization that is similar to the Army Reserve and other Reserve Components, and it established the Coast Guard Auxiliary as an unpaid auxiliary to the Coast Guard. The 1941 law set forth the purposes of the Auxiliary as follows:

It is hereby declared to be the purposes of the Auxiliary (a) to further the interest in safety of life at sea and upon the navigable waters, (b) to promote efficiency in the operation of motorboats and yachts, (c) to foster a wider knowledge of, and better compliance with, the laws, rules, and regulations governing the operation of motorboats and yachts, and (d) to facilitate operations of the Coast Guard.⁸

Today, as during World War II, Coast Guard Auxiliarists are not paid for their time, but they do receive recognition and certain benefits, as is explained more fully below, and they perform important functions for the nation and the Coast Guard. The Auxiliary’s role has expanded and contracted over the years depending upon the needs of the Coast Guard. During World War II, it functioned as a uniformed volunteer reserve with its members wearing a modified Coast Guard uniform, performing almost any duty open to the Coast Guard as long as such duty was performed stateside or in the adjacent waters. After the war, the Auxiliary was asked to focus its efforts on recreational boating safety, which remains one of its core missions.

⁴ The factual set-up for this article is hypothetical but realistic.

⁵ This is a very real hypothetical and one that is all too common with uniformed volunteers who are balancing the demands of their civilian employers with their duties to one of our country’s uniformed services, in this case the United States Coast Guard.

⁶ The Coast Guard Reserve Act of 1939, Public Law 76-152, 53 Stat. 854 (June 23, 1939).

⁷ The Coast Guard Reserve and Auxiliary Act of 1941, Public Law 77-8, 55 Stat. 9 (Feb. 19, 1941).

⁸ Section 2, Public Law 77-8.

More recently, Congress has expanded again the roles and missions of the Auxiliary. Recreational boating safety remains a core mission, but after the terrorist attacks of 9/11/2001 and several major natural disasters (including major hurricanes like Katrina, Rita, Ike, Harvey, and Delta), as well as the Deep Water Horizon Disaster of 2010 (explosion on an offshore oil platform and resulting oil spill that lasted many weeks), the Auxiliary has undertaken many important new roles and responsibilities.

As currently organized, the Coast Guard Auxiliary is a uniformed non-military organization administered by the Commandant of the Coast Guard under the direction of the Secretary of Homeland Security.⁹ The organization and its members are at all times acting as a Federal instrumentality.¹⁰

The current purpose of the Coast Guard Auxiliary is: “To assist the Coast Guard, as authorized by the Commandant, in performing any function, duty, mission, power, role, or operation authorized by law.”¹¹ Auxiliarists have contributed and continue to contribute to all Coast Guard missions except direct law enforcement and military operations. This limitation is by policy, not a restriction by statute.

Auxiliary boat crews and air crews assist in search and rescue, provide boarding platforms for boarding teams, assist in Marine Environmental Protection missions, and perform other important duties. Auxiliarists stand duty as communications watch standers, qualify as members of crew on cutters, serve as public affairs officers, culinary specialists ashore and underway, interpreters, licensed medical professionals, chaplains, and, as the above hypothetical states, attorneys. Auxiliarists are required in most cases to meet the same qualifications as their Coast Guard and Coast Guard Reserve counterparts before being “assigned to duty.” Moreover, when an Auxiliarist is so assigned, the Auxiliarist exercises the “same power and authority in the execution of such duty as regular members of the Coast Guard assigned to similar duties.”¹²

There are many protections afforded to members of the Auxiliary, including the following. The Auxiliarist is provided the same medical treatment afforded to regular members of the Coast Guard if they contract illness or sustain injuries while assigned to duty¹³ and are provided death benefits if they die in the line of duty.¹⁴ Although Auxiliarists are not provided compensation in the form of pay, they are authorized to wear the Coast Guard uniform and they earn many of

⁹ 14 U.S.C. § 3901.

¹⁰ Id.

¹¹ 14 U.S.C. § 3902(a).

¹² 14 U.S.C. § 3912.

¹³ 14 U.S.C. § 3913.

