

CO-2013-LV

(December 2007; Updated August 2013 - no changes to law)

(checked December 2022--no changes)

Military Leave for Public Employees in Connecticut

By CAPT Samuel F. Wright, JAGC, USN (Ret.)¹

1.8: USERRA and Other Laws

2.0: Paid Leave

Connecticut law, codified in Section 7-461 of the Connecticut General Statutes provides as follows concerning military leaves of absence for employees of towns, cities, and boroughs in Connecticut:

Each officer and employee of any town, city or borough who is a member of the reserve corps of any branch of the armed forces of the United States, as defined in section 27-103, shall be entitled to absent himself from his duties or services while engaged in required field training in such reserve corps. No such officer or employee shall be subjected by any person, directly or indirectly, by reason of such absence, to any loss or reduction of vacation or holiday privileges or be prejudiced by reason of such absence with reference to promotion or continuance in office or employment or to reappointment to office or to reemployment. While engaged in such training, each officer or employee who is a bona fide member of the reserve corps of any branch of the armed forces shall receive the difference between his compensation for military activities and his salary or compensation as such officer or employee, provided, if his compensation for military activities exceeds the amount due him as such officer or

¹ 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 (VRRRA—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 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). I have 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. 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.

employee, his military compensation shall prevail. The period of absence in any calendar year shall not exceed thirty days.

CONN. GEN. STAT. § 7-461 (2022). In the wake of Sept. 11, 2001, and the ensuing military operations at home and abroad, Connecticut addressed insurance and pay for state employees called to active duty, in Section 5-259d as follows:²

(a) As used in this section, (1) "state employee" or "employee" means any elected official, officer or full-time employee of the Executive, Legislative or Judicial Department, and (2) "part pay" means the difference between the state employee's base rate of pay, plus longevity, in the employee's primary position on the date the employee is called to active service in the armed forces of any state or the United States and the total compensation the employee receives for such active service, as certified to the State Comptroller by the employing state agency in a manner acceptable to the State Comptroller.

(b) Notwithstanding any provision of the general statutes or any public or special act, the state shall continue to provide coverage, under a group hospitalization and medical and surgical insurance plan sponsored by the state under section 5-259, for the dependents of any state employee and the state employee who is a member of the armed forces of any state or of any reserve component of the armed forces of the United States and who has been called to active service in the armed forces of any state or the United States for (1) Operation Enduring Freedom, (2) Operation Noble Eagle, (3) a related emergency operation or a military operation whose mission was substantially changed as a result of the attacks of September 11, 2001, (4) federal action or state action authorized by the Governor in support of the federal Department of Homeland Security's Operation Liberty Shield, military operations that are authorized by the President of the United States that entail military action against Iraq, or federal action or state action authorized by the Governor to combat terrorism within the United States, or (5) federal action or state action authorized by the Governor or the President of the United States that entails service or military action as part of Operation Jump Start at the border of the United States and Mexico, for the duration of such call-up to active service, provided such state employee and dependents were covered by the insurance plan on the date the state employee was called to active service and the state employee continues to pay any amount that the employee was required to pay for coverage before being called to active service. Any payment required to be made by the employee for coverage under this subsection may be deducted from compensation provided under subsection (c) of this section. The state shall reimburse any state employee who has paid premiums for the continuation of any such group hospitalization and medical and surgical insurance plan between the date such state employee was called to active service and November 20, 2001. The reimbursement shall be in the amount of the state's portion of the premiums so paid.

² This section expired on September 30, 2013.

