

**AL-2010-LV**  
(December 2007, August 2010 and June 2017)  
**(checked October 2022--no changes)**

## **Paid Military Leave for Public Employees in Alabama**

By CAPT Samuel F. Wright, JAGC, USN (Ret.)<sup>1</sup>

1.8: USERRA and Other Laws

2.0: Paid Leave

Alabama law provides as follows concerning the right of public employees to military leave from their civilian jobs:

All officers and employees of the State of Alabama, or of any county, municipality, or other agency or political subdivision thereof, or officers or employees of any public or private business or industry who are active members of the Alabama National Guard, Naval Militia, the Alabama State Guard organized in lieu of the National Guard, or of any other reserve component of the armed forces of the United States, shall be entitled to military leave of absence from their respective civil duties and occupations on all days that they are engaged in field or coast defense or other training or on other service ordered under the National Defense Act, or of the federal laws governing the United States reserves, without loss of pay, time, efficiency rating, annual vacation, or sick leave. Notwithstanding the foregoing, *no person granted a leave of absence with pay shall be paid for more than 168 working hours per calendar year*, and those persons

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<sup>1</sup> 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 45 years, I have 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. 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 38 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 <mailto:swright@roa.org>.

shall be entitled, in addition thereto, to be paid for no more than 168 working hours at any one time while called by the governor to duty in the active service of the state. This section shall apply to all schools and institutions of learning supported by state funds.

ALA. CODE § 31-2-13 (LexisNexis 2022) (emphasis added). Although this section, by its terms, applies to private businesses, as well as the State of Alabama and its political subdivisions, the Alabama Supreme Court has held that requiring private employers to grant paid military leave violates the Alabama Constitution. See *White v. Associated Industries of Alabama, Inc.*, 373 So.2d 616 (Ala. 1979).

The language of section 31-2-13 is archaic, but it appears that the right to paid military leave applies to active duty, active duty for training, and inactive duty training (drills). The 168-hour limit means four work weeks plus one work day, for the typical public employee working 40-hour weeks. After exhausting the right to paid military leave under this section, the public employee has an essentially unlimited right to unpaid military leave under the federal Uniformed Services Employment and Reemployment Rights Act (USERRA).

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**Update June 2017**

By Captain Samuel F. Wright, JAGC, USN (Ret.)<sup>2</sup>

Section 31-2-13(a), quoted in this article, has been amended. It now reads as follows:

(a) Military leave of absence. — All officers and employees of the State of Alabama, or of any county, municipality, or other agency or political subdivision thereof, or officers

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<sup>2</sup> 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. I have 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 35 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 or by telephone at 800-809-9448, ext. 730. I will provide up to one hour of information without charge. If you need more than that, I will charge a very reasonable hourly rate. If you need a lawyer, I can suggest several well-qualified USERRA lawyers.

or employees of any public or private business or industry who are active members of the Alabama National Guard, Naval Militia, the Alabama State Guard organized in lieu of the National Guard, *the civilian auxiliary of the United States Air Force known as the Civil Air Patrol, the National Disaster Medical System*, or of any other reserve component of the uniformed services of the United States, shall be entitled to military leave of absence from their respective civil duties and occupations on all days that they are engaged in field or coast defense or other training or on other service ordered under the National Defense Act, the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, or of the federal laws governing the United States reserves, without loss of pay, time, efficiency rating, annual vacation, or sick leave.

Notwithstanding the foregoing, no person granted a leave of absence with pay shall be paid for more than 168 working hours per calendar year, and those persons shall be entitled, in addition thereto, to be paid for no more than 168 working hours at any one time while called by the Governor to duty in the active service of the state. This section shall apply to all schools and institutions of learning supported by state funds.

ALA. CODE § 31-2-13 (LexisNexis 2022) (emphasis added to indicate newly edited language). The Civil Air Patrol and the National Disaster Medical System have been added to the list of entities covered by this subsection—entities in which service entitles an Alabama public employee to paid military leave. Otherwise, there has been no change in Alabama law on this point.

#### **Access the Alabama Statute on Your Own**

We do our best to keep these state law articles up-to-date and provide the most relevant sections of the applicable statute for you to review. Nonetheless, we still recommend you consult the most recent version of the law to make sure nothing has changed from what we discussed in this article. You can find a public version for yourself online, for free, at <http://alisondb.legislature.state.al.us/alison/codeofalabama/1975/coatoc.htm>. When you click this link, you will be brought to a page with the Code of Alabama. To access the relevant section discussed in this article, select “Title 31 Military Affairs and Civil Defense” → “Chapter 2 Military Code” → “Section 31-2-13 Service benefits for government employees, etc.”

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<sup>3</sup> Congress recently established the United States Space Force as the 8<sup>th</sup> uniformed service.

<sup>4</sup> You can also contribute on-line at [www.roa.org](http://www.roa.org).