¹⁴ Id.

the same awards (or in some cases slightly modified decorations) as members of other Coast Guard components.¹⁵

When they perform duty, Auxiliarists receive meals in kind and reimbursement for travel, lodging, and per diem expenses. These costs are funded from Coast Guard appropriations.¹⁶ The Commandant of the Coast Guard has the authority to grant rights and privileges to the Auxiliary organizations and officers, consistent with applicable laws.¹⁷ Benefits and privileges include shopping at Coast Guard Exchange System stores, utilizing the Coast Guard's Morale, Wellbeing, and Recreation facilities and benefits, accessing the Coast Guard's Employee Work Life system, and receiving Coast Guard tuition assistance.

Of course, the Commandant cannot grant legal protection for absences from civilian jobs necessitated by Coast Guard Auxiliary service. Moreover, the statutes as currently written place some restrictions as to the "status" of Auxiliarists. As one example, Auxiliarists may not receive financial compensation for their service.¹⁸

Question

While doing an Internet search, I found two of your "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA). Does that law give me the right to an unpaid but job-protected leave of absence from my civilian job to perform my duties assigned by the Coast Guard? If I am given permission by my employer and leave my job for a few days to perform a Coast Guard mission as an Auxiliarist, and then upon my return I am terminated by my regular employer, is there anything I can do?

Answer, bottom line up front:

No, not as the law is currently written. USERRA gives employees of the Federal Government, the States, the political subdivisions of States (local governments), and private employers (regardless of size) the right to unpaid but job-protected leaves of absence from their jobs to perform "service in the uniformed services" *as defined by USERRA*. Auxiliary activities, although those activities are requested under title 14 of the United States Code and are similar to voluntary Coast Guard Reserve service, do not qualify as "service in the uniformed services" as defined by USERRA. USERRA, as currently written, simply does not apply to the Coast Guard Auxiliary.

Explanation

¹⁵ 14 U.S.C. § 4101.

¹⁶ 14 U.S.C. § 3912.

¹⁷ 14 U.S.C. § 3901.

¹⁸ 14 U.S.C. § 4103.

Section 4303 of USERRA¹⁹ defines 17 terms used in this law, including the term “uniformed services” and the term “service in the uniformed services.” When a statute defines a term that it uses, that definition applies to cases arising under that statute, not the definition used elsewhere in the United States Code or the dictionary definition.

USERRA defines the term “uniformed services” as follows:

The term “uniformed services” *means the Armed Forces*, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, the commissioned officer corps of the National Oceanic and Atmospheric Administration, System members of the National Urban Search and Rescue Response System during a period of appointment into Federal service under section 327 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, and any other category of persons designated by the President in time of war or national emergency.²⁰

USERRA does not define the term “Armed Forces,” but that term is defined in the definitions section of title 10 of the United States Code, as follows: “The term ‘armed forces’ means the Army, Navy, Air Force, Marine Corps, Space Force, *and Coast Guard*.”²¹ USERRA clearly applies to service in the Coast Guard, including the Coast Guard Reserve. USERRA does not apply to service in the Auxiliary.²²

Q: What about the Civil Air Patrol?

A: The Civil Air Patrol is a federally chartered non-profit corporation.²³ As an organization, the Civil Air Patrol has been authorized to function, under specific conditions, as an auxiliary of the Air Force.²⁴ There are other legal, operational, and functional distinctions between the Civil Air Patrol and the United States Coast Guard Auxiliary that are outside the scope of this article. Service in the Civil Air Patrol is not covered by USERRA as that law is currently written.²⁵

¹⁹ 38 U.S.C. § 4303.

²⁰ 38 U.S.C. § 4303(17) (emphasis supplied).

²¹ 10 U.S.C. § 101(a)(4) (emphasis supplied). Title 10 further provides that the Coast Guard can operate as a separate service within the Navy in time of war. 10 U.S.C. § 101(a)(9)(D). The last time that happened was during World War II. Nonetheless, the Coast Guard is an “armed force” at all times, not just during those rare times when it is operating as part of the Navy. See 14 U.S.C. § 1

²² See 20 C.F.R. § 1002.62.

²³ See 36 U.S.C. § 4331.

²⁴ See 10 U.S.C. §§ 9491, 9492.

²⁵ See 20 C.F.R. § 1002.62.