(c) Notwithstanding any provision of the general statutes or any public or special act, any state employee who is a member of the armed forces of any state or of any reserve component of the armed forces of the United States and who has been called to active service in the armed forces of any state or the United States for (1) Operation Enduring Freedom, (2) Operation Noble Eagle, (3) a related emergency operation or a military operation whose mission was substantially changed as a result of the attacks of September 11, 2001, (4) federal action or state action authorized by the Governor in support of the federal Department of Homeland Security's Operation Liberty Shield, military operations that are authorized by the President of the United States that entail military action against Iraq, or federal action or state action authorized by the Governor to combat terrorism within the United States, or (5) federal action or state action authorized by the Governor or the President of the United States that entails service or military action as part of Operation Jump Start at the border of the United States and Mexico, shall continue to accrue all vacation time, equivalent leave time and sick time to which the employee would be entitled if he or she had continued working in his or her state position during the time of such active service, and shall be credited with such accrued vacation time, equivalent leave time or sick time, except that if the accrual of such vacation time, equivalent leave time or sick time pursuant to this subsection while on active service would cause the employee to exceed any limit on leave time pursuant to any provision of the general statutes, the regulations of Connecticut state agencies or a collective bargaining agreement, the limit shall be temporarily waived to allow the employee to use the excess leave time before the later of the following: (A) From the date of the state employee's discharge from active service until the state employee returns to state employment, (B) not later than one hundred twenty calendar days after the state employee returns to state employment, (C) not later than one hundred twenty calendar days after the state employee is credited with such excess leave time, or (D) for state employees in teaching or professional positions in Unified School District #1 established pursuant to section 18-99a within the Department of Correction who were credited with equivalent leave time pursuant to this section, not later than one year after the employee is credited with such excess leave time. The employee shall be entitled to a leave of absence with pay as provided in section 27-33 from the date on which the employee was called to active service. After the expiration of such leave of absence with pay, the state employee shall receive part pay for the duration of such call-up to active service if the compensation received by the state employee for such active service is less than the employee's base rate of pay, plus longevity, in the employee's primary position. The state employee shall not be required to exhaust accrued vacation time, equivalent leave time or sick time in order to be eligible for the paid leave of absence and part pay under this subsection. As used in this section, "equivalent leave time" means leave time classified as other than vacation time or sick time and includes, but is not limited to, leave time classified as recess rather than vacation time.

(d) No state employee shall be deemed ineligible for any benefit under this section or under any other provision of this chapter solely because such employee's leave time is

classified as recess or other equivalent leave time rather than vacation time pursuant to the provisions of a collective bargaining agreement, including a collective bargaining agreement covering a state employee in a teaching, instructional or professional position in the Unified School Districts 1, 2 or 3.

CONN. GEN. STAT. § 5-259d (2022).

UPDATE—June 2017

Section 5-259d of Connecticut General Statutes has been amended. The only change is that instead of listing specific calls to duty, the new code simplifies it to “war or national emergency”. It now reads as follows:

(a) As used in this section, (1) “state employee” or “employee” means any elected official, officer or full-time employee of the Executive, Legislative or Judicial Department, and (2) “part pay” means the difference between the state employee’s base rate of pay, plus longevity, in the employee’s primary position on the date the employee is called to active service in the armed forces of any state or the United States and the total compensation the employee receives for such active service, as certified to the State Comptroller by the employing state agency in a manner acceptable to the State Comptroller.

(b) Notwithstanding any provision of the general statutes or any public or special act, the state shall continue to provide coverage, under a group hospitalization and medical and surgical insurance plan sponsored by the state under section 5-259, for the dependents of any state employee and the state employee who is a member of the armed forces of any state or of any reserve component of the armed forces of the United States and who has been called to active service in the armed forces of any state or the United States for a military operation, war or national emergency, for the duration of such call-up to active service, provided such state employee and dependents were covered by the insurance plan on the date the state employee was called to active service and the state employee continues to pay any amount that the employee was required to pay for coverage before being called to active service. Any payment required to be made by the employee for coverage under this subsection may be deducted from compensation provided under subsection (c) of this section. The state shall reimburse any state employee who has paid premiums for the continuation of any such group hospitalization and medical and surgical insurance plan between the date such state employee was called to active service and November 20, 2001. The reimbursement shall be in the amount of the state’s portion of the premiums so paid.

