

Paid Military Leave for Public Employees in Iowa

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1.8: Relationship between USERRA and other laws/policies

2.0: Paid Leave

Iowa law provides up to 30 days paid military leave for employees of the state and its political subdivisions who serve not only in the federal armed forces and National Guard, but in the civil air patrol and state nurse corps, too. The law also gives guidance on use of replacement employees and servicemembers returning to their jobs. This law is codified in Title 1 State Sovereignty and Management, Subtitle 11 Defense, Chapter 29A Military Codes, Subchapter 1 General Provisions 29A.28 Leave of Absence of civil employees:

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,

¹ I invite the reader's attention to www.roa.org/lawcenter. You will find approximately 1500 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA) and other laws that are especially pertinent to those who serve our country, along with 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 about 1300 of the articles. In our "state laws" section, we have an article for each state about the state laws that grant paid military leave and other benefits, over and above USERRA, to employees of the state and (often) to employees of the state's political subdivisions.

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. 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.

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.

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.³

To illustrate how this provision works in terms of calculating the paid 30 day allowance, let us consider two hypothetical state employees, both of whom are military reservists. Alexander Adams, a Lieutenant (O-3) in the Navy Reserve, is away from his State of Iowa job for a traditional 12-day annual training tour, from Monday (9/10/2018) through Friday (9/14/2018). Adams does not ordinarily work weekends in his civilian job. Does the middle weekend

³ IOWA CODE § 29A.28 (2021).

(Saturday, 9/15/2018 and Sunday, 9/16/2018) count in exhausting his entitlement to paid military leave? I say no, because section 29A.28(1)(b) explicitly provides that for a short period like this only work days count.

Brenda Barnes, a Captain (O-3) in the Army Reserve, is also a state employee. She is away from her state job for a year of voluntary or involuntary active duty, from 10/1/2018 through 9/30/2019. Because her military period is scheduled to last more than 30 days, all days (including weekends and holidays) count in exhausting her entitlement to paid military leave days. Her 30-day paid military leave starts on 10/1/2018 and expires 30 days later, on 10/30/2018.

Let us assume that Adams, the Navy Reserve Lieutenant, is away from his state job several times during the year. No individual duty period lasts more than 30 days, but cumulatively Adams is away from his state job for military duty more than 30 days during the year. At what point do weekends and holidays start counting toward exhausting his paid military leave entitlement? I contend that the weekends and holidays never count, so long as no period of military duty lasts for more than 30 days.

I did a computerized search on Painters, the 1990 Iowa Supreme Court case. The case is cited in several later Iowa Supreme Court and Iowa Court of Appeals decisions, but none of those cases deal with the computation of the exhaustion of paid military leave. Neither Iowa's high court nor its intermediate appellate court have addressed this specific issue since 1990. I believe that my interpretation will be upheld by Iowa courts when this issue eventually does arise, but of course we will see about that.

Access the Iowa Code 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 of the entirety of the Idaho Code for yourself online, for free, at <https://www.legis.iowa.gov/law/iowaCode>. To access 29A.28, select Title 1 State Sovereignty and Management → Chapter 29A Military Codes → 29A.28 Leave of Absence of civil employees. To more quickly access Section 29A.28 discussed in this article, follow this link: <https://www.legis.iowa.gov/docs/code/2022/29A.28.pdf>.

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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.

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.

If you are now serving or have ever served in any one of our nation's eight⁴ 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
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⁴ Congress recently established the United States Space Force as the 8th uniformed service.

⁵ You can also contribute on-line at www.roa.org.