Q: What would it take to accord USERRA protection to persons serving in the United States Coast Guard Auxiliary and the Civil Air Patrol?

A: That would require a statutory amendment to USERRA or another Federal law or designation by the President.²⁶ In recent years, Congress has amended USERRA to make it apply to the commissioned corps of the National Oceanic and Atmospheric Administration (NOAA),²⁷ to the Space Force,²⁸ and to Urban Search & Rescue personnel.²⁹ Under separate Federal legislation, persons who serve in the National Disaster Medical System (NDMS) have USERRA reemployment rights.³⁰

Q: Can members of the Coast Guard Auxiliary or the Civil Air Patrol have job protections under State law?

A: Yes. USERRA is a floor and not a ceiling on employment and reemployment rights. USERRA does not supersede or override a State law that provides *greater or additional rights over and above USERRA*.³¹

Several States have enacted laws that explicitly grant employees the right to time off from their civilian jobs for Coast Guard Auxiliary or Civil Air Patrol service, and other states include “Auxiliary” in their definitions of military service, thus constructively granting such protections. Some of those State laws only apply to employees of the State and its political subdivisions (local governments), while other laws also apply to private sector employers in the State.

A State law does not apply and cannot constitutionally be applied to Federal agencies operating in the State.³² Thus, these State laws do not protect Federal employees who are Coast Guard Auxiliary or Civil Air Patrol members. However, such laws could be used as persuasive legal precedents in an argument to change the Federal law (USERRA) to grant such protections.

Here are the State laws that at least arguably give Coast Guard Auxiliarists or members of the Civil Air Patrol the right to time off from their civilian jobs for training or service in the Coast Guard Auxiliary or the Civil Air Patrol:

Alaska

²⁶ USERRA’s definition of “uniformed services” includes “any other category of persons designated by the President in time of war or national emergency.” 38 U.S.C. § 4303(17) (final clause). The authority of the President to make other organizations “uniformed services” for USERRA purposes has been in the law since 1994 but has never been utilized.

²⁷ See Law Review 21002 (January 2021).

²⁸ Id.

²⁹ See Law Review 17011 (February 2017).

³⁰ See Law Review 100 (December 2003).

³¹ See 38 U.S.C. § 4302(a).

³² See *McCulloch v. Maryland*, 17 U.S. 316 (1819).

(a) An employee of the state, *or a political subdivision, with the approval of the city council or borough assembly*, who is a member of a reserve *or auxiliary* component of the United States Armed Forces is entitled to a leave of absence without loss of pay, time or efficiency rating on all days during which the employee is ordered to *training duty, as distinguished from active duty*, with troops or at field exercises, or for instruction, *or when under direct military control in the performance of a search and rescue mission*. The leave of absence may not exceed 16 ½ working days in any 12-month period.³³

State employees have the right to paid leave under this provision only for training duty, not active duty, or for service “under direct military control” for a search and rescue mission. Search and rescue is one of the important missions of both the Coast Guard Auxiliary and the Civil Air Patrol, but certainly not the only mission. This provision applies to employees of political subdivisions of the State of Alaska only when the city council or borough assembly has approved applying this provision to the political subdivision.

Arkansas

- (a) An employee of the state, a city of the first class, a city of the second class, an incorporated town, or a county who is a member of:
- (1) The *United States Civil Air Patrol or the United States Coast Guard Auxiliary* and desires to take a leave of absence for the purpose of participating in a training program for the United States Civil Air Patrol or the United States Coast Guard Auxiliary or in emergency and rescue services shall be entitled to a leave of absence with pay for a period of fifteen (15) days for that purpose during any one (1) calendar year, if the leave of absence is at the request of the employee's wing commander, the wing commander's designated representative, or District 15 Captain; or
 - (2) The National Disaster Medical System, a Disaster Mortuary Operational Response Team, or a Disaster Medical Assistance Team, of the Office of Emergency Management of the Office of the Assistant Secretary for Preparedness and Response of the Department of Health and Human Services and desires to take a leave of absence for the purpose of participating in a training program in emergency and rescue services shall be entitled to a leave of absence with pay for a period of fifteen (15) days for that purpose during any one (1) calendar year, if the leave of absence is in response to a United States Department of Health and Human Services National Disaster Team Alert Order.
- (b)
- (1) If an employee is granted a leave of absence under this section, the employee shall be entitled to his or her regular salary during the time the employee is away from his or her duties during the leave of absence.
 - (2) The leave of absence shall be in addition to the regular vacation time allowed to the employee.
- (c) During a leave of absence, the employee shall be entitled to preserve:
- (1) All seniority rights, efficiency or performance ratings, promotional status, retirement privileges, and life and disability insurance benefits; and

³³ Alaska Stat. § 39.20.340(a) (emphasis supplied).