(c) Notwithstanding any provision of the general statutes or any public or special act, any state employee who is a member of the armed forces of any state or of any reserve component of the armed forces of the United States and who has been called to active

service in the armed forces of any state or the United States for a military operation, war or national emergency, shall continue to accrue all vacation time, equivalent leave time and sick time to which the employee would be entitled if he or she had continued working in his or her state position during the time of such active service, and shall be credited with such accrued vacation time, equivalent leave time or sick time, except that if the accrual of such vacation time, equivalent leave time or sick time pursuant to this subsection while on active service would cause the employee to exceed any limit on leave time pursuant to any provision of the general statutes, the regulations of Connecticut state agencies or a collective bargaining agreement, the limit shall be temporarily waived to allow the employee to use the excess leave time before the later of the following: (1) From the date of the state employee's discharge from active service until the state employee returns to state employment, (2) not later than one hundred twenty calendar days after the state employee returns to state employment, (3) not later than one hundred twenty calendar days after the state employee is credited with such excess leave time, or (4) for state employees in teaching or professional positions in Unified School District #1 established pursuant to section 18-99a within the Department of Correction who were credited with equivalent leave time pursuant to this section, not later than one year after the employee is credited with such excess leave time. The employee shall be entitled to a leave of absence with pay as provided by section 27-33 from the date on which the employee was called to active service. After the expiration of such leave of absence with pay, the state employee shall receive part pay for the duration of such call-up to active service if the compensation received by the state employee for such active service is less than the employee's base rate of pay, plus longevity, in the employee's primary position. The state employee shall not be required to exhaust accrued vacation time, equivalent leave time or sick time in order to be eligible for the paid leave of absence and part pay under this subsection. As used in this section, "equivalent leave time" means leave time classified as other than vacation time or sick time and includes, but is not limited to, leave time classified as recess rather than vacation time.

(d) No state employee shall be deemed ineligible for any benefit under this section or under any other provision of this chapter solely because such employee's leave time is classified as recess or other equivalent leave time rather than vacation time pursuant to the provisions of a collective bargaining agreement, including a collective bargaining agreement covering a state employee in a teaching, instructional or professional position in Unified School District #1 or #2 or, prior to July 1, 2014, Unified School District #3.

CONN. GEN. STAT. § 5-259d (2022).

Connecticut General Statutes, Section 5-259d

Section 7-461 of Connecticut General Statutes should not be read as imposing a 30-day limit on the duration of a period of military training or service performed by an employee of a town,

city, or borough. Under the federal law called the Uniformed Services Employment and Reemployment Rights Act (USERRA), an individual has the right, as a matter of federal law, to an unpaid but job-protected military leave of absence to perform voluntary or involuntary service in the uniformed services, and that right is essentially unlimited.³ USERRA supersedes a state law that purports to limit USERRA rights or that imposes an additional prerequisite upon the exercise of USERRA rights.⁴ Section 7-461 simply means that Connecticut is limiting to 30 days the period of time for which it will pay differential pay.

Access the Connecticut 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 <https://www.cga.ct.gov/current/pub/titles.htm>. When you click this link, you will be brought to a page with the Connecticut General Statutes. To access the Section 7-461, Select “Title 7” from the link, then “Chapter 113”, and finally “Sec 7-461 Leave of absence for reserve corps field training.” To access 5—259d, select “Title 5” from the link, then “Chapter 67”, and finally “Sec. 259d Continuation of health insurance coverage and accrual and use of vacation and sick time, leave of absence and equivalent leave time for state employees called to active service in the armed forces.” This article discussed these two sections, but you can also find other potentially relevant statutes on this page as well.

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ROA is more than 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.

³ 38 U.S.C. 4312(h). The military leave is limited only by USERRA’s five-year limit, under 38 U.S.C. 4312(c), and the five-year limit has nine exemptions—kinds of service that do not count toward exhausting the individual’s five-year limit. Please see Law Review 16043 (May 2016).

⁴ 38 U.S.C. 4302(b).

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 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.

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Reserve Organization of America
1 Constitution Ave. NE
Washington, DC 20002⁶

⁵ Congress recently established the United States Space Force as the 8th uniformed service.

⁶ You can also contribute on-line at www.roa.org.