- (2) Any other rights, privileges, and benefits to which he or she has become entitled.
- (d) For purposes of computations to determine whether the person may be entitled to retirement benefits, the period of the leave of absence shall be deemed continuous service.
- (e) The state, city, or county shall continue to contribute its portion of any life or disability insurance premiums during the leave of absence on behalf of the employee, if requested, so that continuous coverage may be maintained.³⁴

Iowa

Here is the section that applies to Coast Guard Auxiliarists and members of the Civil Air Patrol who work for private employers in Iowa:

1. A person shall not discriminate against any officer or enlisted person of the national guard or organized reserves of the armed forces of the United States, *any regular, reserve, or auxiliary member of the United States coast guard, or any member of the civil air patrol* because of that membership. An employer, or agent of an employer, shall not discharge a person from employment because of being an officer or enlisted person of the military forces of the state, a regular, reserve, or auxiliary member of the United States coast guard, or member of the civil air patrol, or hinder or prevent the officer or enlisted person, a regular, reserve, or auxiliary member of the United States coast guard, or member of the civil air patrol from performing any military service or civil air patrol duty the person is called upon to perform by proper authority. A member of the national guard or organized reserves of the armed forces of the United States, or a regular, reserve, or auxiliary member of the United States coast guard, ordered to temporary duty or service, as defined in section 29A.1, subsection 3, 8, or 12, or a member of the civil air patrol performing duty pursuant to section 29A.3A, for any purpose is entitled to a leave of absence during the period of the duty or service, from the member's private employment unless the employment is of a temporary nature. Upon completion of the duty or service, the employer shall restore the person to the position held prior to the leave of absence or employ the person in a position of like seniority, status, and pay. However, the person shall give evidence to the employer of satisfactory completion of the duty or service, and that the person is still qualified to perform the duties of the position. The period of absence shall be construed as an absence with leave, and shall in no way affect the employee's rights to vacation, sick leave, bonus, or other employment benefits relating to the employee's particular employment.
2. An officer or enlisted person of the national guard or organized reserves of the armed forces of the United States, or any regular, reserve, or auxiliary member of the United States coast guard, who is insured as a dependent under a group policy for accident or health insurance as a full-time student less than twenty-five years of age, whose coverage under the group policy would otherwise terminate while the officer or enlisted person was on a leave of absence during a period of temporary duty or service, as defined for members of the national guard in section 29A.1, subsection 3, 8, or 12, or as a member of the organized reserves called to active duty from a reserve component status, or as a regular, reserve, or auxiliary member of the United States coast guard, shall be considered to have been

³⁴ Arkansas Code Annotated § 21-4-104 (emphasis supplied).

continuously insured under the group policy for the purpose of returning to the insured dependent status as a full-time student who is less than twenty-five years of age. This subsection does not apply to coverage of an injury suffered or a disease contracted by a member of the national guard or organized reserves of the armed forces of the United States in the line of duty.

3. A person violating a provision of this section is guilty of a simple misdemeanor. Violations of this section shall be prosecuted by the attorney general or the county attorney of the county in which the violation occurs.

4. The protections provided for in this section shall apply with equal force to members of the national guard of another state, an organized reserve unit in another state, or a civil air patrol unit in another state who are employed in this state.³⁵

Here is the section that applies to employees of the State of Iowa and its political subdivisions:

1.

a. All officers and employees of the state, a subdivision thereof, or a municipality, other than employees employed temporarily for six months or less, who are members of the national guard, organized reserves or any component part of the military, naval, air, or space forces, or nurse corps of this state or nation, or who are or may be otherwise inducted into the military service of this state or of the United States, *or who are members of the civil air patrol, or who are regular, reserve, or auxiliary members of the United States coast guard, shall*, when ordered by proper authority to state active duty, national guard duty, or federal active duty, or when performing a civil air patrol mission pursuant to section 29A.3A, be entitled to a leave of absence from such civil employment for the period of state active duty, national guard duty, federal active duty, or civil air patrol duty without loss of status or efficiency rating, and without loss of pay during the first thirty days of such leave of absence.

b. Where state active duty, national guard duty, federal active duty, or civil air patrol duty is for a period of less than thirty days, a leave of absence under this section shall only be required for those days that the civil employee would normally perform services for the state, subdivision of the state, or a municipality. The provisions of this section shall also apply to a leave of absence by a member of the national disaster medical system of the United States when activated for federal service with the system. If the workday for a civil employee encompasses more than one calendar day, the civil employee shall only be required to take a leave of absence for one day for that workday if a leave of absence is required under this paragraph.

2. A state agency, subdivision of the state, or municipality may hire a temporary employee to fill any vacancy created by such leave of absence. Temporary employees hired to fill a vacancy created by a leave of absence under this section shall not count against the number of full-time equivalent positions authorized for the state agency, subdivision of the state, or municipality.

³⁵ Iowa Code § 29A-43 (emphasis supplied). This section gives Coast Guard Auxiliarists and members of the Civil Air Patrol the right to an unpaid but job-protected leave of absence from their private sector jobs in Iowa to perform Coast Guard Auxiliary or Civil Air Patrol duties, and it protects them from discrimination by their employers based on their service.

3. Upon returning from a leave of absence under this section, an employee shall be entitled to return to the same position and classification held by the employee at the time of entry into state active duty, national guard duty, federal active duty, or civil air patrol duty, or to the position and classification that the employee would have been entitled to if the continuous civil service of the employee had not been interrupted by state active duty, national guard duty, federal active duty, or civil air patrol duty. Under this subsection, “position” includes the geographical location of the position.³⁶

Louisiana

Employees of the State of Louisiana and its political subdivisions are entitled to 15 days per calendar year of *paid* military leave for training or service in a Reserve Component of the armed forces (except for the Coast Guard Reserve) or for service in the Civil Air Patrol. The pertinent section does not mention the Coast Guard Auxiliary or the Coast Guard Reserve. Here is the pertinent section:

All officers and employees of the state, or of any parish, city, town, political subdivision, unit, or any state institution thereof, who are members of the Officers’ Reserve Corps of the Army of the United States, the National Guard of the United States, the Naval Reserve Corps, the Marine Corps Reserve, the Air Force Reserve, the Citizens Military Training Corps, *or the Civil Air Patrol*, either as officers or enlisted men, are entitled to leave of absence from their respective duties, without loss of pay, time, annual leave, or efficiency rating, on all days during which they are ordered to duty with troops or at field exercises, or for instruction, for periods not to exceed fifteen days in any one calendar year; and when relieved from duty, they are to be restored to the positions held by them when ordered to duty.³⁷

Missouri

Under Missouri law, an employee of the State of Missouri (but not political subdivisions of the State) has the right to *paid* leave for up to 15 working days per year for Coast Guard Auxiliary service. Private employers in the State of Missouri that have 50 or more employees are required to grant unpaid but job-protected leave to employees who are members of the Coast Guard Auxiliary. This Missouri section does not mention the Civil Air Patrol. Here is the relevant section:

1. Except as otherwise provided in this subsection, any employee of the state of Missouri who is or may become a member of the United States Coast Guard Auxiliary may be granted leave of absence from their respective duties, without loss of time, pay, regular leave, impairment of efficiency rating or of any other rights or benefits to which such person would otherwise be entitled, for periods during which such person is engaged in the performance of the United States Coast Guard or United States Coast Guard Auxiliary duties, including

³⁶ Iowa Code § 29A-28 (emphasis supplied).

³⁷ Louisiana Revised Statutes § 42:394 (emphasis supplied). Please note that this section does not mention the Coast Guard Auxiliary or the Coast Guard Reserve.

travel related to such duties, when authorized by the appropriate United States Coast Guard order issuing authority or such person's designated representative. Leave for such service shall be for not more than fifteen working days in any state fiscal year, or without regard to length of time when responding to a state or nationally declared emergency or disaster in the state of Missouri or upon any navigable waterway within or adjacent to the state of Missouri. The employee shall be released from work upon request from the member's appropriate United States Coast Guard authority or such member's designated representative. The state of Missouri or the employee's appointing authority thereof shall compensate an employee granted leave under this section at the employee's regular rate of pay for regular work hours during which the employee is absent from the employee's regular place of employment for the state of Missouri. Any leave granted under this section shall not affect the employee's leave status.

2. Before any payment of salary is made covering the period of the leave, the employee shall file with the appointing authority or supervising agency evidence that such employee participated in emergency services duty or other United States Coast Guard or United States Coast Guard Auxiliary duties from the appropriate Coast Guard or Coast Guard Auxiliary authority.

3. No member of the United States Coast Guard Auxiliary shall be discharged from employment because of being a member of the United States Coast Guard Auxiliary or holding any office, position, or appointment under the United States Coast Guard Auxiliary, nor otherwise discriminated against or dissuaded from joining or continuing such person's service in the United States Coast Guard Auxiliary by threat or injury to such person in respect to such person's employment, or of any other rights or benefits to which the employee would otherwise be entitled.

4. Any employee of an employer with fifty or more employees who is or may become a member of the United States Coast Guard Auxiliary shall be granted a leave of absence from their respective duties, without loss of time, regular leave, or of any other rights or benefits to which the performance of United States Coast Guard or United States Coast Guard Auxiliary duties, including travel related to such duties, when authorized by the Director of Auxiliary (DIRAUX) or other appropriate United States Coast Guard authority. Leave for such service shall be for no more than fifteen working days in any calendar year, or without regard to the length of time when responding to a state or nationally declared emergency in the state of Missouri or upon any navigable waterway within or adjacent to the state of Missouri. The employer shall not be obligated to pay a salary to the employee during this leave of absence. The employer shall have the right to request that the employee be exempted from responding to a specific mission and the member's supervising Director of Auxiliary or other appropriate United States Coast Guard or United States Coast Guard Auxiliary authority shall honor such request.

5. The attorney general shall enforce the rights contained in this section for members of the United States Coast Guard Auxiliary.³⁸

New York

³⁸ Revised Statutes of Missouri § 41.1005.

Notwithstanding any other provisions of law to the contrary, public officers and employees of the state who are members of the United States Air Force Auxiliary Civil Air Patrol or the United States Coast Guard Auxiliary Pilots shall be granted leave from work with pay to participate in emergency services during a declared state of emergency upon a written request from a unit commander and the approval of the chief administrative officer of the state agency, department or bureau for which the public officer or employee serves. The public officer or employee shall be compensated at his or her regular rate of pay for those regular work hours during which the public officer or employee is absent from work while participating in emergency services missions during a declared state of emergency. Such leave shall be provided without loss of seniority, compensation, sick leave, vacation leave or other overtime compensation to which the volunteer is otherwise entitled and shall not exceed twenty days in any calendar year.³⁹

Conclusion

Coast Guard Auxiliaries and members of the Civil Air Patrol perform important functions for our country, but they receive no financial compensation for their time. Current Federal law does not give these people legal protection in their paying jobs for time they spend away from those jobs performing these important functions, but in some States these people are protected by State laws. We favor amending USERRA to protect the jobs of Coast Guard Auxiliaries and members of the Civil Air Patrol.

Please join or support ROA

This article is one of 2,300-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 on 10/1/1922 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 almost a century, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation’s defense needs.

Through these articles, and by other means, including amicus curiae (“friend of the court”) briefs that we file in the Supreme Court and other courts, we educate service members, military spouses, attorneys, judges, employers, DOL investigators, ESGR volunteers, congressional and state legislative staffers, and others about the legal rights of service members and about how to exercise and enforce those rights. We provide information to service members, without regard to

³⁹ New York Civil Service Law § 82-C.

whether they are members of ROA, 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 eight⁴⁰ uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20 or \$450 for a life membership. 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 Organization of America
1 Constitution Ave. NE
Washington, DC 20002

⁴⁰ Congress recently established the United States Space Force as the 8th uniformed service.